REPORT OF THE COMMISSION OF EXPERTS ON REFORMING INTERNAL JUSTICE AT THE UNITED NATIONS

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A. INTRODUCTION

1. This Commission was established by the Staff Union to review the system for administering justice within the UN and to make recommendations for reforming that system. These recommendations will be forwarded to the Panel appointed by the Secretary General to redesign the system. The "Redesign Panel" is required by General Assembly Resolution 59/283(2005) to consult with the Staff Union. The Commission represents the Union by submitting this report, which has been approved in principle by the Union, for the Panel to consider before making its recommendations to the Secretary General. The Commission will issue a final report for consideration by the General Assembly once the Secretary General's own reform proposals are published.

2. Administration within the UN is a vast and complex subject, and the Commission had hoped that the Panel might indicate, by way of an "issues paper" or similar, what specific matters it wished the Staff Union to address. In the absence of such indication, this Report takes a broad approach to the need for reform on the assumption that more specific concerns can be identified and discussed at a meeting with the Panel. After that meeting, the Commission in consultation with the Staff Union will be happy to provide the Panel with additional opinion and advice.

3. Significant reform of the system of administration of justice is impossible without the input of the staff members the system is designed to serve, as well as the contribution of stakeholder offices and advisory bodies that play an active role in adjudicating or resolving employment-related grievances at the United Nations. The Commission analyzed the existing mechanisms for resolution of staff grievances; we interviewed the representatives of the major UN stakeholders; we interviewed some members of the Joint Appeals Board/Joint Disciplinary Committee; we interviewed staff members who have used the system of administration of justice as Appellants; we reviewed case files for appeals filed at the JAB to identify the key factors influencing the consideration of these appeals; we visited various UN Offices and advisory bodies to gain a better understanding of the procedures used to resolve grievances. In addition, the Commission requested and received substantial statistical data from the UNAT, the JAB, the Office of the Ombudsman, the Administrative Law Unit (ALU), the Panel of Counsel, and other specialized review bodies. We are grateful to all who have taken the time and made the effort to tell us of their concerns, and have thereby assisted our identification of appropriate reform.

B. OVERVIEW

4. The Staff Union represents some 30,000 UN employees. It has for many years campaigned for them to be accorded fair, efficient and transparent procedures for resolving their grievances and it has repeatedly condemned the arbitrary, dilatory and archaic system of administrative justice that has been allowed to operate in the organization. For that reason it wholeheartedly welcomes the Resolution of the General Assembly to reform that system and looks forward, in the spirit of paragraphs 49(b) (iii), to consultation with the Redesign Panel to achieve fundamental reform. To that end, the Staff Union has appointed this independent commission of experts to recommend reform of the internal justice system so as to embody the standards of justice which modern perceptions of due process and human rights require at the UN. There is no single or preferred model for administrative justice, certainly for this unique organization: due process standards may be achieved in a variety of ways, either by replacing the system in its entirety or by a partial remodelling, building upon those aspects of the current system that are working tolerably well. This Report therefore concentrates upon the general principles which must guide reform, and indicates those aspects of the system which must in any event be changed.

5. We fully endorse the GA resolution that the system of justice in the UN as a whole should be **independent, transparent, effective, efficient and fair**. As will appear in subsequent sections of this report, the system presently and notoriously fails to reflect each of these values. In particular, it fails to embody the "fair play" standards that are mandated by international human rights law enshrined in the Universal Declaration of Human Rights (especially articles 10 and 23) the International Covenant on Civil and Political Rights (notably article 14) and regional treaties such as the European Convention on Human Rights. The UN is open to the charge of hypocrisy in promulgating standards for member states which it refuses to implement within its own organization. Moreover, through the Global Compact and the work of the ILO, the UN seeks to encourage management practices - including the acceptance of collective bargaining and worker representation – that it does not fully accept in relation to its own Staff Union. It has suffered a number of public scandals within its administration – corruption, misconduct, sexual abuse and so on – which are rightly deplored, but has failed to put in place administrative systems that could work to expose and deter such practices.

6. Many members of the Staff joined the UN for idealistic reasons; they believe in the Organization and its mission and feel betrayed by a management that does not practise what it preaches. They have no confidence in the present system: they do not believe that it is fair, and they are correct in that belief. However supportive of the UN, their enthusiasm for its mission is daily soured by a working environment that offers them no effective protection against unjust promotion or discipline decisions, against sexual harassment or bullying ("mobbing"), or against retaliation if they "blow the whistle" on corrupt or unlawful management practices. Many staff are on short term contracts: since justice delayed is justice denied, how can

they have any confidence in a system that delays justice for years after their contract ends? The average time for processing an appeal, through the Joint Appeals Board (JAB) to the United Nations Appeals Tribunal (UNAT) final adjudication, is *five years* – a wholly unacceptable, and for many staff members, crippling, delay. These problems are not, for UN employees, of academic or legalistic interest: they overshadow their daily work. It is a Herculean effort to stay loyal to an institution that you know will not treat you fairly.

7. What makes the present system intolerable is that it falls so far short of due process standards that are increasingly available in nation states where the UN is based. The UN is immune from legal process in countries where it is headquartered, so its employees cannot look to local courts and domestic employment tribunals for redress of their grievances. It is too much to ask them to suffer the indignity and inefficiency and unfairness of an outmoded internal system of justice, when they live and work in states which have modern legislation providing for fair resolution of employment disputes. The UN system was designed in 1946, in some cases on models used by the League of Nations. Administrative and human rights law has progressed dramatically since these times. (Consider, for example, the state of procedural law in 1946 in terms of the legendary Nuremberg Tribunal: the lack of any right of appeal, the imposition of death sentences, the lack of neutral judges and so forth are aspects that could not be replicated in UN tribunals today, because of our better perception of what human rights requires).

8. Increasingly, advanced states have accepted the fundamental importance of securing workplace rights. These initially included basic concepts such as equal pay for equal work and protection against racist or sexist hiring policies or other forms of discrimination. It has been recognized that the human rights guaranteed in the Universal Declaration of Human Rights and the ICCPR apply in the workplace as well. These include the right to be treated with dignity, to have a degree of privacy and freedom of speech and association. Today it is accepted in most national jurisdictions that the rights to fair play – to openness and proper procedures – are to be implied in all employment contracts, enforced through a system of administrative law. It now behoves the UN to vouchsafe its own employees the human rights and due process standards that it urges upon states and transnational corporations, and the dispute resolution procedures and employment rules that are available under modern administrative law systems.

