

# WHERE IS THE RULE OF LAW?

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## Prologue

Since its inception, the UN and international organisations have enjoyed international immunity from all national legal systems, acknowledged by its member States. International immunity is based on diplomatic immunity, a concept originating

from Roman Law, which has since been well established in both international law and practice. This international immunity means that international organisations are immune from suit in national legal systems as an ordinary feature of their working, due to functional necessity. This feature is in keeping with international legal personality, which makes international organisations subjects of international law capable of enjoying international rights and obligations.

ACGM Eyffinger (ed) *Compendium Volkenrechtsgeschiedenis* (2<sup>nd</sup> edn Kluwer Den Haag 1991) 59, and see

Professor A Reinisch *International Organisations before National Courts* (Cambridge University Press 2000) 53.

Today, it is an established concept in law that international organisations may possess international legal personality. As a major player on the world stage, with around 35,000 full time employees, rising to approximately 70,000 employees including part time workers, the international system of organisations enjoys both authority and responsibility in its actions on the world stage. However, the actions of senior officials of the UN enjoy the unique immunity which the UN was granted at its inception; an invisible cloak which no legal system may touch unless permission is given for the lifting of the immunity by the Head of the International Organisation concerned.

"Reparation for Injuries Suffered in the Service of the United Nations", (Advisory Opinion) [1949] ICJ Rep 174, 179, A Reinisch, International Organisations Before National Courts (Cambridge University, 1997).

Like world governments, companies and even NGOs, the acts performed by international organisations are mixed in terms of outcome; some excellent, some bad, some mediocre. What is different in the case of the international organisations is the international immunity it enjoys with respect to all of its senior staff (who enjoy diplomatic-level immunity in all their professional acts).

International immunity is classically divided into three categories; sovereign immunity held by States, diplomatic immunity afforded to individuals as representatives of States, and organisational immunities granted to international organisations. The essence of immunities afforded to representatives of foreign territories has always been to secure the unhindered fulfilment of diplomatic functions, such as immunity from criminal and civil litigation and a guarantee of safe passage.

The evolution of sovereign immunity is discussed in full from section 1.1 to 1.2 of the Report Commissioned by the Centre for Accountability of International

Organisations and prepared by the Amsterdam International Law Clinic, pages 11 to 13. See also,  
P.H. Bekker, The Legal Position of Intergovernmental Organisation: a Functional Necessity Analysis of Their Legal Status and Immunities, Martinus Nijhoff, The Hague, 1994, pp 152-153, and  
D. B. Michaels, International Privileges and Immunities, Martinus Nijhoff, Den Haag, 1984, 11.

However, since its inception, problems have been discernable within the UN's fragile internal legal structure. Inherited from the French civil code system immediately post WWII, it has been subject to little revision since, one of its key features, the lack of independence of the internal tribunals and quasi-judicial bodies, which remain closely tied to the functioning of the international system of organisations, has been subject to criticism in recent legal opinions delivered by leading international jurists Geoffrey Robertson Q.C., Louise Doswald-Beck and Dr Ian Seiderman

[Note: available at <http://www.ilo.org/public/english/staffun/info/iloat> .]

## Overview

The most important mechanism of accountability for any organization or nation is reliance on the rule of law and proper judicial processes. Unfortunately, the UN is uniquely ill-equipped to respond to this urgent need. Unlike the rest of the world, UN operations are "extra-territorial", i.e. not bound by national or local laws, and with "diplomatic immunity" for its staff under a set of conventions on privileges and immunities. (The UN has also asserted that (as a non-nation-state) it is not even bound by international conventions, most notably its own Universal Declaration of Human Rights, and international labour laws on worker rights and representation.)

However, the UN is itself a creature of international law, and can only very awkwardly distance its own operations from those laws, particularly as, during the last decade, its General Assembly resolutions and leadership statements persistently and very publicly preach the need for human rights, labor rights, and good government for all the rest of mankind.

