



# General Assembly

Sixty-third session

Official Records

Distr.: General  
15 December 2008

Original: English

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## Fifth Committee

### Summary record of the 11th meeting

Held at Headquarters, New York, on Thursday, 23 October 2008, at 10 a.m.

*Chairman:* Mr. Råsbrant (Vice-Chairman) . . . . . (Sweden)  
*Chairman of the Advisory Committee on Administrative  
and Budgetary Questions:* Ms. McLurg

## Contents

Agenda item 117: Review of the efficiency of the administrative and financial  
functioning of the United Nations (*continued*)

*Strengthening investigations*

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08-56544 (E)



*In the absence of Mr. Bródi (Hungary), Mr. Råsbrant (Sweden), Vice-Chairman, took the Chair.*

*The meeting was called to order at 10.10 a.m.*

**Agenda item 117: Review of the efficiency of the administrative and financial functioning of the United Nations** (*continued*)

*Strengthening investigations* (A/63/167 and Add.1, A/63/329 and Add.1, A/63/331, A/63/369, A/63/490 and A/63/492)

1. **Mr. Myard** (Chairman of the Audit Operations Committee of the Board of Auditors) recalled that, at the Fifth Committee's seventh meeting he had already introduced all but two of the 19 reports of the Board of Auditors due for consideration at the current session. The Board's report on the activities of the Procurement Task Force (A/63/167), prepared in response to the request made by the General Assembly in its resolution 62/234, was one of the two remaining reports.

2. In the Board's view, the Task Force had worked professionally and in compliance with United Nations rules and regulations, notably those of the Investigations Division of the Office of Internal Oversight Services (OIOS). While the Task Force had found some cases of fraud and criminal conduct, it had not found widespread corruption in the Organization.

3. The Board advocated the permanent incorporation of the Task Force's skills and competencies into the Organization's investigation system, which should be reviewed as a whole. It recommended that the Administration should use the investigation procedure, only if there were well-founded suspicions that rules had been broken, and only after all other reasonable action had been considered. The Administration should standardize and consolidate in an instruction of the Secretary-General the rules and procedures applicable to all investigations in the United Nations.

4. **Ms. Ahlenius** (Under-Secretary-General for Internal Oversight Services), introducing the report of the Office of Internal Oversight Services (OIOS) on the activities of its Procurement Task Force (A/63/329), which covered the 13-month period ending 31 July 2008, recalled that the Task Force had been established in 2006 to investigate allegations of fraud and corruption in the Organization's procurement function. By the time its financing ceased at the end of

December 2008, it would have concluded approximately 250 investigations and issued more than 35 reports.

5. The Task Force had completed investigations despite many challenges, including non-cooperation, very poor record-keeping in the field and administrative and operational difficulties arising from the temporary nature of its mandate. It had sought to work with integrity and fairness, pursuing exculpatory evidence with the same vigour as it examined inculpatory evidence, and aiming to help the Organization to improve its practices and to promote a fair and thorough investigative approach to the high-risk area of procurement.

6. While a number of Task Force investigations had identified corruption and malfeasance, the Task Force on other occasions had recommended, after thorough investigation, that a number of staff should be cleared of allegations of misconduct. It had also found a number of allegations against vendors to be without merit. The Board of Auditors had found no discriminatory practices in the work of the Task Force, which had addressed two areas of particular significance to investigations: according staff due process and improving the integrity of vendor selection and sanctions through investigations, recommendations and proposals to the Administration.

7. The Task Force had also identified fraud, corruption and financial malfeasance in cases beyond those examined by the Board of Auditors. In those cases, absent or deficient internal control systems had left the Organization open to waste and abuse. In the past, the Organization had been slow and even reluctant to hold culprits accountable, and had not been proactive in recovering damages for corrupt conduct.

8. The Organization must make clear its determination to address the risks of internal and external fraud, corruption and financial malfeasance. If fraud or injury occurred, cases should be pursued not only within the system of internal administration of justice, but externally through civil and criminal courts and the arbitral process. A message of deterrence should be conveyed to make it clear that the Organization would not allow itself to be exploited, regardless of the cost of pursuing such cases. In the long run, the tangible and intangible benefits of that approach would outweigh any short-term expenditure.

