

SUPPRESSED WHISTLE-BLOWERS

In 1994 Erskine Childers and Brian Urquhart called for drastic, substantive administrative justice reform in the UN, in sharp and refreshing contrast to all the endless talking and tinkering of the Secretariat over the past decades:

"The debilitating atmosphere and the rise of cronyism have sapped staff confidence in justice within secretariats. Even peer appeal boards lack full trust because no staff member seeking redress can feel confident any longer that he or she may not be intimidated. This state of affairs has been well known. ...

[There should be] a proper resort system whereby staff can report malfeasance without fear, staff seeking redress can have proper counsel, and all staff can have the requisite measure of protection from imperious behavior by poorly-chosen superiors. ...

The [50th UN] anniversary could be a fitting occasion for a solemn reaffirmation of Article 100.2 by all governments in all prime organs of the system. 1995 should begin a new era of respect by member-states for the integrity and independence of a civil service upon which the future effectiveness of the organization in large part depends."

Erskine Childers, with Brian Urquhart, "Renewing the United Nations System", Development Dialogue, 1994:1, Dag Hammarskjold Foundation, Uppsala, Sweden, **1994**, pp. 169-170. [emphasis added.]

In that very same year, the General Assembly called very specifically for new whistle-blower protection and confidential staff reporting processes in the new OIOS. The guidance was elaborated on in even more detail in a Secretary-General's Bulletin of 1994, which made it clear that the new OIOS hotline mechanism and staff reporting processes were a very serious matter.

"Review of the administrative and financial functioning of the United Nations", General Assembly resolution 48/218 B of **29 July 1994**, paras. 6-7., and "Establishment of the Office of Internal Oversight Services", Secretary-General's Bulletin, ST/SGB/273 of **7 September 1994**, section D, "Investigation,." para. 18.

Subsequently, however, as discussed in detail in the preceding subsection on Disappearing whistle-blowers, the whistle-blower process (except for many reports of problems received by OIOS) has largely disappeared from the UN. There were many indicators of UN managerial distaste:

-- IO Watch, which has looked rather diligently, never was able to find mention of a UN whistleblower, successful or not.

-- Although strong public support by top leadership is central to implement any reform, apparently neither Mr. Annan or Mr. Paschke or other top officials ever used the word "whistle-blower" or commended the process.

-- In contrast, Mr. Paschke often emphasized his desire to work in partnership with UN managers, and described at length in an OIOS annual report a senior manager accused of serious and repeated improprieties: the reporter of the allegations [actually an OIOS auditor] was fired for *mala fide* behaviour, but the point of the story was the demonstration that this manager (and others) could be totally exonerated of any charges.

-- OIOS dismissed many of the reports made to it as mere "personnel matters" (a categorization decided on by the Office itself) and then casually passed these sensitive matters on to the Administration.

-- IO Watch found only one mention, in 1998, of a case of possible reprisal by a manager against a staff member "reporting problems", an amazingly small number given some 2000 such reports made to OIOS in the midst of the prevailing UN management climate of impunity.

-- OIOS annual reports have never provided detailed information and statistics on fraud cases, court convictions, total resource recoveries from investigations, or whistleblower cases and their outcomes, preferring instead to present a few glamorous *ad hoc* cases investigated each year.

UN staff are not stupid. An early insider assessment in 1996 had observed wryly that:

"Halfway through his term and answerable only to Member States, [Mr. Paschke] can look forward to a comfortable couple of years ... But United Nations observers are beginning to ask what has been achieved in exchange for ... a free hand for Paschke. The answer is not encouraging.

... the original conception of Paschke's post was a combination of Grand Inquisitor and Super Sleuth. The final product, insiders say, falls far short of either. ... "The problem is that half the OIOS staff do not know anything about the UN" we are told, "and the other half know everything there is to know but are part of the establishment and they are not going to make waves." The results of OIOS's travails are paltry indeed

There are whispers that senior staff need not fear their peccadilloes will be exposed. Paschke's Finest, it is said, will rake no muck above a certain level of political or bureaucratic influence.

"Diplomatic pouch", Diplomatic World Bulletin, July 29-August 6, 1996, p. 10.

Another story on UN "corruption-fighting" in 1997 observed

that

"UN employees -- who request anonymity because they fear they will suffer more professional harm than the corrupt officials they want to expose -- have provided numerous accounts of officials' being transferred rather than dismissed after being caught breaking the rules.

This happens frequently in cases of sexual harassment, nepotism, and occasionally violence, according to these accounts. Whistle-blowers are neither encouraged nor rewarded."

Barbara Crossette, "In war on corruption and waste, UN confronts well-entrenched foe", International Herald Tribune, **3 November 1997**.

The great failing of the UN's "lost whistle-blower decade" from 1994-2004 (and continuing) is that the very specific General Assembly guidance about protecting them was (and continues to be) unfortunately absent from the official staff rules and "Code of Conduct" formulated and issued in 1998 and updated in 2002. Instead of the staff rights and the Secretary-General's responsibilities to ensure due process safeguards and protect the rights of all involved in investigations, the Code includes only an investigatory obligation. It states bluntly that:

"Staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuses of fund, waste or abuse."

"Status, basic rights, and duties of United Nations staff members", [of 1998 and then] ST/SGB/2002/13 of **1 November 2002**, page 24, Regulation 1.2 (r). [emphasis added.]

In the 2002 code revision some specific language was added -- sort of. The excellent ICSAB guidance on staff conduct in existence since 1954 and included as commentary to the original 1998 code of conduct document, was erased by a new set of "Standards of conduct" developed by the ICSC in 2001. IO Watch finds the new version to be considerably weaker than its predecessor, as very notably shown by its statement relating to whistle-blowing, buried as commentary deep in the back of the 2002 UN code:

"It must be the duty of international civil servants to report any breach of the organization's rules and regulations to a higher level official, whose responsibility it is to take appropriate action. An international civil servant who makes such a report in good faith has the right to be protected against reprisals or sanctions."