Christopher C. Joyner, ed., The United Nations and international law, The American Society of International Law (ASIL) and Cambridge University, Cambridge and New York, 1997,

Theodor Meron, The United Nations Secretariat: The rules and the practice, Lexington Books, D.C. Heath, Lexington, MA and Toronto, 1977,

Yves Beidbeder, The internal management of UN organizations: The long quest for reform, 1997, Chapter 11, "The uneven legal protection of UN staff", p. 181, "Administration of justice in the organizations of the United Nations common system: Grievance, disciplinary and appeals procedures", document ICSC/29/R.8 (and Corr. 1 and Add. 1 and 2) of 7 February 1998, and Chris de Cooker, International administration: Law and management practice in international organizations, UNITAR, Martinus Nijhoff, 1988, esp. sections III.1, I.1, and V.

Within this presently-closed and home-made legal system, the UN Secretary-General (and his many duly-delegated and authorized legal advisors and representatives) has autocratic power, with no independent judiciary and only weak and erratic legislative oversight from the General Assembly. He and his representatives have also been granted discretion in making exceptions to the basic staff and financial rules and regulations approved by the General Assembly.

"United Nations staff rules", ST/SGB/2002/1, **1 January 2002**, *inter alia*, "Scope and purpose" and in particular Articles I-II, IV, and VIII-XI; Regulations 1.1, 1.2 and 1.2 (e), 9.1, 10.2 and 12.1-12.4; and Rules 101.2 and (a), (b), and (d), 101.3, 109.1, 110.1-110.3, 111.2, and Rule 112.2.

Because the UN is a creature of international law, it is useful to give a brief overview of the complex, uncertain, and evolving but frustrating nature of that broad field before moving on to this archive's topic of the rule of law in the UN. The following dozen quotes give an impression of some of the many dimensions of international law in practice and how the UN fits in (and see also the bibliography of "Useful sources" at the end of this subsection).

"Some ordinary villages are peaceful and well policed. The global village is of another kind. It has feuds and vendettas which often break into violence. All the inhabitants are armed. The part-time police force is amateurish and weak. It is run by a committee of villagers who rarely agree on what it should do. Powerful neighbors sometimes suppress violence by force. Peace will only come to such a village when the rule of law is imposed."

Jonathan Glover, Humanity: A Moral History of the Twentieth Century, Chapter 18, "The political containment of tribalism: Policing the global village", Yale, New Haven, CT, **1999**, p. 140.

"... International law -- so reverently invoked, so rarely defined .... Does it exist? Some spheres of international behavior (e.g., maritime matters, the rights of diplomats) are governed by law-like regimes: there are enduring and widely-adhered-to conventions, and institutions for arbitrating disputes. ....

The phrase 'international law' often is virtually an oxymoron. Law without a sword to enforce it is mere words, mere admonition or aspiration.

Law must be backed by coercion legitimized by a political process. The 'international community' has no such process. .... A true community exists only when

there is consensus about certain matters -- the meaning of freedom, the nature of rights and duties, sources of legitimacy. .... Rhapsodizing about the U.N. as the 'international community' incarnate obscures this fact

If 'international law' is defined as what the 'international community' actually does, the problem deepens. Regarding force, history is clear; nations do what they think necessary and feasible. ....

Eager seizure of the label 'legal' encourages the fallacy that international law is explicit and exhaustive .... it puts policy at the mercy of a vague and volatile consensus of an 'international community' most members of which are unsuited to serve as ethicists or judges."

George F. Will, "The perils of 'legality': If international law is really law, who enacts, construes, adjudicates and enforces it?", Newsweek (US), **September 10, 1990**, p. 25. [emphasis added.]

"There was always an air of unreality about the UN Security Council debate on Iraq. ...

Why would the Security Council spend two months deciding to authorize the use of force if its decision was not binding? How can the council's decision bind Iraq but not the United States? ...

... It is hard to avoid the conclusion that the charter provisions governing use of force are simply no longer regarded as binding international law.

... Since 1945, dozens of member states have engaged in well over 100 inter-state conflicts that have killed millions of people.

This record of violation is legally significant. ... A treaty can lose its binding effect if a sufficient number of parties engage in conduct that is at odds with the constraints of the treaty.

Of course, it remains politically useful to act with the backing of the Security Council. But the charter was supposed to be about more than politics.