9. On the basis of the Task Force's investigations, OIOS had made a number of recommendations to make the vendor sanction process more flexible, to give the Secretariat more options to deal with vendor misconduct, to promote sound and ethical business practices in companies found to have engaged in corrupt practices in United Nations contracting, and to reward exemplary cooperation with investigations.

10. Before the end of 2008, the Task Force planned to issue at least eight more reports. However, some cases would be left unconsidered, some would remain in mid-investigation, and follow-up would be needed for completed investigations. OIOS would therefore endeavour to retain the competencies and experience gained by the Task Force, to ensure the implementation of recommendations and to make viable changes. While advances in procurement, contract selection and the detection, sanction and prevention of fraud and corruption had certainly been made, much remained to be done.

11. **Ms. Hurtz-Soyka** (Director, Office of the Under-Secretary-General for Management), introducing the report of the Secretary-General on the implementation of the recommendations of the Board of Auditors contained in its report on the activities of the Procurement Task Force (A/63/167/Add.1), said that it had been submitted in accordance with the General Assembly's request to the Secretary-General, in paragraph 7 of its resolution 48/216 B, to report on the steps to be taken to implement the Board of Auditors recommendations at the same time those recommendations were submitted to the Assembly.

12. In his report, the Secretary-General concurred with the five recommendations contained in the Board of Auditors report (A/63/167) and provided information on implementation time frames, the office holders responsible for implementation and the priorities for implementation. With regard to the Board's recommendation that the Administration should incorporate into the Organization's permanent investigations system the skills and competencies of the Procurement Task Force, as well as the lessons learned from its operations, implementation was in progress and was scheduled for completion in the first quarter of 2009, with primary responsibility in that regard lying with OIOS. With regard to the related recommendation that the Administration should review the investigation function in the United Nations as a whole, the Secretary-General, in his report on

strengthening investigations (A/62/582), had indicated his intention to report to the General Assembly after conducting a broader review that would provide a comprehensive approach to investigations across the United Nations.

13. In response to the request for updated information made by the General Assembly in paragraph 17 of its resolution 62/247, the Secretary-General had prepared the relevant report (A/63/369), with respect to the Assembly's request, in paragraph 18 of the same resolution, for information on the intended terms of reference for the proposed comprehensive review of investigations in the United Nations, the terms of reference would take into account the Assembly's decisions on the matters still before it for consideration.

14. The Board's recommendation that investigation procedures should be used with great caution had prompted OIOS to establish an intake committee to review information reported to or identified by its Investigations Division that might lead to an investigation. OIOS was in the process of implementing the Board's recommendation that the Administration should standardize and consolidate the rules and procedures applicable to investigations as an instruction of the Secretary-General to be systematically given to the staff interviewed. It would implement the recommendation that pending investigations should be properly handed over when the Procurement Task Force ceased to operate.

15. Introducing the note by the Secretary-General transmitting his comments on the report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008 (A/63/329/Add.1), she said that, as many of the Task Force alone reports remained under review, their findings should be regarded as those of the Task Force, and not as a final determination by the Organization. In addition, the Secretary-General underscored that the amounts referred to in the OIOS report did not reflect financial loss, but rather total contract value affected by corruption or fraud.

16. The note provided additional information on the Board of Auditors recommendation that an instruction of the Secretary-General should be established to standardize and consolidate the rules and procedures applicable to investigations, to make due process rights

clearer. It also provided clarification of what could be deemed to constitute misconduct, emphasizing that decisions in that regard lay with the Secretary-General, while the provision of legal advice was the function of the Legal Counsel. The Organization had taken a number of steps to facilitate vendors' cooperation with investigations, including the use of new registration criteria, the revision of the United Nations General Conditions of Contract in January 2008 and the application of the United Nations Supplier Code of Conduct. The Secretary-General supported the OIOS proposals for the strengthening of the vendor sanctions regime.