"Status, basic rights, and duties of United Nations staff members", ST/SGB/2002/13 of **1 November 2002**, page 36, para. 19. [emphasis added.]

[Note: this pious but extremely feeble statement, and particularly the passive-voice phrasing of "who protects?", grossly dilutes the very specific and firm whistle-blower protection called for by the General Assembly and the Secretary-General in 1994, which is quoted in detail later in this subsection.]

Worldwide, whistle-blowers and employees who report to

confidential hotlines are increasingly recognized to be one of the most important fraud-fighting tools in organizations. Yet an article on combating global corruption noted that anti-corruption coalitions "on paper" will not be effective without enforcement in fact, which requires:

- an independent and competent judiciary;
- adequate prosecutorial capabilities; and
- whistle blower protections.

Peter Richardson, "The global assault on corruption", The Journal of Public Inquiry, **Fall/Winter 2001**, p. 6.

[Note: in the UN, the second element is apathetic, the first is totally missing, and the third is only empty words.]

Another knowledgeable assessment stressed that:

As the international community is increasingly recognizing, employees (especially public employees) are an invaluable source of information about official corruption. ... Whistleblower protection laws are intended to make it safe for employees to disclose misconduct that they discover during the course of their employment.

... the international community has begun to devise and adopt a variety of laws and procedures for protecting and encouraging whistle blowing.

... statutory protection for whistleblowers is only part of the equation, albeit an important part. **Cultural change and top down support must accompany whistleblower protection laws in order for them to achieve their objectives.**

Elaine Kaplan, "The international emergence of legal protections for whistleblowers", The Journal of Public Inquiry, **Fall/Winter 2001**, pp., 37- 42 [37, 42]. [emphasis added.]

Sadly, however, and after a decade of OIOS investigative activity, IO Watch's research has been able to find only one example of a successful whistle-blower (even though she was fired.) She could at least sue, because she had been employed by a UN contractor, not by the UN.

"A British tribunal has ruled that a former member of the UN police force in Bosnia was unfairly fired after she reported to her superiors that colleagues in the police force used women and children as sex slaves in connivance with Balkan traffickers. ...

... the whistle blower, Kathryn Bolkovac, an American citizen ... charged that she was fired in 2000 for sending e-mails to her employer, DynCorp, [charging links with] ... prostitution rings.

... the UN Mission in Bosnia and Herzegovina said the mission was not commenting because it was not a party to the British legal action. ...

Kofi Annan, the secretary-general of the UN, has said that there would be zero tolerance for such acts.

Bolkovac said she was delighted with the tribunal's findings because it would help her gain more international exposure for the problem posed by corrupt peacekeepers."

Barry James, "Whistleblower upheld in UN Bosnia police case: Firing of former officer unfair, court rules," International Herald Tribune, **August 8, 2002**.

The new Secretariat process of "manager/investigators", as discussed under the preceding topic, only accentuated the poor UN investigations situation from the late 1990s onward. Managers, the people most likely and able to commit large scale fraud, and certainly abuse, are not only exempted in the UN from accountability but are now out on their own investigating subordinate "troublemakers", while the staff, those most aware of fraud and abuse situations, are silenced and punished (see the subsections on Behind the Scenes and Staff Self-defense .)

In mid-2004, however, some very positive events occurred, which indicate that UN whistle-blowing might finally come out in the open, and someday become a valuable tool.

First, three UN staff who blew the whistle on corruption at the troubled UN war crimes tribunal in Rwanda in 1997, and lost their jobs and had their careers interrupted if not ruined, finally had their day in court at the UN Administrative Tribunal in 2003. Each was awarded from \$130,000 to \$240,000 (in best UN style, the actual awards were still not paid out, and will be lowered, unless the applicants want to appeal them all over again.) The official who fired them was never punished before or after his dismissal, a decision that Secretary-General Annan was forced to take in 1997. The three staff members, however, suffered greatly:

"... Sirois was unemployed for four years as he tried to clear his name. ...

Lacoste left Arusha shattered and dismayed. She claimed in her application that she had lost four years' income.

[Goddard] ... said his reputation as a chartered accountant has been damaged ... because of the unfair and untrue accusations made against him. Ironically, he says, the only place he could get a job was back at the United Nations, in 2003.

All three of these highly qualified people who tried to right wrongs only to lose faith in the U.N. justice system now praise the [UNAT] for its handling of their cases in the end. But why did it have to take so long and at such terrible human neglect all the way to the top. And will they ever be repaid for their losses?"

Barbara Crossette, "The cost of U.N. whistle blowing", The Atlantic Online, the U.N. Wire , Copyright, National Journal Group, 1994, **February 9, 2004**.

[Note: OIOS was doing detailed audits of the Rwanda tribunal at the time, but apparently never intervened to protect these three whistleblowers as it is obligated to do. In fact, there are more people -- perhaps many more -- who have suffered similar fates since the UN whistle-blower guidelines were first circulated in 1996. In some cases they received zero recompense from the UNAT.]

Second, UN staff seem to know what is going on, as shown by the 89-page Integrity Survey that was published in June 2004. Sixty-five percent of staff who responded had observed

misconduct. Less than 15 percent believed that staff are disciplined fairly and consistently, and 44 percent believe that the act of reporting violations is "career limiting". And staff members (46 percent) "feel unprotected from reprisals for reporting violations of the code of conduct". As a news article and related commentary summarized the results:

"A new survey of ... [UN integrity] has found that while structures for reporting and combatting corruption exist, most staff members are either unaware of how to use them or afraid to do so for fear of high-level retaliation."

The new study records relatively high levels of worker satisfaction ... but *its most negative findings have to do with ingrown leadership and the lack of response to reports of corruption.*

'Get rid of the old boy network,' one staff member ... [says.] 'That network is wide, tenacious and powerful. ... So long as you can wind your way into that network, you are OK. ... *Opposing the network is certainly the end of a UN career.*'

Warren Hoge, "Report criticizes the way UN fights corruption", International Herald Tribune, June 16, 2004. [emphasis added.]

