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The Future of the Procurement Task Force

by Lydia Swart

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The Procurement Task Force will not be able to continue its work in 2008 unless Member States approve additional funding by the end of this year. Informal discussions on the work of the Task Force were postponed last week at the request of the Group of 77. Some insiders believe that one of the first investigation cases taken up by the Task Force may be a key reason for this delay.

ORIGIN AND WORKLOAD OF THE PROCUREMENT TASK FORCE

The Procurement Task Force started its work in January 2006 as an ad hoc group within the UN's Office of Internal Oversight Services (OIOS). The Task Force was created following the 'Oil-for-Food' scandal, apparently at the urging of former Under Secretary General for Management, Mr. Christopher Burnham from the United States.¹ Concentrating on fraud and corruption in procurement activities, both at the Headquarters and in the field, the Task Force has grown from six to 16 investigators. Its budget for 2006 and 2007 is \$10.9 million with most of it covered by the budget of OIOS and the remainder by the Department of Management.² Working out of undisclosed offices somewhere in Manhattan, it is headed by former US federal prosecutor Robert Appleton, who told the Financial Times last week that the Task Force is only beginning to tackle the biggest cases and that "this year we've been running on all cylinders and we don't want to see that stop."³

According to the Report of the OIOS on the Activities of the Procurement Task Force for the 18-month period ended 30 June 2007 (A/62/272), the Task Force focused its early investigations on the eight UN staff members who had been placed on special administrative leave (with pay) by the management of the UN following an OIOS audit report. Later, it also focused on procurement irregularities in various UN Field Missions and on 319 procurement-related cases it received from the investigations division of the OIOS plus 22 additional cases it identified on its own.

Of the eight initial cases, three were cleared of all allegations – though one of these three is apparently under investigation again. A fourth case was referred for criminal prosecution after the staff member's immunity was waived by the Secretary General. The remaining four cases were determined to have breached the UN Staff Regulations and Rules or were accused of managerial deficiencies. Two of these four staff members were also charged with misconduct. The staff member who was referred for criminal prosecution, Mr. Sanjaya Bahel, ended up in a New York Federal Court where he was pronounced guilty and convicted of all charges based on information provided by the Task Force. He was found to have taken bribes (cash and real estate property in Manhattan) in return for favorable treatment in the bidding and procurement process of a company for at least eight contracts involving some \$100 million.

THE CASE OF MR. ANDREW TOH

The best known case among the first eight investigations of the Task Force concerns former Assistant-Secretary-General for Central Support Services, Mr. Andrew Toh from Singapore, who provided information about his case to the media. The Foreign Ministry of Singapore issued a number of press releases which also provide considerable detail. In fact so much information has been made available publicly that it is not hard to guess which paragraphs in the report on the work of the Task Force (hereafter PTF report) – pertain to Toh, even though the report does not include the names of the eight cases.

According to the PTF report, the ‘interim’⁴ findings about Toh do not suggest fraud or corruption. Instead, in the report dated 5 October 2007, the Task Force determined Toh had continued to endorse a contractor which not only had a poor performance record, but also overcharged the United Nations. Furthermore, it was determined that he did not address issues in regard to a vendor who did not pay its workers the subsistence sums they were entitled to. More seriously, the PTF’s findings led to charges of misconduct “in connection with his refusal to provide full and complete information to the Task Force; his refusal to comply with a specific direction from the Secretary-General; and his inaccurate and incomplete disclosure form.”

In his comments on the PTF report (A/62/272/Add.1), the UN Secretary General states that “the findings of the Task Force should be regarded as those of the Task Force, and not a final determination by the administration of the Organization.” Interestingly, as to the specific case of Toh and the Task Force’s findings – again, Toh is not actually mentioned by name – the Secretary General provides information indicating that Financial Regulations and Rules, performance appraisal mechanisms and audit recommendations had eventually led to the correction of the alleged managerial inefficiencies involving the contractor and vendor.

As the Task Force did not find cause for criminal charges, Toh’s case was referred to the Joint Disciplinary Committee (JDC) which on 4 October 2007 – according to a press release issued by Singapore - cleared Toh of all charges except those related to omissions in his financial disclosure to the Task Force following the directive of the Secretary General or on the annual financial disclosure form for those dealing with procurement. The JDC recommended that Toh be reprimanded for the first and not receive anything beyond a written censure for the latter. The JDC made some observations about lack of fairness and confidentiality as well as due process in this case. According to the press release of the foreign ministry of Singapore, the UN’s Panel on Discrimination and Other Grievances apparently agreed with Toh that he had been denied his due process rights, that his integrity and dignity were violated, and that his supervisor Burnham was guilty of “harassment, discrimination, intimidations and abuse of authority.”