17. The note also provided information on the Organization's response to the recommendations of the Procurement Task Force, particularly with regard to referral of cases to national authorities and recovery action. In the first quarter of 2008, the Management Committee had conducted a review of the implementation of all recommendations of the Procurement Task Force. A further review would be carried out by the end of 2008. While action on investigation reports was taken as expeditiously as possible, such matters unavoidably required careful consideration.

18. Introducing the report of the Secretary-General on the information requested in paragraph 17 of General Assembly resolution 62/247 (A/63/369), she said that the report, prepared in consultation with OIOS, provided information on the status of implementation of General Assembly resolution 59/287, on all the entities other than OIOS carrying out administrative inquiries and investigations and on the status of efforts, using general temporary assistance resources, to establish a training capacity for the Investigations Division to enable programme managers to handle category II cases of possible misconduct.

19. **Mr. Taksøe-Jensen** (Assistant Secretary-General for Legal Affairs), introducing the report of the Secretary-General on information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission (A/63/331), prepared pursuant to paragraph 19 of General Assembly resolution 62/247 on strengthening investigations, said that the Organization was currently cooperating with law enforcement authorities in 65 jurisdictions of 28 Member States. Overall, it had not

experienced problems in its cooperation relating to the sharing of information or material for criminal investigations. The practices in that regard extended beyond the narrow category of officials and experts on mission to other categories of personnel assigned functions under the authority of the Organization. Thus, while military contingent members in a peacekeeping operation fell under the exclusive criminal jurisdiction of troop-contributing States, the United Nations would share information concerning criminal acts attributed to such personnel with relevant national law enforcement authorities in the same manner as in cases involving officials and experts on mission.

20. The Secretary-General sought to strike a balance between upholding respect for the law and facilitating the proper administration of justice, on the one hand, and protecting the privileges and immunities required for the Organization to remain independent in the fulfilment of its functions, on the other. In every case involving the issue of immunity, the interests of the United Nations, as determined by the Secretary-General, were paramount in deciding whether or not a waiver would be granted. The report emphasized the central role of the Office of Legal Affairs in managing the process of information-sharing with Member States and the referral of criminal cases to them. It also highlighted the role of the Permanent Missions of Member States to the United Nations as the main formal interlocutors with the United Nations for the purposes of information-sharing and referral of cases. That practice helped to ensure consistency in the handling of cases.

21. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the report of the Advisory Committee on the activities of the Procurement Task Force (A/63/490), welcomed the Board of Auditors report on the activities of the Procurement Task Force (A/63/167) and its conclusion that the work of the Task Force had not exposed widespread corruption at the United Nations. The Advisory Committee recommended that the General Assembly should endorse the Board's recommendations, taking into account the Advisory Committee's own comments and recommendations.

22. The Advisory Committee noted that the Secretary-General, in his response to the Board of Auditors (A/63/167/Add.1), had indicated that

arrangements were being made for the transfer of the Task Force's know-how and remaining caseload to the Investigations Division of OIOS by the end of 2008. In incorporating the competencies of the Procurement Task Force into the OIOS Investigations Division, account should be taken of the comments and recommendations made in previous reports of the Advisory Committee (A/62/7/Add.35, paras. 16 and 23, and A/62/855, para. 159), which had been endorsed by the General Assembly in its resolutions 62/247 and 62/250.

23. The Advisory Committee concurred with the Board's recommendation that standardization and consolidation of the rules and procedures applicable to all investigations in the United Nations should be completed as soon as possible, and took the view that a Secretary-General's bulletin would be the appropriate means to convey those rules to the staff. The Secretary-General should draw on the Board's observations and the experience of the Procurement Task Force to ensure that the Organization had internal capacity to deal with such matters, thus avoiding the need to resort to ad hoc measures in future.

24. Having noted that OIOS, in its report on the activities of the Procurement Task Force (A/63/329), had identified several areas in which the Task Force had recommended improvements, the Advisory Committee observed that many of those recommendations were within the responsibility of the Secretary-General, welcomed the measures presented in his report (A/63/329/Add.1), and encouraged further action in that regard.