The urgent issue today is the breakdown once again of international rules of force. Until that problem is addressed, the Security Council's deliberations will continue to seem surreal."

Michael J. Glennon, "The rule of law is breaking down", International Herald Tribune, **November 22, 2002**.

"While all ... public organizations try to control the "problems" they are jointly dealing with, there is a set of actors (both individuals and organizations) who are bent on making the problem worse.

... [these actors] constitute dark networks striving to achieve ends which create collective action problems for governments all over the world.

... [Alongside military and economic power in international relations] ... are a variety of dark networks. Some, like arms trafficking and drugs are illegal and pursue power and wealth ... whereas some, like Al Qaeda, wish to destroy the military, economic and cultural power of the West.

... Do [dark networks] ... adopt a similar structure to cope with their need for secrecy? ... is there a point where dark networks come together? ... what can we learn from studying them that might help legitimate states to combat them? ... [Dark networks] are a major policy problem, like piracy was in the 18th and 19th centuries. ...

While we are in the very early stages of network evaluation ... there is no reason to restrict our focus to only legal and covert networks when the need to combat dark networks is so great."

H. Brinton Milward and Jörg Raab, "Dark networks as problems," PA Times (USA), **November 2002**, p. 5.

"The illegal trade in drugs, arms, intellectual property, people, and money is booming. Like the war on terrorism, the fight to control these illicit markets pits governments against agile, stateless, and resourceful networks empowered by globalization. Governments will continue to lose these wars until they adopt new strategies to deal with a larger, unprecedented struggle that now shapes the world as much as confrontations with nation-states once did.

Why governments can't win [these wars]

They are not bound by geography

They defy traditional notions of sovereignty

They pit governments against market forces

They pit bureaucracies against networks

Rethinking the problem

Develop more flexible notions of sovereignty

Strengthen existing multilateral institutions [particularly INTERPOL]

Devise new mechanisms and strategies

Move from repression to regulation."

Moisés Naím, "The five wars of globalization," Foreign Policy, **January/February 2003**, pp. 29-37.

[Note: the article identifies other areas traded illegally for huge profits, including human organs, endangered species, stolen art, and toxic waste. As with most other *Foreign Policy* articles, it also contains an excellent guide for further reading on these topics.]

"President George W. Bush's turn to the United Nations for help in Iraq was a welcome, if belated, recognition that global policing can acquire legitimacy only through multinational endorsement. But the record of the major political bodies of the UN .... has little to show that this is the place to find that sort of legitimacy in the 21st century.

The [General] Assembly is usually mired in speechmaking. The [Security] Council is increasingly perceived as a relic of the cold war. These are not just the sentiments of neo-conservatives in Washington; they were voiced most recently by Kofi Annan, the secretary general of the United Nations. In an unusually candid report issued on Sept. 8, Annan challenged the UN to make radical reforms. ....

The real task is to open a serious debate on what a multilateral institution should be today, and what rules and instruments it should have. As the world's leaders arrive for the General Assembly this week, they would do well to present some concrete ideas on what the United Nations should be."

"Restructuring the UN", International Herald Tribune, **September 22, 2003**.

"Criminal Charges Against Individuals

... the most significant advances in international law now involve not disputes between states, but rather criminal charges against individuals ... [emerging] from violations of international human rights and humanitarian laws that are so serious as to incur individual criminal sanctions. Those violations include crimes against humanity, genocide, and serious war crimes. ...

In addition, ... international criminal law also prohibits the crime of aggression. Unlike the other offenses, however, the crime of aggression regulates not an individual's conduct during armed conflict, but rather the decision to engage in armed conflict. Also unlike the other offenses, the crime of aggression remains undefined. The Security

Council has historically held the power to determine when aggression has occurred, and the Council's permanent members have resisted sharing that authority."

Chapter 7: "Covering legal ground", by Neal Higgins, in A global agenda: Issues before the 58th General Assembly of the United Nations: 2003-2004 edition, Angela Drakulich, ed., An annual publication of the United Nations Association of the United States of America, UNA/USA, New York, Oxford, 2003, pp. 217-253 [233-234]

"Last year ... the World Summit on Sustainable Development ... resulted in the performance by 48 states of a total of 83 treaty actions relating to 39 treaties in the area of economic development and environmental protection. ...