[Note: The actual survey is "United Nations organizational integrity survey", Final Report, prepared by Deloitte Consulting LLP, **June 2004.**

The survey can be found at

<http://www.un.org/News/oss/sg/index.shtml> .]

" ... the UN has [examined the] ... Secretariat's perception of its own integrity. ...

[The Integrity Survey politely explains there are concerns about accountability] ...

More directly ..., [the report notes (p. 11) that] 'Staff members feel unprotected from reprisals for reporting violations of the codes of conduct. This is not a perception confined to a few staff in remote locales and/or dangerous circumstances. Forty-six percent (46%) gave unfavourable response to this item, while only 12% gave favourable responses.'

This is of course just one of the U.N.'s various investigations into itself. Best-known this season is the investigation into Oil-for-Food ... Beyond that, there is an entire division [the OIOS] ... which produces in-house investigations ... An April 14 U. N. Staff Union resolution expresses concern 'over recent events regarding an OIOS investigation into its own investigators ...'

Someone needs to help this institution, and it is not a consulting team ... nor a batch of investigators operating under terms defined by the U.N. ...

I'm working around to the belief that in the matter of reforming the U.N., the only thing worse than having the U.N. ignore a problem is to have the U.N. investigate it."

Claudia Rosett, "The problem with the Secretariat", The Wall Street Journal, June 16, 2004. [emphasis added]

Third, the quite surprising findings of the integrity survey actually forced Mr. Annan to use the "w" word in a covering letter to staff, which called forth additional critical commentary:

" ... Staff [in the Integrity Survey] believe that not enough action is taken to investigate and address instances of unethical behaviour, and that those who expose such breaches may put themselves at risk of reprisal. Staff also perceive that the disciplinary process is applied unevenly, ... that the outcome of the process is generally not known. ...

... [and] that breaches of integrity and ethical conduct are insufficiently and inequitably addressed by the disciplinary system. At the same time, they voice concern about the consequences of 'whistle-blowing' or reporting on misconduct, and uncertainty about the mechanisms for such reporting. ... The [OIOS and Office of Ombudsman channels] ... need to be better known and made more accessible to staff at large. We will inform all staff about the means available to them for reporting on suspected misconduct. **We will also develop measures to reinforce formal protection for whistle-blowers,** while ensuring that they are not used to cloak false accusations."

"Dear colleagues", letter from Secretary-General Annan to UN staff on the findings of the Integrity Survey, of **4 June 2004**, pp. 2-3.

Having [found] ... that Secretariat staff don't trust the top management and are afraid to speak out for fear of reprisals, Mr. Annan's response will be to convene a group of top managers and invite staff members to speak out. ...

Does anyone see a problem here?

The basic flaws are simple: Anytime you create a large institution, accord it great privileges of secrecy, give it a big budget and have it run immune from any sane standard of accountability, you are likely to get a corrupt organization. ...

The problem with the Secretariat isn't 'tone' at the top. It's accountability at the top and secrecy throughout. ...

[A real solution] ... would probably require setting up a competing international institution, based on openness and accountability."

Claudia Rosett, "The problem with the Secretariat", The Wall Street Journal, **June 16, 2004**.

After a "lost decade" of disappearing whistleblowers, however, other serious new tensions also emerged in 2004, which revived concern with anti-corruption efforts and suppressed whistleblowers. As indicated by the following quotes, there were accusations of corruption within the OIOS itself. In addition, the UN Board of Auditors emphasized the weak status of fraud prevention activities in Secretariat departments and recommended strong corrective action, and UN staff representatives criticisms and other scandals suggested an increasingly clear absence of proper accountability processes and actions in the UN Secretariat.

"The United Nation's anti-corruption department has been rocked by accusations that the office itself is corrupt.

The head of the [OIOS] ... , Dileep Nair, has been accused of promoting and recruiting people in ways that are not consistent with U. N. rules and regulations. Also, a senior investigator has been suspended ...

The scrutiny ... comes at a delicate time, as the UN is under intense scrutiny for alleged abuse of the Iraqi oil-for-food program.

... [Nair's office] has carried out 55 audits of the [oil-for-food] process. ...

... [The UN Staff Union urged Secretary-General] Annan in April to ... make an independent investigation of OIOS.

Annan recently wrote to Nair asking him to answer the allegations ...

Nair, who is currently on sick leave from his position, denied all the accusations to Fox News.

Asked if he would resign if any of the charges are proven true, Nair said, "of course." ...

Other allegations of impropriety include charges that some inside the OIOS received financial kickbacks in return for promoting people and that some people were promoted in exchange for sexual favors.

Nair, a former banker and civil servant from Singapore, was picked by Annan in 2000."

Jonathan Hunt, Watching the UN's watchdog", Fox News, **June 16, 2004**.

"Fraud awareness, prevention plan and policy

... The United Nations has, to some extent, an established framework on this issue. However, in terms of implementation, it did not have a comprehensive internal anti-fraud and anti-corruption infrastructure, and did not include anti-corruption and anti-fraud elements in the various rules, procedures and internal controls, which means that such internal risks may not be properly addressed. ...

Owing to the lack of a comprehensive internal fraud plan, a large number of United Nations system offices, funds and programmes have:

- (a) No sufficient framework for prevention, detection, resolution, and reporting;
- (b) No decentralized corruption and fraud risk-assessment mechanisms and no corruption and fraud-prevention committee;
- (c) No appropriate resolution mechanisms for reported and detected incidents and allegations of corruption and fraud (although reliance is placed on the [OIOS] in this regard."

"Financial reports and audited financial statements for the biennium ended 31 December 2003 and Report of the Board of Auditors", Vol. I, UN document A/59/5 of **22 July 2004**, p. 12, item (u), paras. 15(f) and 344-346.
[emphasis added]

"The Board [of Auditors] recommends that the Administration (i) implement a comprehensive and well-communicated corruption and fraud prevention plan in the United Nations system, (ii) establish a corruption and fraud prevention committee that would serve as an effective framework and coordination point for a United Nations system corruption and fraud prevention mechanism, (iii) conduct ethics, corruption and fraud-awareness training sessions and workshops among managers, international and local employees and other stakeholders, (iv) develop appropriate resolution mechanisms for reported and detected incidents and allegations of corruption and fraud, and (v) review the investigation processes at Offices away from Headquarters."