25. Introducing the report of the Advisory Committee on the reports submitted by the Secretary-General in response to paragraphs 17 and 19 of General Assembly resolution 62/247 (A/63/492), she said that the Advisory Committee recommended that the General Assembly should take note of the information provided in relation to paragraph 17.

26. In the case of the information relating to paragraph 19, the Advisory Committee pointed out that information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission, were extremely important issues relating to the independence of the international civil service, to the ability of other officials of the United

Nations to carry out their duties effectively, and to accountability for personal conduct.

27. The issues dealt with in the Secretary-General's report (A/63/331) had administrative implications, as well as far-reaching legal implications, affecting United Nations officials at duty stations all over the world. The procedures for such cooperation with host countries, in particular in situations involving requests for waivers of immunity, must be consistent and transparent. The Advisory Committee recommended that the General Assembly should take note of the report of the Secretary-General, and considered that the General Assembly might wish to decide whether the report should also be considered by the Sixth Committee, together with the report of the Secretary-General on criminal accountability of United Nations officials and experts on mission (A/63/260 and Add.1).

28. **Mr. Hunte** (Antigua and Barbuda), speaking on behalf of the Group of 77 and China, said that the effective conduct of investigations was very important since it had a significant impact on the morale and well-being of the staff and the Organization. The Group particularly appreciated the work of the Board of Auditors in reviewing the conduct of investigations by the Procurement Task Force.

29. Noting that approximately 60 per cent of all companies involved in the cases investigated by the Procurement Task Force were domiciled in either North America or Europe and that those countries represented less than 20 per cent of the entire membership of the Organization, the Group requested further information on the matter and on the criteria for determining whether contracts were tainted by irregularities.

30. The Group had noted the comments and recommendations of the Procurement Task Force on vendor investigations, and agreed that the Procurement Manual should be further strengthened to prevent blacklisted companies from trying to re-enter the vendor system under other guises. The recommendation to strengthen sanctions against malfeasant vendors required closer scrutiny, as it related to the Secretary-General's proposal on a comprehensive review of investigations.

31. Turning to the report of the Board of Auditors (A/63/167), he said that the Group agreed that the investigations conducted had suffered as a result of the circumstances in which the Procurement Task Force

had been set up and in which it had operated and that, in particular, the boundaries between an investigation, an audit and a disciplinary procedure were not always made clear to the staff under investigation. The Group therefore agreed with the recommendations of the Board of Auditors and the Advisory Committee that the rules and procedures applicable to all investigations should be standardized and consolidated under an instruction of the Secretary-General and be systematically provided to staff being interviewed. The Group also agreed that the investigation procedure should be used only where there were well-founded suspicions that rules had been broken and only after all possible alternative approaches had been considered.

32. While agreeing with the recommendation of the Board of Auditors that pending investigations should be handed over when the Procurement Task Force ceased to operate, the Group felt that any transfer of institutional experience should be subject to the existing regulations and rules of the Organization, including those governing human resources management.

33. Finally, the Group agreed with the Advisory Committee that information-sharing was a highly important issue, as it had implications for the independence of the international staff under the Charter.

34. **Mr. Cazalet** (France), speaking on behalf of the European Union, said that the Union merely wished to place on record its open and constructive spirit and its wish to work together with all delegations during the forthcoming discussions and negotiations on the complex and important issues considered under agenda item 117.

35. **Mr. Hoe Yeen Teck** (Singapore) said that the Board of Auditors had acknowledged that it had been unable to hear individual cases of possible violations of due process. That was understandable, given the scope of its mandate; the task of deciding whether the benefit of due process had been properly accorded to staff under investigation rested with United Nations tribunals, which had, in numerous cases, found that OIOS and the Procurement Task Force had failed to ensure due process.

36. The audit had identified several problematic issues concerning the conduct of investigations by the Procurement Task Force, including the absence of formal and transparent rules, the conditions for

applying existing rules and even the applicable rules themselves. Many of those issues had been raised previously by his delegation. The audit had also noted that the Administration had not adequately protected the confidentiality of staff under investigation.