Many States fail to sign or ratify treaties, however, ... because of a simple shortage of technical expertise necessary for the performance of treaty actions. Some also lack the expertise to enact the necessary laws to implement the treaties that they have signed or ratified or to train the personnel required to apply those laws. In order to address those needs, I ... [have sought to offer appropriate technical assistance.]"

"Report of the Secretary-General on the work of the Organization," UN document A/58/1, **2003**, paras. 191-192.

"U.S. allies defended the legal basis for the invasion of Iraq and their military roles there Thursday after Secretary General Kofi Annan of the United Nations reignited the debate over its legitimacy. ...

In an interview ... Annan said the invaders had needed permission from the United Nations Security Council. From the point of view of the UN charter, 'it was illegal', Annan said.

Since the Gulf crisis in 1990-1991, the Security Council had adopted a number of resolutions ... the last in November 2002 ... warning Baghdad of 'serious consequences' if the country was found in breach of earlier resolutions.

Annan ... said that it had been 'up to the Security Council to approve or determine what those consequences should be.'

[A British spokeswoman said] 'We spelled out at the time our reasons for believing the conflict in Iraq was indeed lawful' ... [but] conceded that international lawyers disagreed about the war's legality.

[Australian] Prime Minister John Howard not only rejected Annan's remarks but criticized the United Nations as a 'paralyzed' body, incapable of acting on major crises, such as the current one in Sudan's Darfur region.

[Polish, Bulgarian, and Japanese spokespeople also disagreed or expressed doubts.]"

"U.S. allies argue war was legal: Britain and 4 others attack Annan's claim that it wasn't justified", Agence France-Press, International Herald Tribune, **September 17, 2004**.

"The UN is not in good shape and the world is in worse shape. ... [UN critics know] ... their chosen target is vulnerable. As a [US expert] put it, 'The UN is useful, but it is also a terribly flawed and defective organization.'

[A panel is looking at changed threats and Security Council changes] ... [major countries seek new permanent Security Council seats] ... Investigations of widespread corruption in the UN-directed oil-for-food program in Iraq continue. All of this is unsettling.

[But then came] the startling declaration from ... [Secretary-General Annan] that

the war in Iraq was illegal. ...

... it may provide a basis for a battery of lawsuits against the United States from Iraqis demanding reparations and from every sharp lawyer with a dislike of America's role on the planet.

I ... believe that a strong case can be made that [the war] was legal. Good lawyers in good faith have disagreed. ...

Complex issues, yes, but with a brutally simple bottom line: unless the UN can [develop] a system that is more streamlined and efficacious, and less open to legal dispute, it will not be adapted to the realities of today's world. ..."

Roger Cohen, "As world leaders meet, UN is at a crossroads", International Herald Tribune, **September 22, 2004**. [emphasis added]

"[UN Secretary-General Kofi Annan] appealed to world leaders yesterday to rally behind the rule of international law, warning that global standards were being shamelessly disregarded and selectively applied. ... 'Today the rule of law is at risk around the world,' he told the UN General Assembly in New York. 'This [international] framework is riddled with gaps and weaknesses. ...

'It lacks the teeth that turn a body of law into an effective legal system. Many feel that it is not always used fairly or effectively; those invoking it do not always practice what they preach.'"

This year's assembly comes as leaders start to lock horns on the tortuous question of UN reform, a debate upon which Mr. Annan has pinned his and his organisation's future.

Mr. Annan warned that the system's legitimacy was at stake. 'Just as within a country respect for the law depends on the sense that all have a say in making and implementing it, so it is in our global community. All must feel that international law belongs to them, and protects their legitimate interests.'

His speech reflected an organisation facing a sense of crisis. ... "

Mark Turner, "Annan says global rule of law is at risk." Financial Times (UK), **September 24, 2004**.

"[The recent UN High-Level Panel on Threats, Challenges, and Changes] ... central conclusion is that, without Security Council approval, no state should use force to defend itself against a threat that is not imminent. ... If the Council dallies, too bad: the target state must ask again.