9. There has never been a time when work for the UN has been more important, or more dangerous and difficult. In certain countries where staff are stationed or ordered to visit there is physical danger – from crime or terrorist acts or civil warfare, or simply from unconquered diseases such as malaria. Additionally, in every international working environment there is a danger of discrimination, of harassment, of psychological bullying, of unfair treatment. These dangers are exacerbated in the UN, with its unique structure of national representation filtered through an opaque bureaucracy. Workers placed on short term contracts must live with uncertainty and insecurity. Because the UN brings together executives and staff from different countries, they come with different cultural standards and

different approaches to human resource management. That of course is one of the great challenges and satisfactions of working with the UN, but it does mean that problems will arise – not only as a consequence of different ways of working, but through rivalries and lack of understanding, through jockeying for promotion or simply through malice or ignorance. Every international organization and the UN above all, must embrace fair procedures for resolving the employment issues these characteristics will sometimes generate.

10. The particular ways in which the current UN system falls short of international justice standards will be examined in the course of this Report. At this stage, we simply highlight some glaring examples. Although modern administration encourages informal settlement through mediation and/or arbitration, these procedures are unavailable or available only in modest and optional form through the Ombudsman's office. At a formal level, legal disputes require adjudication by independent professionals, under a two-tiered system that permits appeal. However, the UN offers its employees only a first stop at the Joint Appeals Board ("JAB"), on which the majority of members are not independent of management, and then an appeal to the United Nations Administrative Tribunal ("UNAT"), whose members are appointed under a system that does not secure independence. UNAT rarely offers hearings, and these need not be in public. Delays at every level are endemic and crippling, and are counted in years rather than months. The Administrative Law Unit (ALU) within the UN is compromised to such an extent that it has entirely forfeited Staff Union confidence and is regarded as a duplicitous agency for protecting bad managers. It acts as the body which undertakes the review which employees must first request in order to proceed to JAB/UNAT determination, yet having (usually) reviewed the case adversely to the employee, it then puts the case against him or her at the Board and Tribunal. It has thus developed an anti-staff bias and cannot possibly perform an independent review function. The "Panel of Counsel" which provides advice and representation for staff members is not "of counsel" at all: it comprises employees or ex-employees, often without any legal training, who volunteer to serve. These defects provide some of the reasons why staff members feel that justice is unavailable at present within the system.

11. The worst feature of this system is that JAB and UNAT decisions are not binding on management. The Secretary General is not bound to accept JAB "decisions" (so they are really no more than recommendations) and can pay compensation rather than accept UNAT orders (which are therefore not enforceable "orders"). In practice, the Secretary General often rejects JAB/ JDC advice (usually, when it is in favour of the staff member) and almost always chooses to pay compensation rather than to accept a UNAT recommendation for reinstatement. This bizarre, "non-binding" quality of JAB/ UNAT adjudication not only means that the internal justice system is seriously biased against members of staff. It means, more fundamentally, that it is not a "justice" system at all. Instead, it is a system in which the Management always wins, even when it loses. The Secretary General simply rejects inconvenient pro-staff decisions by the JAB/ JDC, or pays money in lieu of taking the right action recommended by UNAT. This non-binding aspect

makes the present system fatally flawed and must be redressed as the first step in any reform.

12. These are just some of the reasons why a root and branch reform is necessary. But to be effective, the models chosen must address, indeed combat, a particular culture that has grown within the UN administration. It is a culture both nepotistic and diplomatic, that undervalues "merit" and true qualification in employment and promotion decisions, and looks to regional groupings, state nominees, and "diplomatic" considerations, both generally (by advancing well-connected or inoffensive candidates), and specifically by favoring the employment of diplomats, even to do the work of judges. It may be that this culture is endemic in an organization that must reflect the interests of 191 nation states, fluidly organized in regional and political blocs and seeking to impose their own social and political stamp on UN initiatives. This is acceptable – or at least inevitable – when it affects UN policy decisions. It is unacceptable if it is allowed to influence employment decisions or the mechanisms for resolving workplace disputes. What all state parties to the UN Charter must realize is that they have no right to inject these political concerns into an area which must be governed by universal international and administrative law principles.

13. The Staff Union's overriding concern is to create a system of internal justice in which its members can have confidence that they will be treated fairly. That means, crucially, a system that produces <u>independent</u> and <u>expert</u> decisions that are <u>binding</u> upon management. Anything less than this will fail. That is why we insist upon an end to the present power of the Secretary General to circumvent UNAT/ JAB decisions. The "review" role of the ALU must be abolished: if a "Review" is to be a preliminary to legal action, then it must be serious, balanced and fair, and not (as at present) a one-sided formality deployed by management as a delaying tactic. The two tiers of the internal justice system must function independently of both the organization's management and its members. There is a need to complete the process towards filling the Tribunal with real judges. The vice of "state-nomination" of judges, which has led to so many inferior or nepotistic appointments throughout the UN, should be ended.

14. What the Secretary General should "outsource" is the appointment of judges and arbitrators, who instead of being assigned by states should be nominated by an independent panel of experts – with two experts nominated by Management and two by the Staff Union, these four to agree upon a distinguished fifth member as their independent chairman. That panel would form an International Justice Council (IJC) with a permanent secretariate, to appoint professional judges to a first-tier Employment Tribunal (ET) and to an Appeal Tribunal (UNAT) and would also appoint the Ombudsman. It would be resourced by and responsible directly to the General Assembly (GA) rather than the Secretary General and it would supervise and oversee the administration of justice within the organisation. This is our first and over-arching recommendation, to free the internal justice system from the institutional control and influence of the Secretary General and his managerial offices and to make it financially independent and responsible directly to the

General Assembly. The IJC might also be given the task of supervising UNAT as merged with the appeal tribunal for ILO staff disputes (ILOAT) which deals with the same kind of disputes concerning international staff. Reform must begin at the top, and only by radically changing the nature of the appointment process for the judges – the UNAT members, the Ombudsman and the JAB replacement - will staff begin to have confidence in the system of administration of justice at the United Nations.

C. THE PRINCIPLES OF GOOD ADMINISTRATION

15. The overarching principle on which the administration of justice at the United Nations should rest is contained in Article 101 (3) of the Charter. It provides: "The paramount consideration in the employment of staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity." Over fifty years ago in its Advisory Opinion of 13 July 1954, *Effect of Awards of Compensation Made by the UNAT*, the International Court of Justice found that "the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity." We believe that the performance of each part of the system must be assessed against these goals. Only an effective review of administrative decisions, governed by due process and dedicated to the rule of law, can meet the Charter requirements.

16. A second over-riding principle is that there must be an appropriate mix of informal and formal mechanisms to ensure justice. Many situations can be resolved informally and efficiently. Others will need to be considered formally with careful consideration of the facts and law. The challenge is to find the appropriate mechanisms to encourage informal resolution, but then to provide, as a last resort, a system for fair and binding adjudication.