"Financial reports and audited financial statements for the biennium ended 31 December 2003 and Report of the Board of Auditors", Vol. I, UN document A/59/5 of **22 July 2004**, p. 12, item (u), paras. 15(f) and 349.

[Note: The Administration airily responded that "some of the Board's comments may give the mistaken impression to the uninitiated reader that the potential for large-scale fraudulent and corrupted activities is widespread". The Administration assigns high priority to the issues of fraud and corruption ..."
[emphasis added]

"First report on the implementation of the recommendations of the Board of Auditors ... for the financial period ended 31 December 2003: Report of the Secretary General", UN document A/59/318 of **1 September 2004**, paras. 124-126.

"Rosemarie Waters, [the UN Staff Union President], said that ... in the last six years, [UN] ... management had been reforming itself and increasing managerial authority, while reducing accountability. The Staff Union [had great respect for the Secretary-General's vision and reform programme goals.] ... It could not support, however, the erosion of staff rights and dissolution of oversight mechanisms as a means of implementation, [or legitimize] ... actions in which staff, through their elected representatives, had no meaningful role to play. ...

The [integrity survey] ... revealed that staff ... feared reprisals for exposing breaches of ethics, and they perceived that the disciplinary process was applied unevenly. Their view of integrity among senior managers was less than positive..

The Organization had yet to establish concrete measures for individual accountability, she continued. It was essential that areas with expanded delegation of authority for personnel decisions should be carefully examined and, if abuses were found, such delegation should be revoked. ... The [OHRM] had informed staff representatives of its inability to enforce accountability because they lacked central authority. The Fifth Committee may wish to recommend that concrete individual accountability be developed, in consultation with staff representatives, on a priority basis."

"UN staff committee representatives tell budget committee concerns ignored in management reform report", Fifth Committee, Press Release GA/AB/3641 of **29 October 2004**, pp. 2-3.

"The United Nations, which extols the virtues of 'good governance', is not practising what it preaches, say [many long-time observers.] ...

The complaints ... come amidst several recent scandals, including accusations of bribery, nepotism, sexual harassment, and mismanagement of peacekeeping operations overseas.

"The underlying problem is a lack of transparency and accountability" says Hillel Neuer, [one close observer.] ..

... in 2003 the OIOS cleared the U.N. Office on Drugs and Crime in Vienna of charges of corruption and mismanagement.

... Senior U.N. officials in New York [have reportedly routinely abused] their first class or business class airline privileges ...

[Neuer said] 'if some of the things that happen at the United Nations took place in a big corporation, people would have been fired.'

[A UN shortcoming, Neuer added, is that the investigation results emerge very slowly] ... are mostly 'white-washed' ... [and occur] only after 'a lot of prodding from the media and NGOs.'

[A reporter asked spokesman Fred Eckhard if there is] 'a record that shows that the United Nations, under Kofi Annan, has taken allegations of mismanagement and misbehaviour seriously and fired people as a result?'

[Eckhard replied] ... 'I will certainly ask for you ...'

Thalif Deen, "Corruption: U.N. failing to practice 'good governance', IPS Inter Press Service, **December 9, 2004**. [emphasis added]

[Note: No such record seems to exist, but it definitely should, for Director-level senior officials and above, as a clear measure to confirm that the UN indeed takes accountability seriously.]

What some now call the UN's "annus horribilis" also ended as it began, with further sharp accusations about suppression of whistleblowers at the UN.

"Two lawyers for U.N. whistle-blowers urged the United Nations on Wednesday to protect staffers who want to disclose corruption at the world body, including the oil-for-food program for Iraq.

One of the lawyers said 'five or six' U.N. employees including a high-level employee had contacted him for advice on how to reveal evidence of wrongdoing in [that] ... programme without jeopardizing their careers. ...

Andre Sirois -- himself a U.N. staff member and former whistle-blower --- said ...

'In one case it was something big, that definitely would make the front page ...'

But based on his advice, none of [them] ... have gone public, he said. 'I know them. They won't. They are very quiet and under a lot of stress.' ...

While U.N. rules call for wrongdoers to be punished, they do nothing to shield staff members from reprisals when they come forward with evidence, [Tom] Devine and Sirois said.

'There is irreparable harm when freedom of speech is canceled, irreparable harm to the institution,' Devine said. 'The message is, 'Do not say anything to investigators.' ...

An independent U.N. inquiry led by [Paul Volcker is investigating] ... whether any U.N. employees received bribes or allowed kickbacks."

Irwin Arief, "Lawyers call on U.N. to shield whistle-blowers", Reuters, **December 15, 2004.**

Without doubt the best way that the Secretary-General could now act to "reinforce formal protection for whistle-blowers" and "lead by example" in the bargain, would be to act decisively. He should acknowledge his and his staff's grave mistake in ignoring the Assembly's 1994 guidance on whistle-blower protection; apologizing publicly to those UN staff who foolishly believed that the General Assembly's and Secretary-General's own guidance (SGB/273, see below) would be honored, and suffered accordingly; and ensure that it is fully incorporated into the UN staff rules and the Code of Conduct at the very first opportunity.

FOR EASY REFERENCE, THE GENERAL ASSEMBLY'S EXPRESS GUIDANCE OF 1994 IN ESTABLISHING THE OIOS WAS THE FOLLOWING:

"The General Assembly ...

