

# INEPT "ADMINISTRATION OF JUSTICE" SYSTEM

The failure of the various UN oversight mechanisms to deal firmly with Secretariat mismanagement, abuse, and corruption and other performance problems, and to establish the management accountability system that the General Assembly called for in 1993 (as discussed in other sections of this website) leave only one process to ensure management accountability, performance, and transparency -- the rule of law, which in this case is represented by the UN's "administration of justice" system. Unfortunately, this closed system is by far the weakest UN managerial accountability process of all.

In his report on UN accountability and responsibility in August 2000, Secretary-General Annan emphasized that a comprehensive and clear system of accountability was required at all levels, including an internal justice system for staff to seek redress for administrative actions. He 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]

In a second August 2000 report, on progress made in reforming UN human resources management, he began a section on "Administration of justice" by observing that:

"While there is currently a comprehensive system of justice in place, its highly formalized nature leads to protracted and lengthy proceedings that are in the interest of neither justice nor of the staff or management. At present, the decision makers whose administrative decisions are questioned are very rarely directly involved in defending the cases. This has resulted in the perception that the system shields managers from being held accountable for their decisions."

"Human resources management reform: Report of the Secretary-General," UN document A/55/253 of 1 August 2000, para. 51. [emphasis added]

Yet the Secretary-General finished his August

accountability and responsibility report with a claim of "victory," namely that:

"In conclusion, the Secretary-General is confident that the comprehensive system of accountability now in place ensures that accountability mechanisms are effectively used, are seen to be used, and ensure that staff at all levels are held accountable for their actions and inaction."

The General Assembly may wish to take note of the mechanisms in place since 1994, including those discussed in the present report, which together constitute the comprehensive system of accountability for the Organization."

"Accountability and responsibility: Report of the Secretary-General", A/55/270 of 3 August 2000, Summary, paras. 47-48.

These three quotes, all presented concurrently to the General Assembly, illustrate the jarring discordance of the UN's homemade 'administration of justice' system. First, the Secretary-General specifically acknowledges that the UN is legally obligated to have just and effective internal processes, which are indispensable to maintain morale and to enforce accountability. Second, however, he admits that the existing internal justice "mechanism" is not working well, and exempts managers, which the staff knows all too well. Third, and nevertheless, the Secretary-General leaps to the assertion that UN accountability mechanisms are now effectively used and perceived to be used, and that everyone in the UN is now held accountable for their action or inaction.

In fact, the UN administration of justice system is a mess. It has stumbled along seemingly forever with minor cosmetic changes to meet General Assembly pressures, but very little transparency and much continuing dissatisfaction. The criticisms reach back almost a half century, and (as in other areas discussed under this topic of the rule of law at the UN) they are just as valid today as when they were first written.

A brief preface on the system's origins and structure is necessary. Formally, the UN's obligation for some type of justice system springs from a diplomatic convention:

"Article 29 (a) of the Convention on the Privileges and Immunities of the United Nations states: 'The United Nations shall make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party.'

Accordingly, the United Nations has established appropriate administrative machinery, with staff participation, such as the Joint Appeals Boards (JAB) ... to consider and advise the Secretary-General upon appeals by present or former staff members against administrative decisions alleging non-observance of their contracts of employment, terms of appointment or conditions of service, including all pertinent regulations, rules, precepts and administrative instructions, or against disciplinary action."

Mark A. Roy, "Administration of justice in the United Nations Secretariat",

Secretariat News (New York), **19 June 1984**, pp. 4-7, [4].

[Note: Mr. Roy was the Chairman of the Legal Committee of the New York Staff Council]

The resulting UN internal justice system has three basic layers, an advisory appeals process, a disciplinary process, and a formal appeals process. Each of these layers is more mysterious and less transparent than the last.

"United Nations Staff Rules", Secretary-General's Bulletin ST/SGB/1999/5 of **3 June 1999**, Staff Rule 110.4, Article XI and Chapter XI, and Jay Axelbank, "Administrative injustice at the UN", UN Special, **December 1993**, p.15.

Yves Beigbeder, , The internal management of United Nations organizations: The long quest for reform, St. Martins Press, New York, **1997**, Chapter 12, "The staff unions' dilemma: Confrontation or partnership?", pp. 187-198.

[Note: The Secretariat also had, for many years, an informal system for resolving lesser staff grievances, which was once considered relatively active and useful, but then greatly declined in importance, in considerable part due to managers' unwillingness to cooperate with it. It has now apparently been discontinued.]

First, Joint Appeals Boards (JAB's) operate at major duty stations and are composed of staff volunteers (many or most of whom are chosen by the Administration.) These people, who already have full-time duties and UN careers, and often very little legal background, "advise" the Secretary-General on staff appeals against administrative decisions (as violations of their contractual rights), which he is free to disregard. If the staff filing appeals are dissatisfied with the JAB's and/or the Secretary-General's subsequent decisions, they may apply to a UN Administrative Tribunal (UNAT) of judges appointed by the General Assembly.

Second, Joint Disciplinary Committees (JDC's), composed of selected staff volunteers, are formed to advise the Secretary-General in cases of staff charged with misconduct, in what is clearly "management's" process. Little is ever reported, or even known, about actual JDC functioning, processes, and results.