17. A third principle is that the formal mechanisms must be independent. UNAT must be made more professional and independent and thought needs to be given to how to ensure the independence of the JAB, or else its replacement. The personnel servicing such bodies should not act in a dual capacity that might give the impression they are exercising an undue influence on behalf of management in the deliberations of those bodies.

18. A fourth principle is that, whatever mechanisms are used, they should act with due dispatch. Justice delayed is justice denied where a person's professional career – and livelihood – is at stake. The informal procedures should not drag on beyond the point where they clearly outlive their usefulness. The formal procedures should follow strict time limits, applicable unless otherwise agreed to all the parties involved and with corresponding consequences in cases of non-compliance.

19. A fifth principle is closely related to the third: the procedures should have adequate resources. Currently, there are unacceptable delays caused, in part, by lack of human resources in moving cases through the JAB and UNAT. The United Nations *Basic Principles on the Independence of the Judiciary*, adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, insist that it "is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions." The United Nations should expect no less of itself than it expects of its Members. Indeed, what

is true of the judiciary is equally true of other dispute mechanisms, formal and informal. Providing adequate resources does not entail merely hiring more people to do the work. It also involves developing a culture in which members of the Secretariat understand that it is important for them to contribute to such activities as counselling, peer review and other participation in the mechanisms. Service inside the institution should be seen as an important part of staff performance. It should be rewarded both by making time available from other duties and by taking such contributions into account in salary and promotion decisions. Adequate resources need to be provided also for training those who participate in the various mechanisms. This is especially so where peer review mechanisms are involved. Justice is not a free ride.

20. Access to justice oftentimes entails access to lawyers. Methods need to be developed to ensure that people coming before the JAB, JDC or any first-tier tribunal and UNAT have adequate legal advice. It is clear to us that better provision needs to be made for good quality legal assistance to those not in a position to afford it.

21. A final principle is the accountability of managers. All too often, administrative decisions are reversed because there has been an abuse of power by managers exposed during the fact-finding process, but while the staff member may obtain some redress (typically monetary), no follow-up action is taken against those managers who have been responsible. In theory, bad managers may be required to reimburse the organization in the event of their gross negligence or violation of rules and regulations, but this never seems to happen. An independent internal justice system with professional judges and public hearings can constitute an important measure of accountability. This is especially the case in an organisation with immunity from national justice systems and which has sometimes been reluctant to waive that immunity to permit external investigation and prosecution of managers in respect to allegations of fraud or corruption. An organisation which is not amenable to the normal law enforcement process other than by a waiver of its own privileges has a particular responsibility to establish a transparent internal justice system.

D. THE PRESENT SYSTEM

A.) Informal Dispute Resolution

i. The Panel on Discrimination

22. When disputes arise, staff members are first encouraged to attempt informal resolution through mediation or conciliation. The Panel on Discrimination and other Grievances (PDOG) and the Office of the Ombudsman are currently the main avenues for informal dispute resolution for employment-related grievances. PDOG is an informal procedure to consider "all types of staff grievances" – e.g. allegations of discriminatory treatment, harassment, non-observance of a staff member's terms of appointment, etc. At Headquarters, the Panel consists of seven members and a coordinator appointed by the Secretary-General for a two-year term, and Panels have been established in other duty stations. Panel members "shall act with complete independence and impartiality".[1] However, these panels are sometimes regarded as "staff advocates" rather than independent and impartial mediators. The panels lack sufficient power to summon documents or persons during their deliberations. The Office of Human Resources claims that Panel findings are often inadequately substantiated, and rarely implements the panels' recommendations. The Panel at Headquarters is largely dormant, despite Staff Union attempts to revive it and Management efforts to recruit a secretary.

ii. The Ombudsman

23. The Ombudsman's Office only started functioning on 25 October 2002. Its Terms of Reference include the authority "to consider conflicts of any nature related to employment by the United Nations".[2] The Ombudsman has direct access to the Secretary-General, and is meant to serve as an independent and impartial mediator to resolve conflicts and make recommendations on actions required to resolve disputes. But the Ombudsman does not have decision-making authority. The GA, while recognizing the importance of this office as "the primary means of informal dispute resolution", has requested nevertheless that the Ombudsman "expand its outreach activities […] in order to facilitate equal access to its services by all staff members, including those posted in field missions and other duty stations".

iii. Other Avenues

24. Staff members may also bring their cases to the attention of specific bodies and officials for informal resolution, e.g. to Staff Representatives, the Staff Counselor, JAB members acting as facilitators "for conciliation", or to Supervisors or Human Resources Officers.

[1] ST/AI/308/Rev.1
[2] Resolution 59/283 promulgated in ST/SGB/2002/12

C.) ***Formal Dispute Mechanisms***

25. Staff Regulation 11.1 provides that the Secretary-General "shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules". An "administrative decision" is a prerequisite for the initiation of formal recourse procedures, whether it is a request for review, a suspension of action in the case, or an appeal to the Joint Appeals Board.

i. Request for Administrative Review

26. Under Staff Rule 111.2 "a staff member wishing to appeal an administrative decision shall as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed". This is the only procedure in the formal stage that is centralized in New York. Regardless of the staff member's duty station, he/she must send the request for review to the New York Headquarters. This request must be filed in writing within two months of the receipt of the decision. In theory, this formal stage is designed as a final opportunity for the official who took the contested decision to review his decision before the case is taken to the next stage. If the staff member receives an unfavorable answer from the Secretary-General, he/she may appeal to the Joint Appeals Board within one month. If the Secretary-General does not reply to this request within one month (for staff in New York) or two months (for staff stationed elsewhere), the staff member may appeal against the original decision to the Joint Appeals Board.