6. Requests the Secretary-General to ensure that the [OIOS] has procedures in place that provide for direct confidential access of staff members to the Office and for protection against repercussions, for the purposes of suggesting improvements for programme delivery and reporting perceived cases of misconduct,

7. Also requests the Secretary General to ensure that procedures are in place that protect individual rights, the anonymity of staff members, due process for all parties concerned and fairness during any investigations, that falsely accused staff members are fully cleared and that disciplinary and/or jurisdictional proceedings are initiated without undue delay in cases where the Secretary-General considers it justified: such procedures shall include any necessary amendments to the Staff Regulations and Rules of the United Nations ...;"

"Review of the administrative and financial functioning of the United Nations", General Assembly resolution 48/218 B of **29 July 1994**, paras. 6-7.

The Secretary-General's own Bulletin of 1994 detailed the new OIOS hotline processes even further, and identified protections and procedures as a very serious matter.

"18. The Office may receive and investigate reports from staff and other persons ... suggesting improvements ... and reporting perceived cases of possible violations of rules or regulations, mismanagement, misconduct, waste of resources or abuse of authority. ... staff members and others can make directly to the Office suggestions and reports which shall be received and handled in complete confidence. Further procedures ... and related arrangements are designed to protect individual rights, the anonymity of staff and others, due process for all parties concerned and fairness during any investigation, as well as to protect against reprisals.

(a) Investigations shall respect the individual rights of staff members and be conducted with strict regard for fairness and due process for all concerned ..."

(b) The [USG of OIOS] shall designate the officials authorized to receive such suggestions and reports ... [who] shall be responsible for safeguarding ... [them]. Unauthorized disclosure ... shall constitute misconduct ...

...

(e) The transmittal of suggestions or reports to the Office with knowledge of their falsity or with willful disregard of their truth or falsity shall constitute misconduct, for which disciplinary measures may be imposed.

(f) No action shall be taken against staff or others as a reprisal or making a report or disclosing information to, or otherwise cooperating with, the Office. Disciplinary proceedings shall be initiated and disciplinary action shall be taken in respect of any staff member who is proven to have retaliated against a staff member or other person who has submitted suggestions or reports to the Office or otherwise cooperated with the Office."

"Establishment of the Office of Internal Oversight Services", Secretary-General's Bulletin, ST/SGB/273 of 7 September 1994, section D, "Investigation,," para. 18. [emphasis added]

THE UN STAFF REGULATIONS SINCE JANUARY 1999 ARE QUITE CLEAR AS WELL ON THE SECRETARY-GENERAL'S OWN DUTY TO ENSURE THAT STAFF RIGHTS, NOT JUST DUTIES, ARE RESPECTED. The relevant regulation and its commentary, which Mr. Annan and his legal office have simply ignored, state that:

"Regulation 1.1 (c)

The Secretary-General shall ensure that the rights and duties of staff members as set out in the Charter and the Staff Regulations and Rules and in the relevant resolutions and decisions of the General Assembly are respected.

Commentary

1. Staff regulation 1.1 (c) is new.

2. The regulation codifies an implicit duty that falls on the Secretary-General, that is, to ensure that the rights and duties of staff members are respected."

"Status, basic rights and duties of United Nations staff members", ST/SGB/2002/13 of 1 November 2002. [emphasis added.]

UN Staff regulation 101.2 and (a) state further that, quite loosely:

"Staff Rule 101.2
Basic rights and obligations of staff.
General
Rule 101.2 (a)

Disciplinary procedures ... **may** be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter ... the Staff [and Financial] Regulations and Rules, and all administrative issuances."

"Status, basic rights and duties of United Nations staff members",
ST/SGB/2002/13 of 1 November 2002, p. 23. [emphasis added]

This provision of course only says "may", but its commentary asserts confidently that:

"Staff Rule 101.2 is new. It will **ensure** that that staff are held accountable through disciplinary procedures for failure to comply with their obligations and the standards of conduct ..."

"Status, basic rights and duties of United Nations staff members",
ST/SGB/2002/13 of 1 November 2002, p. 24. [emphasis added]

To underscore all the above responsibilities, the General Assembly itself, while "regretting the limited time it had at its disposal to consider this matter", endorsed the revised regulations and rules, and code, but added a very important emphasis on management responsibility in the code and its standards, when it :

" ... **emphasizes that managers, as staff members, are bound by the duties and obligations set out** in ... [the newly-stated staff regulations and rules] ... **and that their higher-level functions and responsibilities entail increased accountability for the proper performance of all their duties in managing** the human and financial resources entrusted to them.

Requests the Secretary-General to emphasize in the commentary ...that the higher level of responsibilities associated with managerial functions entails a commensurate increase in the accountability of managers."

"Revisions to article I of the Staff Regulations and chapter 1 of the 100 series of the Staff Rules of the United Nations", General Assembly resolution 52/252 of 8 September 1998, prologue and paras. 6-7, included in the

"Status, basic rights and duties of United Nations staff members",
ST/SGB/2002/13 of 1 November 2002, pp. 5-8. [emphasis added]

Will Secretary-General Annan and his top legal aides who omitted the important and specific staff rights and protections for confidential reporting of 1994 from the staff Code of Conduct and Staff Regulations and Rules accept "increased accountability" for proper performance of their managerial duties, and be disciplined and held accountable as the commentary "ensures"? IO Watch concludes: of course not. The all-important "may" weasel word of rule 101.2 (a) would immediately be brought into play. Then, however, the validity and impact of these new rules and codes and "highest standards" of the international civil service are brought into question at their very core.

IO Watch has devoted considerable space in this archive to whistle-blowers, in its subsections on [Investigations: Is the OIOS a fig leaf?](#) , [Disappearing whistle-blowers](#), and in this subsection on suppressed whistle-blowers. This is because what might seem to be a minor process is really a fundamental litmus test of the UN Secretariat's commitment to accountability, transparency, and the exercise of integrity, which it resoundingly fails. **THE ENTIRE STORY, REDUCED TO A BRIEF CHRONOLOGY, GOES AS FOLLOWS.**

-- Beginning in the late 1980s, the General Assembly urged new Secretariat actions to fight fraud, including mechanisms for staff whistle-blower reporting and their protection.