The same applies when genocide occurs. 'Genocide anywhere ...', the Panel declares, '... should never be tolerated.' But [the panel asserts] ... armed force cannot be used to stop genocide ... unless the Security Council permits it. ...

The central problem is that the 'global order' posited by the panel is largely non-existent. Notions of justice vary from one culture to another. ... [The Panel] ... makes no effort to assess the effectiveness of the [UN] Charter's rules, whether the benefits of saving them are worth the costs, whether they still command international support, or whether alternatives such as strengthening regional peacekeeping organizations might work better.

A little empirical spadework, coupled with a little more disinterestedness, would have gone a long way in lighting the way toward a more peaceful and just world. That is the issue -- not how the Security Council can get a bigger piece of the action."

Michael Glennon, "A stronger Security Council is no solution", Financial Times (UK), **December 13, 2004**.

[Note: Mr. Glennon, a professor of international law, is the author of Limits of law, prerogatives of power: Interventionism after Kosovo, Palgrave, New York, **2001**.

"Throughout its history, the [60-year-old International Court of Justice, the United Nations' judicial organ] ...has averaged only a few cases a year, and ... [decided] in fewer than 100 all told. By contrast, the World Trade Organization [has heard several hundred cases] in less than a decade, and the European Court of Justice ... has heard thousands of cases in its half-century existence. ...

Why have countries abandoned the court? The most plausible answer is that they do not trust the judges to rule impartially, but expect them to vote the interests of the states of which they are citizens.

Statistics bear out this conjecture.

When their home countries are parties to litigation, judges vote in favor of them about 90 percent of the time. ... [Additionally, states tend to vote wealthy for wealthy, poor for poor, democracies for democracies, and authoritarian for authoritarian]. ... Politics matter.

Today, [hopes are high] for the fledgling International Criminal Court ... but its prosecutor and judges have enormous [political discretion] to pick defendants ...

Successful international organizations either adapt to great power politics or they wither on the vine; it is a choice that the supporters of global justice will soon face."

Eric A. Posner, "The international court in decline", International Herald Tribune, **January 13, 2005**.

[Note: Mr. Posner, a law professor, is the author, with Jack L. Goldsmith, of The limits of international law, to be released, **2005**.

Alongside all these diverse facets, contentions, and complications of international law, the UN itself stands exempt. A Convention on the Privileges and Immunities of the United Nations states that the UN shall make provision to settle contractual or other disputes of a private law character to which it is a party. An informal internal justice system was therefore established in the Secretariat, but it has long been challenged by a fundamental question raised in 1974 by a distinguished professor of international law, M. N. Akehurst (University of Paris):

"In the early days of the 20th century, it may have been possible to regard legal relations between international organizations and their staff as operating outside any known legal system; such a view is no longer tenable."

Peter Ozorio, [who was a member of a **1974** staff working group] "Legal rights revisited," UN Special (Geneva), October 1992, pp. 24-25. [emphasis added]

Nevertheless, in the 21st century, the UN's home-made system continues relentlessly on and on, despite several decades of determined but so far unsuccessful efforts by the General Assembly and staff groups to reform it, intermingled with reluctant admissions by the UN leadership of its many inadequacies. At least, in 2000, Secretary-General Annan stated the fundamental fact that:

"The jurisdictional immunity of the Organization legally obligates it to have just and effective internal processes to deal with grievances and appeals by staff, and with disciplinary cases ... [as] an indispensable aid to maintaining staff morale, as well as enforcing accountability. ..."

"Accountability and responsibility: Report of the Secretary-General", A/55/270 of 3 August 2000, Summary, para. 39. [emphasis added]

Within this presently-closed and home-made UN legal system, the Secretary-General (along with his many duly-delegated and authorized legal advisors and representatives) has autocratic power, with no independent judiciary and only weak and erratic legislative oversight from the General Assembly. He and his representatives have also been granted discretion in making exceptions to the basic staff and financial rules and regulations approved by the General Assembly.