27. These requests for review are forwarded to the Administrative Law Unit (ALU), an office located within the Department of Management, in the Office of Human Resources Management. This Unit handles all letters addressed to the Secretary-General alleging non-observance of terms of appointment. This Office has multiple functions, which include preparing the Secretary-General's response to appeals before the Joint Appeals Board; representing the Secretary-General before the Joint Appeals Board; reviewing disciplinary cases in order to determine whether disciplinary charges are warranted, and preparing written presentations to the Joint Disciplinary Committee. It should be obvious that it cannot possibly offer a fair and independent review when it is geared up to act against the employee at the next stage. Indeed, in the course of the "review", it may acquire information from employees that it later will use against them! In practice, the requirement to request a review of the administrative decision appears to most staff to be a mere formality that adds to the delay in the consideration of appeal cases. The Office of Internal Oversight has reported that a "root cause" of the unacceptable delay is that managers do not provide the ALU with coherent rationales for their decisions in a timely manner: in 2002, for example, they took an average of 201 days to respond to ALU requests and some managers took as long as 600 days. For its part, the ALU has shown itself incapable of effective action: during 2000, it received 167 requests for review but "did not have time to respond to any of them". By 2003 it had improved only to the extent that it did have time to respond to 66 requests, out

of 147 made in that year.[3] These statistics suggest a Review system that is beyond repair.

ii. First Tier Adjudication: the JAB

28. Chapter XI of the Staff Rules stipulates the functions and composition of the Joint Appeals Board (J.A.B). J.A.B.'s operate in New York, Geneva, Vienna, and Nairobi. The Boards are composed of Chairpersons appointed by the Secretary-General in consultation with the Staff; members appointed by the Staff; and members appointed by the Secretary-General. The functioning of the Board is supported by a Secretariat composed of legal officers who provide legal and procedural advice to the J.A.B. panels in their consideration of appeal cases. The Secretariat of the JAB is under the authority of the Office of the Under-Secretary-General for Management, which means that it cannot be regarded as independent.

29. A staff member contesting a decision may request a suspension of action by writing to the Secretary of the Joint Appeals Board. On receipt of this request, the Presiding Officer of the Joint Appeals Board will convene a Panel immediately to consider whether the implementation of the contested decision would result in "irreparable harm" to the staff member (a standard that in our view is too high and which the employee can seldom in practice satisfy). Within three working days, the Panel will forward to the Secretary-General its recommendation on whether the decision should be stayed pending the consideration of the case on the merits. The decision of the Secretary-General with regard to the suspension of action recommendation is final, however, and not subject to appeal. This is obviously wrong: the JAB (or any replacement) should decide, rather than recommend, whether suspension is justified.

30. Once the statement of appeal has been properly filed, and the ALU has submitted the Respondent's reply, the JAB Secretariat prepares the case and assembles the written pleadings for submission to the Panel assigned to consider the appeal. The *recommendations* of the Panel are forwarded to the Under-Secretary-General for Management who makes a final decision on behalf of the Secretary-General. In theory, the Secretary-General accepts the unanimous recommendations of the JAB unless "there is a compelling reason of law or policy not to do so". But in practice recommendations are often airily and arbitrarily cast aside, usually after many months of consideration. Again, the JAB is not operating as an independent "justice" mechanism. It is merely a body that "advises" management, frequently to no avail. Its "decisions" are generally reasonable and sensibly argued, but it does not "decide" anything.

31. The JAB process is extremely dilatory. The Office of Internal Oversight reported in 2004 that the delay in New York ranged from 27 to 37 months; in Geneva from 15 to 26 months and in Nairobi from 19 to 26 months. This wholly unacceptable delay it put down to a lack of resources and a failure to observe time limits, but we consider that an inherent reason for the endemic delay is the difficulty in

[3] OIOS report, 11 October 2004, A/59/408, paras 12 and 29

assembling volunteer panels and the general amateurishness that attends many of the fifteen stages identified before the process is completed. Management responses are usually slow, and sometimes are outrageously so. After the initial exchange of pleadings, 12 months often elapses before a panel session is arranged. We echo the OIOS conclusion that such delays are "particularly serious" when the cases involve the non-renewal of contracts, as staff often do not have the luxury of waiting for protracted periods until their case is heard, given the financial implications of unemployment.[4]

32. The role of the JAB has been the subject of numerous reviews as part of the efforts to reform the administration of justice at the United Nations. In his Report to the General Assembly in 1995[5], the Secretary-General "considered a number of options and concluded that a professionalized dispute-resolution mechanism by arbitrators recruited from outside the United Nations system would be the best answer to the needs of the Organization". The Secretary-General proposed that the JAB be replaced by an Arbitration Board composed of 10 externally recruited arbitrators, no two of whom may be from the same Member State. There is much still to be said for this recommendation, which was based on a powerful and logical critique of the JAB as presently constituted.

iii. Disciplinary Procedures: the JDC

33. Pursuant to Chapter X of the Staff Regulations, the Secretary-General has established the Joint Disciplinary Committee (JDC) to advise him in disciplinary cases. The Secretariat of the JDC is located at the JAB Secretariat and the JAB personnel perform its functions. The Secretary of the JAB also serves as Secretary of the JDC. Currently the JDC receives two types of disciplinary cases:

- Cases of serious misconduct where the Secretary-General has already imposed a disciplinary measure such as summary dismissal;
- Cases referred to the JDC by the Secretary-General, requesting advice from the JDC as to what disciplinary measure if any, should be imposed.

34. In both cases, a JDC Panel considers the facts of the case, including the findings of the investigation and the staff member's response to the allegations, and makes *recommendations* to the Secretary-General. The functions and composition of the JDC are very similar those of the JAB, and the same objections apply. In terms of reform, however, although there is a case for replacing the JAB by a fully professional tribunal, it is important to maintain a staff representation in disciplinary decisions. Peer review creates confidence in both parties that decisions about standards of conduct will reflect on-the-ground realities and take current practice into account.

[4] OIOS report, 1st October 2004, A/59/408, para 19
[5] (A/C.5/50/2 of 27 September 1995)

35. The endemic delay in JDC cases is particularly debilitating for staff members. It means that the cloud of suspicion, often unjust and increasingly picked up by the media, cannot be dispelled until well after it has taken psychological toll on the staff member and his or her family. The Secretary General has noted the difficulty of obtaining JDC panels with the requisite expertise to deal with allegations of fraud in procurement or with tax or financial matters.[6] The JDC system, he conceded, "has proved to be extremely slow and cumbersome". This problem would be ameliorated by having a professional judge chair the disciplinary tribunal

iv. <u>Specialised Bodies</u>

36. Certain narrowly defined cases must be referred to specialized bodies, such as *The Claims Review Board (CRB):* (compensation claims for loss of or damage to a staff member's personal effects attributable to the performance of official functions); *The Medical Board:* (sick leave entitlements); *Classification Appeals Committee:* (appeal against classification decisions); *Joint Staff Pension Fund Appeals Board*; *Advisory Board on Compensation Claims:* (compensation in the event of death, injury or illness attributable to the performance of official duties); *Performance Appraisal Rebuttal Panels:* (reviews rebuttals filed by staff members who disagree with the rating given to them by their supervisors). Decisions by some of these bodies may in some cases be appealed to the JAB, while other appeals can lie directly to UNAT. We consider that in a sensibly reformed system, all these first tier adjudications should be amenable to direct appeal to UNAT