-- The Secretariat responded, in 1992, that the existing rules were quite adequate for fraud fighting and warned [with awesome prescience!] that protecting staff whistle-blowers had proven difficult in practice.

-- As part of the 1993 management accountability and 1994 OIOS resolutions, the General Assembly nonetheless called, in very explicit terms, for the Secretary-General to establish such mechanisms and protections.

-- Mr. Paschke, after initial contempt for whistle-blowers, was eventually impelled to acknowledge the required process. But IO Watch can find in OIOS reports of its first decade only one prominent example of a UN manager accused but vindicated by OIOS [the whistleblower was dismissed], one mention of a manager who was accused of possible retaliation, and zero mentions (or encouragements) to UN staff whistle-blowers.

-- During the 1994-2003 period, IO Watch could also find no instances of Mr. Annan or any other senior official ever mentioning the whistle-blower process, even while making pronouncements about the UN Convention against Corruption. Only the General Assembly pressed Mr. Paschke to respond on questions of whistle-blower retaliation (and he had to reverse his strong distaste for whistle-blowing after being made aware that such protection was his express responsibility.)

-- In 1998, in the UN Code of Conduct on staff rights and obligations, the Secretariat included staff obligations to cooperate with investigations by OIOS and managers, but omitted any mention of the specific rights (or even existence) of whistle-blowers.

-- The Code also made it an explicit duty of the Secretary-General to ensure that staff rights are protected, including those set out in relevant General Assembly resolutions, as were the whistle-blower provisions.

-- In 2000, as detailed in this archive's subsection on OIOS, Mr. Nair and OIOS reported a "flood of fraud cases" in the UN just before Mr. Annan's Millennium Assembly celebrations in New York -- not coincidentally, in all subsequent OIOS annual reports any discussion of overall OIOS investigations progress and results was suppressed, with only a few *ad hoc* "gotcha" stories of individual investigations.

-- In a revision of the code of conduct in 2002 the Secretariat finally added, but only as commentary buried at the back of the document, new cryptic "weasel word" guidance on the duty of staff to report code violations to "a" higher official for "appropriate action", with a "right" to be protected against reprisals or sanctions.

-- Only in late 2003 did UN whistleblowers emerge in public, after three of them won large damage awards in the UN internal justice process.

-- Following the integrity survey revelations in June 2004 that staff had serious concerns about reporting violations of the code of conduct and reprisals therefore, Secretary-General Annan finally uttered the "whistle-blower" word and promised to "develop measures to reinforce formal protection for whistle-blowers."

-- However, in December 2004 the continued UN suppression of whistle-blowers was highlighted once again, in conjunction with the oil-for-food scandal inquiries underway.

The whistle-blower process has thus gone full circle, with Mr. Annan now promising do something that he, as Secretary-General, had been obligated to do, and has failed to do, ever since 1997.

In May 2005, the UN announced new "immediate" reforms in response to criticisms of the Iraq oil-for-food programme by the Volcker group and in the staff Integrity Survey of June 2004. With regard to whistle-blowing (and actually using that forgotten word) it stated that:

"In direct response to the concerns about fairness and integrity raised in last year's

Integrity Survey among UN staff and to prevent the reoccurrence of such damaging incidents as the exploitation reported in certain peacekeeping missions, misconduct of senior officials and harassment in the workplace, the UN is implementing concrete steps.

Whistleblower protection

The results of the Integrity Survey indicated that staff had little confidence in the Organization's ability to provide sufficient protection for whistleblowers. A review of best practice was conducted, using the expertise of a consultant recommended by Transparency International. The Secretary-General has now issued a robust new whistleblower policy and is seeking the views of staff before formally promulgating it. The policy is designed to provide staff a viable mechanism so that they feel free to come forward with their concerns with the confidence that they will be protected against retribution. The release of the draft policy was accomplished by a circular outlining to staff all existing avenues for the reporting of alleged misconduct.

Status: Staff consultations are already underway and the new policy will be promulgated as soon as this process is completed.

"UN management reforms 2005: Management reform measures to strengthen accountability, ethical conduct and management performance", **May 17, 2005**, p. 4, available at www.un.org/reform_update.html.

Along these lines, IO Watch understands that the proposals out for staff consultation in mid-2005 provided reassurances about firm protection, would involve several offices including yet another senior officials review panel, would at least keep a record of reprisal complaints and report to the General Assembly on actions taken, and that the Secretary-General might even establish a whistleblower award at some time in the future.

As of July, the only whistle-blower details made public, as best IO Watch can determine, are the following:

"The United Nations is considering creating a high-level ethics office to encourage workers to come forward with allegations of misconduct or mismanagement against their superiors, UN officials said ...

The idea is part of a plan to strengthen protections for employees who report misconduct, after a survey found that UN staffers believed that little was being done to root out unethical behaviour and that workers who exposed wrongdoing risked reprisals."

"Officials weigh creating high-level ethics office", Reuters, in the International Herald Tribune, **April 9-10, 2005**.

IO Watch considers the above Secretariat consultations and proposals to be extremely cynical. The new "robust" framework for whistle-blowing was created by senior Secretariat officials (helped by a consultant) who have been suppressing whistle-blowers for the past decade. Learning that staff mistrust the leadership's commitment to corruption-fighting and believe that any reporting risks reprisals, the Secretariat further blithely proposes even more senior officials for them to report to and a senior official review body to ensure that all is well. These multiple high-level officers and groups not only create some plush new jobs, but also blur responsibility for firm action,

which clearly should rest with the very specific OIOS mechanism which the General Assembly established in 1994. And the possible whistle-blower award should go to the next successful whistle-blower, because he or she, it seems clear, would be the first.

And, once again, the Secretariat indicates that -- as already discussed in the area of [Anti-harassment efforts](#) -- the it will settle for a strong policy that is not implemented. Equally, Secretariat reporting might also disclose that there are few "cases". However, this outcome would quite probably not confirm that "all is well", but that UN staff will not jeopardize their careers by trusting this defective "old-boy" protection system. As an IO Watch participant was once told by a senior UN oversight veteran, "It's great if you can report misconduct and corruption, but who is going to be listening on the other end of the phone line?"