"United Nations staff rules", ST/SGB/2002/1, 1 January 2002, *inter alia*, "Scope and purpose" and in particular Articles I-II, IV, and VIII-XI; Regulations 1.1, 1.1(f), 1.2, 9.1, 10.2 and 12.1-12.4; and Rules 101.2 and 101.3, 109.1, 110.1-110.3, 111.2, and Rule 112.2.

Most UN staff (and certainly almost all Member State representatives and the public) know little about the UN internal justice system. Staff also usually do not much care about that system, at least until they misbehave, perform very poorly, or - of central interest here -- run afoul of an abusive manager and the Secretary-General's representatives. Then it may well be too late, and they can only struggle down the slippery slope of a UN career that is suddenly collapsing.

At best, staff who speak up can only attempt to defend themselves in "internal justice" processes that can drag on for up to five years, achieving no redress but only -- and by no means very often -- some modest financial reimbursement for the damage done. The managers themselves have impunity, and the taxpayers of the world pick up the tab for the elaborate process and any "damage done" payments, sometimes in six-figure dollar sums, made to the aggrieved staff.

The UN internal justice system has been sharply criticized for decades for its inability to protect staff rights. The General Assembly tried in the 1980s to reform the internal justice system without success, but in 1993 the General Assembly bluntly instructed the Secretary-General to develop a "just, transparent, simple, impartial and efficient" system. He agreed that the existing system was woefully outdated, overloaded, slow, confused, and expensive, and proposed major reforms to professionalise and accelerate the appeals process. But once again the parties could not agree, and another required review in

1999 has led to only minor cosmetic changes to "patch up" the old, defective system.

In 1987 the then top manager of the UN had expressed grave concern about this flawed system:

"... Lamenting that 'Something has gone very wrong with our processes', [UN Under-Secretary-General for Administration and Management Martti Ahtisaari] stressed that justice was not only important in itself, but was also a basic aspect of good staff-management relations. Justice was a 'primary defense against the buildup of feelings of arbitrariness and discrimination' which, he warned, could undermine staff morale and 'finally destroy an international organization however high its ideals and purposes.'"

"Staff-management meeting to discuss justice administration reform and performance reports", Secretariat News [New York], **31 August 1987**, p. 5.

Yet almost two decades later, the debilitating UN internal justice system continues on, although it is roundly criticized by all. Far from solving its many past operating problems, it has now developed serious new "gaps": "floater" staff, amateur "investigations" of staff by managers in a quite lawless system, and disappearing whistle-blowers, as discussed further in the many related archive subsections under UN Management Accountability Struggles and Inadequate UN Oversight .

Rule of law issues in the UN are greatly complicated by a dissonance in policy. The UN under Secretary-General Annan has two conflicting positions on the matter. The first two quotes which follow grandly urge the importance of the rule of law everywhere, but the third shows a great annoyance within the UN leadership about rules and regulations which obstruct and impede the UN's supposedly dynamic managers:

"Enhancing the rule of law

On 24 September 2003, the Security Council held its first general consideration of the topic of justice and the rule of law. In a statement ... I shared a number of lessons that the Secretariat has learned from its experiences over the years [in peace operations] ... Foremost among those was that we must make the rule of law and justice central objectives of our peace operations. ...

In [an August 2004 report] ... to the Security Council I suggested a number of ... precepts or ground rules ... [*inter alia*]

to ensure that all courts created or assisted by the United Nations are structured and organized in a way that will ensure that the process of prosecution and trial is credible, that it complies with established international standards regarding the independence and impartiality of the judiciary, the effectiveness, impartiality and fairness of prosecutors and the integrity of the judicial process; ...

to recognize and respect the rights of victims and ensure that relevant processes include specific measures for their participation and protection ..."

"Report of the Secretary-General on the work of the Organization", UN document A/59/1, **20 August 2004**, paras. 222-223.

"[UN Secretary-General Kofi Annan] appealed to world leaders yesterday to rally behind the rule of international law, warning that global standards were being shamelessly disregarded and selectively applied. ... 'Today the rule of law is at risk around the world,' he told the UN General Assembly in New York. 'This [international] framework is riddled with gaps and weaknesses. ...