Subsequently, the Secretary General determined the consequence of Toh’s incomplete financial disclosure. Toh was suspended for two months without pay and was also demoted. A considerably stronger punishment than recommended by the JDC. It is likely that Ban Ki-moon wanted to send a strong message about the importance of complete financial disclosure for managers and staff involved in procurement. We could not find any press releases or reports which clearly explain in what way Toh only partially completed his financial disclosures, or how this was discovered. In one press report, it is suggested that Toh did not mention a home in Singapore and a bank account in London which he claimed to have opened for his daughter. Feeling somewhat vindicated by the findings of the JDC and the Panel on Discrimination and Other Grievances, Toh reportedly would like to bring a civil case against Burnham in the US courts. This would require the Secretary General to waive the immunity of Burnham and according to some observers, this is highly unlikely as no criminal charges are involved but rather an employment dispute.

SINGAPORE'S CONCERNS

In a letter dated 24 January 2006 to the Straits Times, an English-language daily in Singapore, Toh wrote: "I have every intention to continue to fight for the truth to prevail and to restore the good name of Singapore and the Singaporeans." That the Singapore government also felt that its own reputation was soiled by the charges against one of their nationals - even though he is an international civil servant and not representing his government in the execution of his duties - has been very evident to Fifth Committee delegates. Since early 2006, the fifth committee delegate representing Singapore has persistently raised questions about somewhat relevant issues in a rather intense and angry manner. Many delegates assume that this has been motivated by the investigation of Toh and some privately wonder whether this constitutes interference from Singapore in an ongoing internal investigation.

The government of Singapore seems to feel that Toh was singled out because he is from Singapore and they argue that none of his counterparts with the same stature in peacekeeping were similarly investigated at the time, even though because of 'delegation of authority,' many contracts fall under the responsibility of the Department of Peacekeeping. Though the Permanent Representative from Singapore at the United Nations would not deny that Toh's financial disclosure was incomplete, Singapore remains especially concerned about the lack of due process. Not being allowed legal counsel early on during the investigation is one of Singapore's key objections. The OIOS, however, argues that it has been advised by the Office of Legal Affairs "that fairness does not entail the right of the staff member to have counsel's assistance during the interview." The OIOS feels that there seems to be a misunderstanding about how "due process applies in the context of an administrative (not adjudicatory) fact-finding investigation."⁵

THE FUTURE OF THE PROCUREMENT TASK FORCE

In the PTF report, the OIOS explains that it would like the Task Force to complete its work after its mandate expires at the end of December. It feels that the "momentum and the skills and competencies of the staff of the Task Force should not be lost." The OIOS is even considering requesting the General Assembly to incorporate the competence of the Task Force into the overall permanent OIOS capacity.

Responses from Fifth Committee members following the introduction of the PTF report on 20 November indicate that the EU and the United States are ready to consider the report of the Task Force and its continuation in 2008. The G77, however, indicated that they first want to receive the outstanding comprehensive review of the investigation division of the OIOS before moving on to informal consultations. Asking to receive other reports first is not an unusual tactic for Member States in the Fifth Committee, because stalling issues provides them with bargaining chips to support items that are higher on their agenda. But in this case, the stance of Singapore about the Task Force is apparently a key factor, along with concerns from some delegates from the South - not publicly expressed - in regard to the Task Force's mandate and establishment as well as the perception that it primarily targets staff members from the South.

Ban Ki-moon recently requested almost 5 million dollars for the work of the Procurement Task Force in 2008.⁶ The G77 - a group of 130 Member States - though not a driving force in the establishment of the Task Force, is clearly in the driving seat at this point. It is however doubtful that the G77 can afford to eliminate it. Not allowing the work of the Procurement Task Force to continue would dangerously fuel perceptions that the UN - its Secretariat and its Member States - are unwilling and unable to stem fraud and corruption. Current negotiations on Administration of Justice - the new internal justice system of the UN - provides Member States with a good opportunity to review how investigations are conducted across the board in the organization.

Notes:

1. John Bolton praised Burnham for being the driving force in the creation of the Procurement Task Force according to the article, *UN Corruption probe 'At Full Throttle'* by Edith M. Lederer, Associated Press, 3 November 2006.
2. To cover the costs of premises, communications, supplies etc (A/62/272, page 18).
3. *UN split over keeping crime team*, by Harvey Morris, Financial Times, 20 November 2007
4. Does the use of the word 'interim' mean that the investigation of Toh is still ongoing? Or is 'interim' used because when preparing the PTF report, the JDC had not yet pronounced itself on this case?
5. A/62/272 In her statement to the Fifth Committee on 20 November 2007, Under-Secretary-General Inga-Britt Ahlenius for Internal Oversight Services said: "I would like to address an important issue which has unfortunately been severely misreported lately, namely the process by which the PTF conducts its investigations and addresses its cases. The PTF operates under the Investigations Division's Manual of Investigation Practices and Policies. ... Absolutely every effort is made to ensure investigations are carried out in a highly professional manner, and to ensure that staff are fully informed of their full rights as they pertain to an administrative investigation.
6. A/65/520

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