37. His delegation, particularly in view of the inadequacies of the Investigations Division of OIOS, had originally been supportive of the role that the Procurement Task Force had been intended to play when it had been set up three years previously. However, the last three years had revealed the additional problems that could arise, in particular in connection with due process issues, in the case of an entity with a limited legislative mandate and even less accountability. During the same period, little had been done to strengthen the Investigations Division's capacity to handle procurement cases, and posts that had been established for that purpose remained unfilled.

38. When the Procurement Task Force ceased to function by the end of 2008 it would leave behind a number of unfinished investigations, and the question of what to do next had to be decided. The audit had been a step in the right direction, and his delegation had three suggestions to make in that context.

39. First, there must be fair and transparent rules on investigations. OIOS should, as soon as possible, finalize its long-promised investigation manual, which should be comprehensive and address all relevant issues, including the due process matters that had been identified by United Nations tribunals. Programme managers and other staff empowered to conduct investigations should also finalize their own investigation procedures, drawing where appropriate on the OIOS investigation manual, thus ensuring a minimum standard. The Secretariat should ensure that all investigators received training appropriate to their roles and responsibilities.

40. Second, the regulations and rules must be disseminated so that everyone to whom they applied knew about them and understood their implications and the implications of all relevant administrative issuances and circulars. There should be a single point of reference for anyone seeking further clarification, perhaps on the United Nations Intranet.

41. Third, the investigation process should be made more efficient and effective. The Secretariat should be capable of handling a wide variety of investigations.

However, no systematic assessment had been made of how investigations should be conducted. His delegation looked forward in that connection to the report that had been requested in General Assembly resolution 62/247, which should provide guidance on the way forward.

42. **Ms. Norman** (United States of America) said that her delegation strongly supported the work of the Procurement Task Force and was pleased with the efforts it had made since its creation in 2006 to preserve the integrity of the United Nations and its operations. Despite operational challenges due to the temporary nature of its mandate, the Procurement Task Force had tackled an impressive caseload and had identified 20 significant fraud and corruption schemes in contracts worth over \$630 million.

43. As the work of the Procurement Task Force had proved critical in the effort to identify and deal with fraud, waste and mismanagement in the Organization, her delegation strongly supported the integration of its functions into the Investigations Division of OIOS. The capacity of the Investigations Division needed to be strengthened; she was concerned, however, that the current capacity and staffing of OIOS would prove inadequate to address the additional burden, and she asked for assurances that that matter would be addressed as a priority within OIOS and the Secretariat.

44. Her delegation agreed with the Advisory Committee that almost all of the corrective actions required were within the authority of the Secretary-General, and she requested the Secretariat to take the necessary action without delay.

45. It was gratifying to learn from the Secretary-General's report (A/63/167/Add.1) that the development of a comprehensive investigation manual was well advanced; she asked for an update on the state of completion that had been reached. On a related matter, she asked about recent progress in developing the investigation learning programme modules to be used for training programme managers.

46. The OIOS report (A/63/329) dealt in chapter VI with vendors and contracts and made repeated references to recommendations on strengthening United Nations procedures and sanctions against corrupt and irregular vendors and contractors. She asked about the status of the recommendations, in particular those concerning a vendor sanctions system

that would include public disclosure of decisions taken on vendor sanctions.

47. While noting that the Board of Auditors had concluded in its report (A/63/167) that the Procurement Task Force had not exposed widespread corruption at the United Nations, her delegation also agreed that the existence of the Task Force might have served as a deterrent and had thus been helpful in eliminating undesirable suppliers. She asked for further information on the elimination of undesirable suppliers from the entire United Nations system.

48. Her delegation agreed in general with the Task Force's recommendation that companies and individuals should be held accountable for financial losses resulting from wrongful conduct. She urged the Secretary-General to act without delay in implementing the Task Force's recommendations.

49. **Mr. Kovalenko** (Russian Federation) said that his delegation attached great importance to the strengthening of internal control mechanisms in the Secretariat. The United Nations was currently performing important tasks requiring colossal material and human resources. Vast sums were spent on peacekeeping operations, and the Member States were entitled to demand proper accounting. Unfortunately, cases of miscalculation, error and sometimes misconduct in the expenditure of resources occurred from time to time. His delegation was convinced that OIOS could make a substantial contribution to improving the utilization of the Organization's resources.