'It lacks the teeth that turn a body of law into an effective legal system. Many feel that it is not always used fairly or effectively; those invoking it do not always practice what they preach.'"

This year's assembly comes as leaders start to lock horns on the tortuous question of UN reform, a debate upon which Mr. Annan has pinned his and his organisation's future.

Mr. Annan warned that the system's legitimacy was at stake. 'Just as within a country respect for the law depends on the sense that all have a say in making and implementing it, so it is in our global community. **All must feel that international law belongs to them, and protects their legitimate interests.**'

**His speech reflected an organisation facing a sense of crisis. ...**"

Mark Turner, "Annan says global rule of law is at risk." Financial Times (UK), **September 24, 2004.** [emphasis added]

"We are too complicated and too slow. We are over-administered ... and have too many rules and too many regulations' [Mr. Annan] told staff on 29 October. [He called] for ... simpler procedures and more authority for managers ...

The Secretary-General and his senior managers are addressing shortcomings that impede the effective use of staff resources. Chief among them:

Managers have limited responsibility over their human and financial resources. This leads directly to the erosion of accountability at all levels of the Organization;

Complicated rules and procedures have served to discourage the recruitment, advancement, and mobility of staff, affecting the UN's capacity to move the right person to the right place at the right time. This is essential in a global organization which is increasingly expected to act quickly to address complex crises and changing priorities;

"Staff become focus of United Nations modernization: New management culture key to revitalization," United Nations Focus Series, No. 4, **November 1998**, pp. 2-3.

No government, and no public or private organization can be respected and credible unless it provides, and is widely recognized as providing, independent and effective judicial processes (and free access to outside processes) to ensure that it honours its principles, codes of ethics and conduct, and human and labour rights, through transparency, due process, full and fair hearings, redress accorded to its citizens or staff, and sanctions for those responsible for abuse, mismanagement, or misconduct.

The existing UN internal justice system, however, is extremely nontransparent and ambiguous, and deliberately so. Analyzing this system is much like the blind men feeling the elephant to try to discern what it is. IO Watch has a certain advantage, since its participants have spent considerable time

inside the feeble system that has become so entrenched.

The troubled and murky system, however, still has considerable potential for justice. A body of poorly-handled cases and highly questionable and embarrassing judgments has built up, particularly during the last few years. Very significant "pay-off" sums have sometimes been made to abused staff to smooth over the actions of incompetent and bad managers. The role of the existing system in preserving managerial impunity and evading the rule of law is becoming ever more evident, not least to the General Assembly.

Examining these outputs and impacts of the UN internal justice system provides a factual body of knowledge of its highly improper administrative practices and judgments. Hopefully, these building blocks may someday serve to finally establish a legitimate justice system that provides UN staff the same fundamental legal rights as people in the rest of the world.

The tired old UN administrative justice system appears seriously out of place. But instead of more tinkering to establish the small ombudsman's office and some vague "streamlining" and training, a fresh and searching analysis of the entire situation seems urgently needed. The following subsections, and other parts of this archive, explore five critical questions.

(a) Are new accountability, investigation, and anti-harassment processes now being installed in such a jumbled, misleading, and disorderly way that they threaten to overwhelm the already slow, rigid, and archaic UN "internal justice" system?

(b) Is the UN internal justice system truly "comprehensive", or are there very serious and improper quasi-judicial activities going on behind the scenes?

(c) Especially in light of the Secretariat's failure to implement the 1993 management accountability system, is it a mere "perception" (as stated but not rebutted by Secretary-General Annan himself in August 2000) that the internal justice system shields managers from accountability and sanctions -- or a reality?

(d) The UN increasingly seeks to lead global efforts toward universal values and good governance, including active advice and support to, the "real world" of human rights, judicial reform, and international tribunals. How can it maintain its credibility in this role if its very own

internal justice system is so clearly unjust?

(e) Are significant reforms available, or being made in other international organizations, which could serve as models to finally reform this severely defective UN process?

These questions are explored throughout this archive, but IO Watch finds that the answer that they provide to the title of this section, Where is the Rule of Law? , is "not within the UN." The UN is eager to promote the rule of law and advise everyone and anyone else, and it is revising -- or says it is -- its rules and internal justice system.