C.) ***<u>Appeal</u>***

<u>United Nations Administrative Tribunal (UNAT)</u>

37. Staff members or other persons with *locus standi* may appeal a decision of the Secretary-General on the recommendations of the JAB or JDC to the United Nations Administrative Tribunal. The Tribunal is composed of seven members who are nominated by their countries and appointed by the General Assembly for a four-year term, renewable once. Article 3 of the Statute stipulates that members of the Tribunal "shall possess judicial experience in the field of administrative law or its equivalent within their national jurisdiction". The Tribunal is the final appeal body: its judgments are "final and without appeal", although they are not "judgements" in any true sense because they are not binding on the Secretary General. This and other serious deficiencies in UNAT are considered below. Very serious delay attends upon the rule that staff members cannot appeal to UNAT until the Secretary General has considered the JAB report. Because JAB decisions are not binding, the recommendations have to be reviewed on behalf of the Secretary General by the Office of the Under-Secretary General for Management. Since this office is usually responsible for the original decision, its "review" cannot be unbiased – which means that the Secretary General is sent partisan advice as to whether or not to accept the JAB recommendation.

[6] Report A/C5/50/2, 27th September 1995, para 5

E. REFORM: THE NEW STRUCTURE

A.) Informal Mechanisms

i. The Ombudsman

38. We consider that the parties to any work-related dispute should be encouraged first to seek informal resolution through alternative dispute resolution (ADR) mechanisms such as mediation, conciliation, and arbitration. Informal and early resolution of cases will save the heavy ultimate cost associated with the adjudication of cases at the formal stages of the appeal process. Management should commit to an Open-door policy, i.e. staff members with grievances must be encouraged to meet with their supervisors and other individuals in the chain of command to discuss and attempt to resolve their grievances.

39. The GA has stressed the "importance of the Office of the Ombudsman as the primary means of informal dispute resolution" and requested that the Office "continue to expand its outreach activities".[7] During our consultations, many staff members emphasized the general perception among UN staff that the Office is not seen as effective for resolving such disputes, to a degree that staff members were sometimes reticent to approach the office about their grievances. The Commission believes that this is in part due to a lack of public-awareness campaigns to educate staff about the functions and potential of the Ombudsman's office for informal dispute resolution. One problem is that although its Case Officers have received formal training in mediation and have been duly certified, they are not independent of management and are generally of a lower rank than people on the management team.

40. There is no doubt that a considerable number of cases that go to expensive and cumbersome appeals before the JAB/ JDC and the Tribunal could be effectively mediated. We therefore recommend a compulsory mediation process, prior to the new Employment Tribunal (ET) adjudication that we recommend to replace the JAB/ JDC. The Ombudsman Office should expand its outreach activities, and have its role strengthened in the following ways:

    i. The Ombudsman should be appointed by the Internal Justice Council (see above, paragraph 14);

    ii. Either side to a dispute may request voluntary "in house" mediation, by the Ombudsman's office;

    iii. The Ombudsman should maintain a panel of independent mediators;

    iv. Independent mediation will be mandatory (unless both parties agree that it would be futile) before a case goes to first-level adjudication;

[7] Resolution A/RES/59/283

v. The mediation process must be subject to strict time limits;

vi. The Ombudsman should establish permanent representation in major duty stations and field missions, who have the requisite experience in ADR.

ii. The Panel on Discrimination and Other Grievances

41. The Commission notes the Secretary-General's Report to the General Assembly dated 5 October 2004[8] regarding the role of the Panels and the feasibility of attaching their functions to that of the Ombudsman. That Report noted that the Panels had certain "unique features" that were worth retaining, such as the power to make specific recommendations to the office of Human Resources and to examine cases that do not arise from specific administrative decisions. We do not agree that these powers are incompatible with the Ombudsman's Office, and see no reason why, as part of the consolidation, simplification and professionalisation of the internal justice system, they should not be subsumed by the Ombudsman. The PDOG itself should be abolished. The Panel's work that falls outside the ET jurisdiction – e.g. because there is no specific administrative decision to consider - could be continued, rather more actively and professionally than at present, by a *Commission on Discrimination, Harassment and other Grievances* with staff and management members, chaired by the Ombudsman or his/her representative, with powers to conduct formal hearings, subpoena papers and persons, and to make recommendations to the Secretary General or the Office of Human Resources Management.

B.) Formal Mechanisms

i. Request for Administrative Review

42. Requests for administrative review, which are currently a necessary precondition to formal appeal, are forwarded to the ALU for consideration. This process is intended to give the decision-maker a last chance to review the decision before it is the subject of a formal appeal. During our consultations, the ALU provided us with statistical data regarding the requests for administrative review for the years 2003 to 2005. The statistics show that most of the cases are not reviewed and end up as appeals before the JAB. This is due in part to understaffing levels at the ALU, which is also responsible for other functions such as preparing Respondent's replies at the JAB, reviewing all disciplinary cases, and defending the Secretary-General on suspension of action cases. The statistics obtained from the JAB and the ALU demonstrate that in practice, the administrative review requirement is no more than a formality that has little usefulness and adds months – sometimes, years, to the consideration of cases. Moreover, this formality appears to staff as a delaying tactic and in any event rarely causes the Secretary-General to rescind the contested decision.

[8] (A/59/414)

43. There is no doubt that many cases that end up at the formal stages could have been resolved at the administrative review stage. The real problem is that the same office reviewing a case will represent the Secretary-General against the Appellant before the JAB. This is a classic case of conflict of interest, which has contributed to the Staff Union's justified criticisms of the ALU. Although these criticisms may result from understaffing and incompetence rather than malevolence, we firmly believe that the ALU must be removed from the Review process.

44. We question whether there should be a formal review process at all. Management will inevitably review a case when an appeal is lodged, and keep it under review, sometimes conceding and settling prior to the hearing. In our view, Staff Rule 111.2, which makes a review request a precondition for appeal, should be abolished.