As a much-needed "reality check," IO Watch wishes therefore to conclude with:

- (1) the following brief quote excerpts as reminders of the importance of the whistle-blower topic and the UN Secretariat's long-standing evasion of it;
- (2) some good and directly-relevant practices which exist elsewhere;
- (3) the heightened irony of weak whistle-blower activity in the midst of the Iraq oil-for-food scandal investigations and findings; and
- (4) a final expert quote written a decade ago for the UN's 50th anniversary celebrations but, regrettably, still fully applicable as the 60th anniversary celebrations begin in the autumn of 2005.

First, the brief excerpts:

"An open-ended question ... in the [UN Organizational Integrity Survey] questionnaire ... [required an answer] ... in the respondents' own words. The item asked: 'What suggestions would you like to offer to improve integrity within the UN?' ... Four themes are apparent from reviewing the comments.

- (1) Improve the management system to enhance integrity ...
- (2) Supervisors and managers should be more closely supervised by senior management ...
- (3) Management accountability should be better developed ...[with rewards and punishments for managers] ...
- (4) Senior leaders' personal commitment to integrity and ethical conduct should be more clearly stated and monitored for compliance ...

Negative comments to the open-end question reveal a clear majority. As one analyst has observed "**Even though the open-end question is positive and proactive, the majority of the answers are rather negative.** Some respondents go beyond light criticisms and take an aggressive, bitter [tone]."

"Staff members feel unprotected from reprisals for reporting violations of the codes of conduct. This is not a perception confined to a few staff in remote locales and/or dangerous circumstances. Forty-six percent (46%) gave unfavourable response to this item, while only 12% gave favourable responses. The causes of this perception have at least two sources: experience and/or mistrust. The basis for these perceptions has got to be determined and **remediation must be made.** ...

Overcoming mistrust is more difficult than remediating incidences, but a combination of policy review and training and development efforts will help. Training ... would include examples of how such matters are handled ... and examples of actions taken against those who would violate the whistleblower policy.

Both quotes above are from the "United Nations organizational integrity survey", Final Report, prepared by Deloitte Consulting LLP, **June 2004**, the first on page 10, the second on page 11.

[Note: Based on IO Watch's extensive review of available documentation, overcoming UN staff mistrust will indeed be very difficult in training, because the "handling of such matters" is (a) to ignore them or (b) send a brief letter after a year or two saying a management investigation "revealed no problem", and because "examples of actions taken" against retaliating managers seem to be zero.]

"Having [found] ... that Secretariat staff don't trust the top management and are afraid to speak out for fear of reprisals, Mr. Annan's response will be to convene a group of top managers and invite staff members to speak out. ...

Does anyone see a problem here?

The basic flaws are simple: Anytime you create a large institution, accord it great privileges of secrecy, give it a big budget and have it run immune from any sane standard of accountability, you are likely to get a corrupt organization. ...

The problem with the Secretariat isn't 'tone' at the top. It's accountability at the top and secrecy throughout. ..."

Both quotes are from Claudia Rosett, "The problem with the Secretariat", The Wall Street Journal, **June 16, 2004**.

As the international community is increasingly recognizing, employees (especially public employees) are an invaluable source of information about official corruption. ... Whistleblower protection laws are intended to make it safe for employees to disclose misconduct that they discover during the course of their employment.

... statutory protection for whistleblowers is only part of the equation, albeit an important part. **Cultural change and top down support must accompany whistleblower protection laws in order for them to achieve their objectives.**"

Elaine Kaplan, "The international emergence of legal protections for whistleblowers", The Journal of Public Inquiry, **Fall/Winter 2001**, pp., 37- 42 [37, 42]. [emphasis added.]

"Even when ... systemic requirements [for fighting corruption] are well satisfied

on paper, they will not be effective unless enforced. **Fully effective enforcement requires:**

- **an independent and competent judiciary**
- **adequate prosecutorial capabilities**
- **whistle blower protections**
- Periodic asset declarations by senior public officials and [oversight] organizations]
- Empowerment of private enforcers by giving them the right to recover damages and have government actions invalidated
- Protections for the media to enable them to keep up the pressure for reform."
Richardson, Peter, "The global assault on corruption", The Journal of Public Inquiry, Fall/Winter 2001, p. 6.

"The United Nations, which extols the virtues of 'good governance', is not practising what it preaches, say [many long-time observers.] ...

The complaints ... come amidst several recent scandals, including accusations of bribery, nepotism, sexual harassment, and mismanagement of peacekeeping operations overseas.

"The underlying problem is a lack of transparency and accountability" says Hillel Neuer, [one close observer.] ...

... the investigation results emerge very slowly] ... are mostly 'white-washed' ... [and occur] only after 'a lot of prodding from the media and NGOs.'

[A reporter asked spokesman Fred Eckhard if there is] 'a record that shows that the United Nations, under Kofi Annan, has taken allegations of mismanagement and misbehaviour seriously and fired people as a result?'

[Eckhard replied] ... 'I will certainly ask for you ...'

Thalif Deen, "Corruption: U.N. failing to practice 'good governance', IPS Inter Press Service, December 9, 2004. [emphasis added]

"James O. C. Jonah, ... [who worked at the UN for three decades] ... and served as head of personnel from 1979 through 1982, ... [observed that] **The [Fifth] Committee should ... have a serious look at the results of the integrity study. Never had the staff perception of integrity been so low.** ... In some respects, the reforms had weakened the Secretariat considerably.

When he served as head of personnel, his biggest fight had been with programme managers, who were most resistant to reform Without a strong personnel office, however, there would be no uniformity of rules and fairness in the system. Governments should not take what was happening lightly.

