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RESOURCE MANAGEMENT

(a) Personnel matters, including amendments to the Staff Regulations and Staff Rules

New system of administration of justice at the United Nations

Note by the Secretary-General

SUMMARY

Executive summary: This document reports on a new system of administration of justice at the United Nations and its implications for IMO; and requests the Council to decide on the options available

Strategic direction: 4

High-level action: 4.1.1 and 4.3.1

Planned output: Not applicable

Action to be taken: Paragraph 23

Related documents: None

BACKGROUND

1 General Assembly resolution 63/253 of 24 December 2008 provides for a new system of administration of justice at the United Nations, the aim of which is to establish an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice, consistent with the relevant rules of international law and the principles of the rule of law and due process, to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

CURRENT SYSTEM USED BY IMO

2 Under the current system of administration of justice within IMO, a staff member who wishes to appeal against an administrative decision must first request the Secretary-General to have that decision reviewed. If the staff member is not satisfied with the outcome of that review, he/she may, then, submit an appeal to the Joint Appeals Board (JAB), an internal body

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established pursuant to the IMO rules and regulations to advise the Secretary-General regarding appeals filed by staff members. The JAB makes a recommendation, but the final decision on the appeal is taken by the Secretary-General. Following the exhaustion of all internal procedures, the staff member may lodge a further appeal against the decision of the Secretary-General to the United Nations Administrative Tribunal (UNAT).

IMPLICATIONS OF THE NEW SYSTEM FOR IMO

3 Under the new UN system, as of 1 July 2009, no new cases should be submitted to UNAT and the Tribunal itself will be abolished as of 31 December 2009. As of the latter date, therefore, the agreement concluded in 1964 between IMO and the UN providing for the extension of UNAT's jurisdiction to IMO will cease to be in force. In light of these developments, the Secretary-General has been advised, by letter dated 9 March 2009, from the UN Under-Secretary-General for Management, that those United Nations specialized agencies that are currently utilizing UNAT as part of their dispute settlement procedures, of which IMO is one, will need to take a decision on whether and how they wish to proceed with the new UN administration of justice system.

4 Essentially, the choice is to replace the current system by one of following two options, which the UN is currently taking steps to put in place:

- (a) a two-tier judicial review system; or
- (b) a single-tier judicial review system.

Should IMO decide not to accept either of these two options provided by the UN, the Organization will need to make alternative arrangements with another international administrative tribunal, such as the International Labour Organization Administrative Tribunal. Whatever new process is chosen will require amendments to be made to the Staff Rules and Regulations and all will entail costs (see paragraphs 13, 17 and 21 below).

Option (a) Two-tier judicial review system

5 This option is the one that is being introduced in the UN itself. As of 1 July 2009, the UN JABs are due to be abolished, to be replaced by a much more complex system of dispute settlement involving the following compulsory elements:

- an informal system of dispute resolution;
- a new management evaluation capacity;
- legal assistance for staff; and
- a two-tier system of formal judicial review.

6 The first element, namely the new informal system of dispute resolution, includes a mediation aspect, which aims to resolve disputes between staff and the administration expeditiously and amicably. In this regard, the UN has established a Mediation Division to provide formal mediation services. It is anticipated that the Mediation Division will receive and administer voluntary joint requests for mediation and act as a neutral third party to assist the parties in reaching a mutually acceptable settlement.

7 The second element, namely the new management evaluation capacity, requires the management to review a contested decision prior to the complaint proceeding to litigation. This provides an opportunity for the administration to correct its mistakes and/or reverse faulty decisions prior to the judicial review stage.

8 The third element, namely legal support to UN staff, will be provided by the Office of Staff Legal Assistance, which has been strengthened specifically for this purpose.

9 Since the UN has not, as yet, provided clear guidance regarding the application of the above-mentioned three elements of the new system (mediation, a management evaluation capacity and legal support) to IMO, it is difficult, from a practical perspective, as well as costly, for IMO to utilize the new UN procedures. However, following enquiries made by the Secretariat, it appears that IMO will be able to retain its current internal recourse mechanism involving the JAB, albeit in a modified form, in lieu of the above-mentioned three elements.

10 The fourth element of the new UN system, namely a two-tier system of formal judicial review, comes into play once the internal procedure (JAB) has been exhausted. At that stage of the proceedings, the staff member may lodge an appeal against the administrative decision with the United Nations Dispute Tribunal (UNDT), which has been established as the first instance Tribunal of a two-tier formal system. In the absence of an appeal, a decision of the UNDT would be binding on IMO, if IMO chose this option. Should the Tribunal order rescission of the contested administrative decision or specific performance, it would, however, also provide for compensation to be paid in the alternative, not generally exceeding the equivalent of two years' net base salary of the applicant. The Secretary-General would, accordingly, retain discretion regarding the final implementation of the decision.