45. If an independent review is appropriate, then it should be conducted within the Ombudsman's Office. After receiving a request for review, the Ombudsman would make the initial decision either to refer the case to mediation, or to conduct an independent review of the case in order to make a recommendation to the Secretary General. We believe that this option would allow the resolution of a substantial number of cases before they become appeals. Strict time limits must be established for any review process, and the administration must not be allowed to use mediation as a delaying tactic. The process of mediation and other forms of ADR, and that of the formal request for review could continue simultaneously, and there would be no need of a long period in which the case stays idle. This would entail the establishment of Administrative Review Officer posts within the Office of the Ombudsman.

ii. <u>The Joint Appeals Board and Joint Disciplinary Committee</u>

46. The JAB and JDC are peer-review bodies that have been heavily criticized, and there appears a general consensus among staff that they are dilatory and inefficient. The most serious criticism, of course, is that they are not "legal" bodies with decision-making powers, but merely advisory. Staff must make considerable sacrifices to sit on them, and are not in practice given "time off" to do so. In his 1995 Report to the General Assembly the Secretary-General proposed that the JAB be replaced by an Arbitration Board composed of 10 externally recruited arbitrators, no two of whom may be from the same Member State.[9]

47. We support the Secretary-General's view that "the present system, where a Joint Appeals Board (JAB) advises the Secretary-General is no longer viable". We are of the considered view that the JAB should be professionalized and that it should be given the authority to issue binding decisions which can be appealed to UNAT by either party to the dispute. That said, we doubt the need to appoint "arbitrators": JAB work could be handled instead by a small panel of full-time professional judges, experienced in fact-finding and adjudicating employment disputes. There is

[9] A/C.5/50/2 of 27 September 1995

a strong argument that in the interests of professionalising the system and avoiding the delay and disruption attendant upon recruiting volunteers, ordinary employment disputes should be heard by a judge sitting alone. Some members of the Staff Union would argue that the advantages of peer review are such that the judge should at least have the benefit of lay assistants, one appointed by Management and the other by the Staff Union. Where those disputes concern discipline (i.e. JDC cases) however, we consider it essential that the judge sits with a representative of staff and of management.

48. The Secretary General's recommendation for a UN arbitration board, comprising a panel of "outside" arbitrators, was a praiseworthy attempt to find a model that could make binding decisions "since staff members subject to the authority of the Secretary General under Staff Regulation 1.2 cannot make decisions binding upon him."[10] We see no reason to make this staff regulation a shibboleth. There is no diminution in the authority of the Secretary General, as chief administrative officer of the organisation, in making management decisions on employment or discipline subject to a justice system which includes staff decision-makers but is independent of him, but answerable (through its supervision by the IJC) to the General Assembly. This does not diminish his authority, any more than the CEO of a multi-national corporation is diminished by being required to comply with the decision of courts in various countries where the company operates. If this is thought to be an insuperable obstacle to the appointment of staff members to a tribunal which will bind the Secretary General, then it can be circumvented by appointing the Management and staff representatives in the capacity of expert assessors rather than as judges. In other words, they would retire and consider the issues with the judge, but the final decision would be that of the judge alone.

49. We recommend abolition of both the JAB and JDC. These weak advisory bodies should be replaced by an *Employment Tribunal* consisting of a full-time professional judge, sitting to decide employment disputes but with a staff representative and a Management representative to sit as assessors in disciplinary cases (as to whether assessors should sit in employment cases, see paras 60-62 below). The judges would be appointed by the IJC, and the representatives respectively by Management and by the Staff Union. They should be properly paid for what would be a part-time engagement. The Tribunal would require a professional secretariat, based in New York but with offices in major UN outposts. It would need to be independent, and responsible to the IJC rather than to the DSG. The Employment Tribunal judgement should be binding (subject to appeal); hearings should presumptively be public; the Employment Tribunal must have power to order disclosure of documents; judgements should be placed on a public file.

[10] AC5/50.2, paras 32 to 33

iii. UNAT

50. The Executive Secretariat of UNAT must be separated from the Office of Legal Affairs, which represents the Secretary-General before the Tribunal. This is a crucial reform in any event, since the Appeal Tribunal must be and must be seen to be entirely independent of the organisation's management. The best way of securing this is to bring it under the umbrella of the IJC, which should appoint its members, fund its operations and control its secretariate.

51. Judges serving at UNAT should be independent, and unattached to any particular state member. They should be appointed by the IJC after public advertisement for a 7 year, non-renewable term. The IJC should appoint a full-time President of the tribunal – the other judicial positions would be part-time unless the amount of work required more full-time appointments to avoid delay. The UNAT Statute must be amended to require that each member of the Tribunal should be a lawyer of distinction and independence, with at least 15 years experience in administrative, international or employment law. The Registrar and Assistant Registrar should also be appointed by the IJC, to posts of D-1 and P-5 levels respectively.

52. We strongly believe that public hearings are essential to produce confidence in any court. UNAT has always sought to avoid hearings of any sort, with the result that it is not seen as a living and working part of the UN and is not seen as dispensing justice. There should be a public file upon which all submissions are placed unless the court gives permission for them to be kept confidentially. It must be emphasized at both the Employment Tribunal and UNAT level that the presumption must be in favor of publicity for all submissions and judgments. UNAT should hold hearings, unless the parties agree that a hearing is not necessary, and the presumption must be that such hearings will be open to the public and press. The principle that "justice must not only be done, but must be seen to be done" is important in this respect: the problem with UNAT at present is that nothing is ever seen to be done at all.

53. Under Article 10 of UNAT's Statute, if the Tribunal finds that the application is well founded, it must order rescission of the decision, or performance of the obligation. However, the Tribunal must, when ordering specific performance, at the same time fix an alternative amount of compensation to be paid to the applicant should the Secretary-General decide that implementation of the order is not "in the best interest of the Organization". This leaves it to the Secretary-General to decide whether he prefers to comply with the order or to pay the amount determined by the Tribunal. It can rarely be in the interest of the UN for its leader to refuse to perform an obligation decided upon as just by a court. Injustice to the "compensated" party is compounded by the fact that there is currently a limit on compensation awards: they cannot exceed two years' salary. The fact that compliance is within the Secretary-General's discretion undermines staff confidence in the Tribunal and raises questions regarding the independence and fairness of the process. Until recently, of course, the SG has almost always chosen to pay the compensation rather than to rescind the contested administrative decision. There is a serious

discrepancy here between UNAT and ILOAT – the equivalent appeal tribunal for the ILO and other international organisations. ILOAT itself decides whether performance "is not possible or desirable" in which case it awards the applicant monetary compensation. This is a much better system. It means that the justice body itself, and not the Secretary General decides where the interests of the UN lie in relation to employment rights. At present, ILOAT enjoys greater authority than UNAT, and UNAT itself says that this gap "represents a glaring example of injustice and discrimination between the two categories of staff members working under the United Nations system".[11] There is a powerful argument for merging UNAT and ILOAT to provide a strong and authoritative appeal tribunal for the resolution of all disputes involving staff employed by the UN or associated international organisations.

54. UNAT currently holds only two sessions: one in August and another one in November. This is conducive to delay. With a full-time President, and a quorum of three judges, UNAT could be much more expeditious and efficient. Moreover, the advance of technology has rendered it unnecessary to delay judgments until meetings every six months or so. There is absolutely no reason why case papers cannot be e-mailed to judges so they can discuss them by teleconference, videoconference, or e-mail. The judgments can be agreed in this fashion and issued by putting them on the Internet. The Tribunal does not have to meet to get out a decision. The only time meeting in person is necessary is to hear oral argument from counsel or testimony from witnesses. That said, with a full-time President there is no reason why cases should not be heard and decided all year round, rather than twice a year.