50. The original functions of OIOS, in addition to auditing, included investigation, inspection and the evaluation of programme activities. The strengthening of the investigation function, though undoubtedly an important issue, should not adversely affect the other functions of the Office.

51. In the informal consultations, his delegation intended to focus on the parameters and consequences of investigation procedures and on the structural changes being proposed to integrate the functions of the Procurement Task Force into OIOS. At the current stage, his delegation was very doubtful and, indeed, perplexed at the proposal to integrate the functions and skills of the Procurement Task Force into OIOS. The Office had had investigation functions from the outset and did not need to have them integrated from without. Moreover, the proposal for the integration of skills was

not in conformity with United Nations human resources management rules and procedures. His delegation was also surprised at the proposal concerning the need for a decision by the General Assembly on the transfer of pending cases to OIOS, and would be grateful for further clarification of that matter by the Secretariat.

52. With regard to the exchange of information between the Organization and the law enforcement bodies of Member States, the Secretary-General's report (A/63/331) confirmed his delegation's opinion that there were a number of problems in that area which were more than merely technical. In particular, such exchanges had a bearing on the rights and legitimate interests of United Nations officials and experts on mission. The machinery for interaction needed to be improved, above all with a view to more effectively protecting the rights of such persons. Greater attention should be paid to ensuring transparency in the process of decision-making on the subject of immunities. It was also essential to inform the authorities of the State of nationality whenever a United Nations official faced the threat of legal action in connection with acts performed in the line of duty. In some cases, that was the only means of ensuring proper respect for the professional rights of the person concerned.

53. **Ms. Ahlenius** (Under-Secretary-General for Internal Oversight Services) said that she disagreed with the statement made by the representative of Singapore to the effect that the United Nations Administrative Tribunal had in numerous judgements faulted OIOS and the Procurement Task Force on due process. In fact, there had been no such judgements. In connection with the statement concerning the alleged absence of clear rules, she pointed out that the Board of Auditors had mentioned that the Procurement Task Force had followed the rules established in the OIOS Manual, which had been prepared in cooperation with the United Nations Legal Counsel. Similarly, the conclusions of the Board of Auditors had been very clear with regard to due process. The Board had studied one significant case where the person concerned had alleged a violation of due process, and the Board had concluded that the claim was without merit. No violations of due process had occurred in any other investigations carried out by the Procurement Task Force. The report of the Board of Auditors did

not, therefore, support the statements on that matter made by the representative of Singapore.

54. With regard to the permanent structure and capacity of OIOS, she said that a proposal for the reform and restructuring of OIOS investigations had been submitted the previous autumn. The General Assembly at that time had not approved the proposals but had requested a more detailed analysis and justification of them. In addition, the General Assembly had decided the previous December to extend the mandate of the Procurement Task Force until the end of 2008. In such circumstances, it would have been a waste of resources to establish a parallel structure in the Investigations Division for the investigation of procurement cases. However, in 2008 OIOS had prepared for the integration of the capacity and know-how of the Procurement Task Force into the Investigations Division. As she had explained in presenting her proposal to the General Assembly the previous year, that task would require the redeployment of posts from the field, where cases were declining, to the headquarters duty stations in New York, Vienna and Nairobi in order to restructure the Investigations Division in a fully effective way so as to be able to absorb the outstanding caseload of the Procurement Task Force.

55. The representative of Singapore had also referred to the alleged lack of accountability of the Procurement Task Force. In that connection, she stressed that the Procurement Task Force was part of OIOS, that the head of the Task Force reported to her and that she was, therefore, fully accountable for the work it carried out.

56. **Mr. Hoe Yeen Teck** (Singapore), responding to the remarks of the Under-Secretary-General, said that he would be happy to sit down with her to identify the passages in the report of the Board of Auditors where the Board had recorded the conclusions to which he had referred in his statement. He was pleased to have the Under-Secretary-General's assurance that accountability ultimately rested with her; his delegation would pursue that matter further in the informal consultations.

*The meeting rose at 11.20 a.m.*