On a day-to-day basis, however, IO Watch believes that the UN is falling further and further behind the conscientious application that ensures the **rule** of law, particularly because of the Secretariat's autocratic decision-making styles, the right to declare exceptions, the lack of due process provided to staff, a discriminatory and often very amateurish criminal justice process, a profound lack of democratic and operational accountability, and diplomatic immunity that has in too many cases morphed into a pervasive atmosphere of management impunity.

The first subsection below outlines UN Staff Rights? , a half-century saga of troubling issues and deficiencies. The second subsection assesses the Inept "Administration of Justice" System , and the many unfinished struggles to reform it.

The third subsection examines the considerable amount of Behind the Scenes "justice" in the UN Secretariat, and the fourth further explores Major Ongoing Flaws in the UN's legal processes and internal justice system.

The fifth and sixth subsections discuss briefly expanding and Related UN External Initiatives in advising others on the human rights, judicial, and good governance processes, and the faint but noticeable recent progress in, and enormous challenges of, Piercing the Cloak of UN Impunity.

The seventh subsection discusses perhaps the most serious area of inadequate human rights and legal protection in UN operations, Refugee Sexual Abuses . The final subsection notes some feasible and much-needed actions that can be taken to revise the UN's Code of Conduct, have external experts conduct a judicial reform review (as was done at the World Bank almost a

decade ago), and the important step -- also proposed a decade ago by eminent UN observers -- to establish a UN human rights ombudsman.

Although this archive seeks wherever possible to rely on quote excerpts, especially in the UN Performance Problems section, this and the other sections combine excerpt quotes with brief IO Watch commentary and summaries, in order to piece together a chronological "story line."

This connective material is required primarily because the UN's lack of serious attention to rule-of-law, management accountability, transparency, and corruption issues means that relevant "needles" must be dug out of the UN information "haystack" and then linked together. This situation of course underscores a long-standing UN aversion to proper internal justice, performance, accountability, oversight, transparency, and reporting processes as discussed throughout this archive.

The archive material presented below, as elsewhere, is only an initial compilation. IO Watch will be adding many more quotations in the future. In this section, in particular, IO Watch would very much like to add documented contributions written or suggested by present and former UN staff members, and others interested.

IO Watch would particularly welcome materials (and input) from UN staff who have been caught up in, and abused by, these UN internal processes. They could come to form a vital, ongoing interest group (please see Contact IO Watch .) Articles from UN staff journals giving the insights and analysis of those "on the [literal and figurative] battlefield," of whatever vintage, are also particularly welcome. Any such future joint efforts would help tremendously to make this archive a full and continuing record of UN failure to provide human rights and rule of law in its own operations, as a base for finally installing proper reforms.

(For an explanation of the nature, rationale, and parameters of the quoted excerpts found throughout this archive, please see the subsection on archive Rationale, Development, and Parameters .)

The following abbreviations of major UN organizations and entities appear throughout this archive:

ACABQ	Advisory Committee on Administrative and Budgetary Questions
ACC	Advisory Committee on Coordination (heads of UN system agencies, recently retitled "Chief Executives Board for Coordination")
Board of Auditors	of the United Nations
CPC	Committee for Programme & Coordination
DAM	Department of Administration and Management (recently retitled the Department of Management, DM)
DPI	Department of Public Information
DPKO	Department of Peace-keeping Operations
ECOSOC	Economic and Social Council
Fifth Committee	(Administrative and Budgetary) of the General Assembly
ICSC	International Civil Service Commission
JIU	Joint Inspection Unit
OIOS	Office of Internal Oversight Services
OHRM	Office of Human Resources Management
UNCTAD	United Nations Conference on Trade and Development
UNHCR	Office of the United Nations High Commissioner for Refugees
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WFP	World Food Programme

## **Useful sources**

*(Note: informally assembled by IO Watch, roughly ranked from "most useful" on down, and subject to change as new sources are added.*

*Because there have been so many failed attempts to address or, more often, to avoid reform of the UN internal justice system, that bibliographic information is shown separately at the end of the subsection following on [Inept "Administration of Justice" System](#) .)*

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