55. The UNAT statute must be rewritten to incorporate all the above changes. The most important change will be to make its judgements <u>binding</u> on Management: no longer will its "orders" merely be recommendations that can be circumvented by paying inadequate compensation. When compensation <u>is</u> appropriate, there should be no artificial limit to the amount equivalent to two years of salary.

[11] Letter dated 8th November 2002 from President of UNAT to chairman of Fifth Committee: A/C.5/57/25, 20 November 2002

F. OTHER JUSTICE ISSUES

i. Legal Representation of Staff

56. The Commission interviewed the Coordinator of the Panel of Counsel (POC), and particularly considered how the POC provides advice to staff members in the early stages of a dispute. The Commission fully agrees with the Coordinator's view that the volunteer system fails to provide sufficient and effective counsel for staff members. We believe that it is essential for staff members to have access to legal advice about their contracts as soon as a dispute develops. In the early stages of a dispute, access to legal representation is vital because a lawyer's advice can cause staff members to "simmer down" once they recognize that on the facts they have no reasonable redress. This can save a lot of futile, unnecessary, frivolous or vexatious action. In his 1995 report, the Secretary General proposed to create a post of Legal Officer at P-4 level to serve full-time on the POC "to advise staff as to whether they may have a valid case and if so, how to proceed".[12]

57. The Commission endorses the Secretary-General's enforcement of the policy of "Zero-tolerance for Sexual Exploitation and Abuse" but cautions that staff members must be afforded legal protection in such cases, by assigning private criminal defence attorneys to represent staff members who are subject to sexual exploitation charges. A number of serious disciplinary and criminal allegations have been made against staff members in the field, but several of them have been proved to have been motivated by malice or blackmail. These cases, particularly of sexual abuse, must be taken very seriously by the UN, but there is a grave concern that unless there is a proper defence, individuals will be unfairly demonized in the media and prejudiced in the run-up to the hearing. The UN must, at the time of charging the staff member with any misconduct of a criminal nature, provide a "Public Defender" who can assist him or her and if need be hire private lawyers to represent them at the hearing. This system has been used successfully by the UN's Special Court in Sierra Leone – its public defender office has been widely praised by NGOs. It coordinates the defence and hires counsel who are reasonably priced and demonstrably competent to undertake a defence in adversary proceedings.

58. We believe that the POC can only fulfil this "public defender" function if it is strengthened through the recruitment of licensed attorneys who have the requisite experience to represent those staff members who cannot afford to retain outside counsel. Although it is gratifying that some staff members volunteer their time and services to provide valuable representation for their colleagues, this amateur system must end, not only because their advice may not be correct but because, when a staff member acts on behalf of another against his own current employer, he has a perceived conflict of interest. The United Nations recruits qualified lawyers to represent and defend the administration against individual staff members who are left at the mercy of volunteers who may not be qualified or competent to give advice on what may be difficult legal issues. It is important to get right the balance

[12] Above, para 68

between the staff member and his/her counsel and the "phalanx" of lawyers that is available to represent the administration at every stage of the proceedings. There is a principle of "equality of arms" that is adopted by Human Rights Treaties and it must be respected by the United Nations. The organization has a duty to resolve its disputes fairly, and where criminal charges, in effect, are levelled, the accused staff member should be afforded an experienced criminal defence lawyer. This necessary measure has been rejected by previous administrators, which have claimed that external lawyers face difficulty finding their way through the maze of UN reports and circulars.[13] This excuse we reject. Where allegations of, say, child abuse or rape are levelled at a UN staff member, a qualified and experienced defender is essential for justice to be seen to be done.

ii. Time-limits

59. The Staff Rules provide strict time frames for the formal appeal process within the internal advisory bodies and UNAT. However, we found that the time limits are often ignored and not dealt with equitably. They are usually not enforced against the administration, which can, without repercussions, delay a case for a year or more by failing to submit the Respondent's reply. We therefore recommend that all parties should be held to strict time limits, unless otherwise ordered, and any failure to observe them should not delay the consideration and adjudication of a case and there should be sanctions for non-compliance.

iii. Peer Review

60. In general, the administration of justice can benefit from the valuable experience and institutional knowledge of staff members who volunteer in boards, panels and committees for the consideration of staff grievances. But this system has drawbacks. Firstly, volunteer staff members may be dependent on the administration for progress in their career, and may fear they will jeopardize their prospects if they act too independently. Secondly, these volunteers are only given time off from their regular duties to attend meetings and hearings; they are not given time off to prepare for cases and review case files that are often very voluminous, and require substantial preparation. They have no choice but to prepare for cases in their spare time. Thirdly, we found that these volunteers are not given any incentives to encourage them to continue to serve for the administration of justice system. Fourthly, peer review is "extremely expensive for the organisation".[14] To the extent that peer review is retained, these problems must be addressed, both by Management and by the Staff Union.

61. The Union should be able to recruit, from its current or former members, representatives who are independent-minded and sufficiently expert to sit on disciplinary and specialised tribunals. Management must be prepared to give time off for preparation of cases and must provide incentives, such as considering ET

[13] E.g. OIOS report 2004, above, para 49
[14] A/C.5/50/2, para 25

service as part of the mobility system or including it in the individual PAS or (in difficult and time-consuming cases) by over-time payments.

62. We recommend that peer review should be retained for all disciplinary cases in the Employment Tribunal and as far as possible for the specialised bodies enumerated in paragraph 36 above. We are aware of considerable support among staff for retaining peer review in ordinary employment cases and it may thus be perceptually important to do so. However, it undoubtedly can cause serious delays in the system and it is the reason (or excuse) that the Secretary General gives, wrongly in our view, for refusing to be bound by a decision in which staff have participated. We accept that there are employment cases where the professional judge would be assisted by assessors from staff and Management and we think there would be merit in giving the parties the right to apply for an ET in which assessors sit alongside the professional judge.

iv. Ethics and Whistleblower Protection

63. We welcome the establishment of an Ethics Office and the development and promulgation of a Whistleblower Protection Policy. We believe however that this policy should be further developed and the Office should be given teeth by provisions that require senior managers and all senior UN officials to file financial disclosure statements. There must be a public register for such statements. Moreover, in order to combat corruption and deter managerial misconduct, whistleblower protection must be expanded. Members of staff and contractors who "spill the beans" to investigators should be protected from retaliation unless their claims have been made maliciously. Whistleblower protection and ethical oversight are legitimate subjects for the internal justice review because they affect the conscience of staff members, and the way they are treated when they act from conscientious motives.