"UN staff committee representatives tell budget committee concerns ignored in management reform report", Fifth Committee, Press Release GA/AB/3641 of 29 October 2004, p. 4. [emphasis added]

Second, the UN could learn much about a serious whistleblower process and its effective use by adopting good practices used elsewhere, including clear and simple reporting on these topics which the World Bank was already providing in 1997, and the ready availability of a professional, very-experienced, and independent hotline which the UN could itself contract for, instead of using the multiple "old-boy" and weak OIOS mechanisms

as at present:

"World Bank Complaints

Misconduct cases investigated by the World Bank's
Office of Professional ethics in 1997

<u>TYPE OF CASE</u>	<u>NUMBER</u>
Tax related	57
Misuse of facilities or property	54
Harassment - nonsexual	36
Benefits related	30
Abuse or negligence of authority or position	22
Fraud	21
Harassment - sexual	8
Criminal charges	3
Other misconduct *	<u>77</u>
 TOTAL	 308

* Other misconduct includes defaults on loans,
favoritism in hiring, conflict of interest, abusive
behaviour toward security, plagiarism, bribe
solicitation, and overtime discrepancies"

Glenn R. Simpson, "World Bank, under attack, concedes staff problems," Wall
Street Journal, **March 19, 1999**.

The official hotline of the Association of Certified Fraud Examiners (ACFE) provides a highly-professional hotline service. It has many client organizations from both business and government, works in 150 languages (144 more than the UN, which could certainly facilitate reporting from troubled UN field operations), and has more than 20 years of experience. Although the UN is "above the laws" that govern the rest of the world, if it is really serious about whistle-blowing tools to help stop its recent accountability and mismanagement crises, it could adopt this turn-key service. Full details on the ACFE services and resources are available at www.ethicsline.com.

Third, it is scandalous that the UN takes such weak action to strengthen whistle-blowing now, in the midst of all the revelations about corruption and mismanagement in the Iraq oil-for-food programme which it administered. Some people already doubt the work of the Volcker group, because it was commissioned by (that is, shaped by) Secretary-General Annan. One of its most severe handicaps is that UN whistle-blowers who know about grave defects in the programme are not cooperating because of the retaliation that they fear it would inevitably bring, as shown by the following quote.

"Two lawyers for U.N. whistle-blowers urged the United Nations on Wednesday

to protect **staffers who want to disclose corruption** at the world body, including the oil-for-food program for Iraq.

One of the lawyers said 'five or six' U.N. employees including a high-level employee had contacted him for advice on how to reveal evidence of wrongdoing in [that] ... programme without jeopardizing their careers. ...

Andre Sirois -- himself a U.N. staff member and former whistle-blower --- said ...

'In one case it was something big, that definitely would make the front page ...'

But based on his advice, none of [them] ... have gone public, he said. 'I know them. They won't. They are very quiet and under a lot of stress.' ...

While U.N. rules call for wrongdoers to be punished, they do nothing to shield staff members from reprisals when they come forward with evidence. [Tom Devine and Sirois said.

Irwin Arief, "Lawyers call on U.N. to shield whistle-blowers", Reuters, December 15, 2004.

IO Watch believes that something must be done quickly, finally, and forcefully to fully establish and use the whistle-blowing mechanisms that the General Assembly called for in 1994.

Furthermore, Mr. Annan should be held directly accountable (and sanctioned) for his failure as the UN chief administrative officer: to ensure the proper use of Member State funds by protecting whistle-blowers from retaliation; add the 1994 whistle-blower provisions to the UN staff rules; and establish a proper fraud strategy during the past decade. Timely action could doubtless have prevented much of the waste of large amounts of funds in the UN administered Iraq oil-for-food programme, and in many other areas of UN management "crisis," past, present, and future.

As Mr. Annan's predecessor stated firmly in 1992 (in a report trying to assure the General Assembly that Secretariat fraud-fighting efforts were firmly under control):

"The Secretary-General attaches great importance to his fiduciary responsibility vis-à-vis Member States for the prudent management of resources entrusted to the Organization. Care is taken to ensure that these resources are utilized for the purposes for which they were provided, that they are spent with all due regard for economy and that there is accountability at all stages for their use."

"Measures to facilitate reporting by staff members of inappropriate uses of the resources of the organization: : Report of the Secretary-General", UN document A/47/510 of **October 8, 1992**, paras. 9-14. [emphasis added]

The final observation on failed UN whistle-blowing is to repeat the eloquent initial quote of this subsection, from prestigious UN ex-senior officials (and subsequently expert observers) Erskine Childers and Brian Urquhart, which they made in 1994 before the UN 50th anniversary celebrations.

"The debilitating atmosphere and the rise of cronyism have sapped staff confidence in justice within secretariats. Even peer appeal boards lack full trust because no staff member seeking redress can feel confident any longer that he or she may not be intimidated. This state of affairs has been well known. ...

[There should be] a proper resort system whereby staff can report malfeasance without fear, staff seeking redress can have proper counsel, and all staff can have the requisite measure of protection from imperious behavior by poorly-chosen superiors. ...

The [50th UN] anniversary should be a fitting occasion for a solemn reaffirmation of Article 100.2 by all governments in all prime organs of the system. 1995 should begin a new era of respect by member-states for the integrity and independence of a civil service upon which the future effectiveness of the organization in large part depends."

Erskine Childers, with Brian Urquhart, "Renewing the United Nations System", Development Dialogue, 1994:1, Dag Hammarskjold Foundation, Uppsala, Sweden, 1994, pp. 169-170. [emphasis added.]

Unfortunately, Childers and Urquhart's very important prescription remains fully-applicable but still ignored as the UN 60th anniversary arrives. IO Watch offers some feasible ways to decisively correct this sad situation through an [External experts justice reform review](#) based on, but updating, the above proposal, in the section on the rule of law. Important related reform actions are also found in the subsection on [Answers: A Starting Point](#) which discuss [A real UN fraud prevention programme](#) and [General Assembly audit subcommittee](#).

Given the past lethargy of the UN General Assembly (and most certainly the Secretariat) on true management reform implementation, however, IO Watch regretfully expects that it will have to continue to follow this very serious topic on and on into the future, or until the UN's reputation and operations collapse, whichever comes first.