11 Decisions of the UNDT will be subject to appeal to the United Nations Appeals Tribunal (UN Appeals Tribunal) in cases where it is asserted that the UNDT has:

- exceeded its jurisdiction or competence;
- failed to exercise jurisdiction vested in it;
- erred on a question of law;
- committed an error in procedure, such as to effect the decision of the case; or
- erred on a question of fact, resulting in a manifestly unreasonable decision.

12 Decisions of the UN Appeals Tribunal would be binding on IMO. However, as with decisions of the UNDT, the Secretary-General would retain the discretion to pay compensation as an alternative to rescission of the contested administrative decision or specific performance.

Costs

13 Cost-sharing arrangements would be based on the total number of staff at IMO. At this point in time, the Office of the Controller of the United Nations is still developing more precise guidelines regarding cost-sharing arrangements; however, these would include the running costs of both Tribunals, the salaries and expenses of the judges (three full-time and two part-time judges for UNDT and seven full-time judges for the UN Appeals Tribunal) as well as costs associated with the preparation of cases before both Tribunals. The question of costs apart, at

this point of time, as the new system is not yet in place, there are no clear grounds to suggest that the institution of a two-tier UN Tribunal system will function better for IMO than the single-tier appeal system (JAB with UN Appeals Tribunal, as discussed in option (b) below). Option (a) is, therefore, not recommended.

Option (b) Single-tier judicial review system

14 Under this option, IMO would be able to retain its current internal recourse mechanism involving the JAB; but, unlike option (a) above, there will only be one level of judicial review, namely to the UN Appeals Tribunal. The system would, accordingly, function in a manner similar to the system of administration of justice currently in place in IMO involving appeals to the UN Administrative Tribunal.

15 Pursuant to article 2(10) of the Statute of the UN Appeals tribunal, an appeal can only be pursued on condition that IMO has in place a “neutral first instance process”. Neutrality will be determined by reference to whether the determinations of the internal recourse mechanism, i.e. the JAB, were made independently of the authority whose decision is being challenged. In addition, as the UN Appeals Tribunal will not generally conduct its own findings of fact, the JAB will be required to provide a written record of its proceedings, coupled with a written decision providing reasons, as well as findings of fact and law.

16 Decisions of the UN Appeals Tribunal will be binding but, as described in relation to option (a) above (paragraph 12), the Secretary-General will retain the discretion to pay compensation as an alternative to the rescission of the contested administrative decision or specific performance. This provision is in line with the current system of administration of justice applied in IMO.

Costs

17 As stated above (paragraph 13), at this point in time, the Office of the Controller of the United Nations is still developing more precise guidelines regarding cost-sharing arrangements. However, should IMO choose this option, the cost-sharing arrangement would be tied to the number of cases filed against the Organization in a particular year rather than being a standing figure based on staff numbers. This is expected to reduce the Organization’s costs considerably compared to option (a) since, based on past experience, relatively few cases emanate from IMO. Therefore, for the reasons explained in paragraphs 14 and 16, as well as the question of costs, option (b) is recommended.

ALTERNATIVE SYSTEM AVAILABLE TO IMO (ILOAT)

18 The new UN system of administration of justice is not the only system which is available for IMO to endorse as the appeal process available under the Administrative Tribunal of the International Labour Organization (ILOAT) may, alternatively, be utilized. Pursuant to its statute, ILOAT is competent to hear complaints alleging non-observance of the terms of appointment of officials and of provisions of the Staff Regulations not only of ILO but also of any other international organization which enters into an agreement with ILOAT.

19 A complaint will not be receivable by ILOAT unless the decision impugned is a final decision and the person concerned has exhausted all internal procedures, which are open to him/her under the applicable Staff Regulations of his/her organization. “Exhausting all internal procedures” means making use of all the legal channels that are open to an official within the rules of his/her organization before a final decision is taken.

20 A major difference between the current IMO and the ILOAT systems is that the discretion to pay compensation as an alternative to the rescission of a contested administrative decision or specific performance lies with ILOAT and not the Secretary-General. In addition, the ILOAT Statute does not set an upper limit of compensation. As a result, IMO may end up paying much higher awards of compensation to a successful complainant than is currently the situation.

Costs

21 In respect of the cost implications of accepting the ILOAT jurisdiction, ILOAT charges a fixed annual fee calculated according to the number of staff working in an organization. In addition, all expenses incurred by the Tribunal during a hearing will be borne by the organization against which the complaint is filed. Therefore, for the reasons explained in paragraph 20, as well as the question of costs, the ILOAT option is not recommended.

RECOMMENDATION

22 In the light of the information provided above, the Council may wish to adopt option (b) on the grounds that it concerns a system which is relatively cost efficient; easy to implement; basically similar to the current IMO system; and retains the Secretary-General's discretion to pay compensation in lieu of rescission of the administrative decision.

ACTION REQUESTED OF THE COUNCIL

23 The Council is invited to:

- .1 note the information provided in this document;
- .2 endorse the above recommendation; and
- .3 comment and decide, as it may deem appropriate.