64. The Commission is of the view that this Office must play an essential role in a reformed United Nations, and it is therefore crucial that it be given the proper resources adequately to discharge its functions. It must, moreover, have an operational independence from Management, by reporting to an independent Review Board. It must have a capacity to mount thorough investigations into credible complaints. In these respects, the office as it exists at present is most unsatisfactory. It operates a "telephone hotline" for advice on ethical issues but it is not equipped for, or interested in, taking on any wider role in probing managers whom it also advises. The Office does not mount investigations of any kind; it has yet to produce a code of conduct and it has adopted – quite wrongly in our view – a policy of keeping financial disclosure statements by senior management from public view. The Office lacks independence because it spends a good deal of its time advising the Secretary General and for that reason we quite frankly doubt whether it can protect whistleblowers as effectively as the Office of Internal Oversight, which is more independent and has experience of investigating procurement and accounting practices. It is, of course, early days, but we consider

that the protection of whistleblowers is sufficiently important to be entrusted to the Ombudsman. The head of the Ethics Office should be appointed at the Assistant-Secretary-General level, and regional offices must be established in all major duty stations away from Headquarters. The Ethics Office should be resourced and resolved to undertake investigations. It must reverse its present policy which keeps financial disclosure statements by senior management secret from the public.

G. CONCLUSION

65. There is an urgent need for the UN to make itself more accountable but not merely to member states which may be influenced by domestic political agendas which can pre-dispose them either to criticise the organisation unfairly or to cover up its failings. Governments (at least in democratic nations) may come and go: the UN is always responsible to the people of the world. Reform of the internal justice system will certainly enhance that accountability, in the ways indicated in this Report. But true accountability can only be achieved by a high level of transparency. There would be less need for "whistleblowers" if the foul play on which they blow the whistle was clearly visible to the crowd. Freedom of information has become one of the defining characteristics of good democratic governance and the UN's Global Compact encourages greater disclosure by trans-national corporations. We consider that the UN should promulgate its own "Freedom of Information Act", under which its internal documents and decisions will become available in due course, upon application by the public or the media, subject only to privacy or to international security considerations. The Ombudsman could serve as the Freedom of Information Commissioner, reviewing Management refusals to disclose with his decision appealable in turn by UNAT.

66. The present system is unsustainable. It is far removed from best practice in administrative and employment law in advanced states and it sets a poor example for those states which are in a process of improving their legal systems. The current practice in a number of respects violates the right to a fair trial and fundamental employment rights guaranteed by the Universal Declaration of Human Rights (Articles 10 & 23), the International Covenant on Civil and Political Rights (Article 14(1)), and regional treaties such as the European Convention on Human Rights (Article 6).

67. The challenge is to design an internal legal system which is a working model of both the rule of law and of justice administration and to that end we offer the recommendations that are summarised below. We caution, however, that reform has been on the UN agenda for over a decade and there must be a real question over management resolve to progress it. For that reason we recommend that the General Assembly reconvene its Re-design Panel in three years time, to report on the progress that has been made in implementing GA resolution 59/283 of 2005.

SUMMARY OF RECOMMENDATIONS

Our recommendations may be summarized as follows:

1. **Internal Justice Council (IJC)**

   i. The General Assembly should establish and fund an International Justice Council with the mandate to provide a fair, efficient and cost-effective system for formal resolution of employment disputes within the organisation.

   ii. The Council should comprise 5 persons of international distinction and respect in the field of justice and human rights. Two such persons will be appointed by the SG, and two by the Staff Union. Together and by agreement, they shall invite a fifth such person to chair the Council.

   iii. The Council shall be responsible for supervising the internal justice system at the UN. It will appoint the UNAT President and judges; the UNAT Registrar and Deputy Registrar; the Employment Tribunal judges and a Registrar of the Employment Tribunal, and the UN Ombudsman.

2. **United Nations Appeals Tribunal (UNAT)**

   i. This final judicial body shall have a full-time President and 6 part-time judges appointed for one 7 year term.

   ii. It shall meet for at least 4 sessions each year, for hearings (unless waived by both parties) and presumptively such hearings shall be in public. At least three judges must sit to decide each case.

   iii. UNAT shall be funded by a subvention from the IJC and shall have no connection with the Office of legal affairs.

   iv. UNAT decisions shall be binding and shall not be circumvented by alternative payment of compensation unless the Tribunal approves of this course.

   v. Any compensation ordered by the Tribunal shall not be limited as to amount.

3. **The Employment Tribunal**

   i. The JAB and JDC shall be abolished and replaced by an Employment Tribunal for first-tier adjudication.

   ii. The Tribunal shall comprise a professional judge, sitting with two assessors appointed respectively by the Staff Union and the management to assist the judge in all disciplinary cases, and in other cases upon application.

   iii. No application shall proceed to hearing or determination without an attempt at mediation, unless either the Employment Tribunal relieves the parties of this requirement or they both agree that mediation would be futile.

4. **Request for Administrative Review**

i. Staff Rule 112.2 must be rescinded. Review shall no longer be a precondition for appealing an administrative decision.

ii. The Ombudsman, if requested by Management, may conduct an independent review and make recommendations to the Secretary General, as an alternative to voluntary mediation.

5. **The Ombudsman**

i. The Ombudsman shall be appointed by the IJC.

ii. The Office shall maintain a panel of independent "outside" mediators as well as offering an "in house" mediation service.

iii. The PDOG should be abolished. The Ombudsman should take over the function of this panel, and Chair a *Commission on Discrimination and Harassment and other Grievances*.

iv. The UN must promulgate a *Freedom of Information* system under which internal documents become available in due course for disclosure upon specific application by media or public, subject to privacy and security exemptions. The Ombudsman should review Management refusals to disclose and his decision should be appealable to UNAT.

6. **Miscellaneous**

i. Experienced legal defence counsel must be provided on request to all staff members facing disciplinary charges that allege criminal conduct.

ii. The Panel of Counsel must be strengthened to enable staff to take advice from real counsel – i.e. licensed lawyers, especially at an early stage of disputes.

iii. Time limits must be strictly enforced at all levels of the justice system.

iv. Peer review should remain for disciplinary matters.

v. The Head of the Ethics Office should be appointed at Assistant Secretary General level and should be responsible to an independent Review Board. He should maintain a public Register of the financial interests of Senior Managers and officials participating in the international justice system.

vi. The important role of protecting whistleblowers should be removed from the Ethics Office and given to the Ombudsman or else to the Office of Oversight Investigation.