Third, an Administrative Tribunal (the UNAT), is composed of seven full-time judges who are appointed by the General Assembly. They presently hear some 30 cases a year, and provide the only formal hearing (since the JAB and the JDC are admittedly amateur and informal processes which merely advise the Secretary-General) for those staff who are determined enough to invest several more years pursuing the elusive goal of UN internal justice. No subsequent appeal can be made to UNAT judgments.

"United Nations Administrative Tribunal: Statute and Rules, Provisions in force with effect from 1 January 1998," United Nations, New York, **1998**.

Most UN staff (and certainly almost all Member State representatives and the public) know little about this UN internal justice system, and do not much care. The system, however, has been sharply criticized for decades for its fundamental inadequacies.

In the 1970s a distinguished expert concluded that it was "not tenable" for an international organization to deal with its staff "outside any known legal system", and a group of UN system staff representatives met to launch their first campaign to reform the UN internal justice system. Their analysis disclosed, *inter alia*, the basic facts that:

"social justice [to which international agencies are committed] stops short for one segment of mankind -- the international civil servant, a member of a virtually unprotected minority.

The existing system of due process suffers from an absence of important elements: it leaves out values. It ignores needs ... It pretends that the 'rule of law' can stand independent of the society in which an international civil servant lives and functions. All too often, the appeals procedure, which is conceived of as an instrument to raise a staff member's hopes, buries it instead.

... the machinery of due process is slow and ponderous, and thus fails to provide a true safeguard against administrative absolutism and arbitrariness ..."

"Appeals procedures for international civil servants," Federation of Civil Servants Associations (FICSA), FICSA Studies and Policies NO. 2, of 1974, as quoted and discussed in Ozorio, Peter, "Tribunal trouble: Legal rights revisited", UN Special, October 1992, pp. 25.

The 1974 FICSA report also provided a very incisive analysis of key deficiencies in the appeals system [which remain fully applicable three decades later], *inter alia*:

"Appellant as Trouble-maker: Challenging an administrative decision, no matter what, by and large, is still regarded with suspicion ...

Weakness of Internal Boards: Probably [their] weakest point is that an executive head sits as prosecutor and judge ... [particularly] in smaller-sized duty stations ...

Pernicious doctrine: ... after all evidence is presented and weighed and abuse or misuse of power is proved -- and thus the administrative decision is not, as frequently claimed, "in the best interest of the organization" -- then it is indefensible to deprive an appellant of remedy sought. ...

Either/Or Judgement: When administrators have been found guilty ... [of misconduct] ... tribunals, without notable exception, give an executive head a choice -- the remedy sought ... (say reinstatement) or compensation ... appellants ... may win their cases, but still lose their jobs.

Just Handouts or Just Compensation: The tribunal's known practice of mendacity in cash settlements ... makes it easier for an administration to pay. But for most administrations, the choice is not saving money, but saving face. The choice is made easier because the 'fine' that is paid comes out of the pocket of member governments ... How are these expenses shown on an organization's books?"

"Appeals procedures for international civil servants, Federation of Civil Servants Associations (FICSA), FICSA Studies and Policies NO. 2, of 1974, as quoted and discussed in Ozorio, Peter, "Tribunal trouble: Legal rights revisited", UN Special, October 1992, pp. 25-26.

[Note: The first, "troublemaker," assertion is by far the favored Secretariat tactic for undermining a staff case, by immediately launching ad hominem attacks to attempt to discredit the case, whatever it may be.]

The General Assembly tried in the mid-1980s to reform the internal justice system, but encountered only foot-dragging and disputes. An opening staff salvo observed that:

"... just over six years ago [i.e., in 1978]... a former justice of the [International Court of Justice reviewed a staff dispute with management] ... the material which he collected has never [appeared]. I would like to quote [several passages therefrom] ....

'The problems ... have accumulated over a long period owing to the failure and inability of the existing machinery to find and implement solutions to staff grievances.'

'...complaints pile up, and staff members become increasingly bitter and resentful. .... a formal grievance procedure ... should be speedy, ... encourage settlement .. at the working level, [have clear and publicized procedures] ... be a process of negotiation ... [with] Any bargain ... or agreement .... equally binding ....

.... dealing on a basis of equality with staff representatives will [be difficult for ] a number of [management] officials ....

Nevertheless, thousands of managements and unions have gone this road before us, many of them in the public service sector. We have their experience .... to draw on. ...'

How long are we going to pretend that the United Nations is so different from the rest of the world that we cannot learn and profit from others' experience?"

"Bill Bailey", [a "senior official at Headquarters], referring to a 1978 expert opinion of the appeals system, in "Appeals or redress of grievances?", Secretariat News [New York], November 1984, pp. 8-9.

Another critical report by an outside expert followed three years later:

" ... the UN Administrative Management Service [hired a consultant to review continuing crises in Secretariat administration of justice and remedies therefore], who stated in a detailed report in November 1981 that]:

'The delays in the Joint Appeals Board at Headquarters are now so serious that they cast doubt on the willingness and ability of the United Nations to provide effective means for settling disputes with the staff.' The situation has already had a bad effect on staff morale ... The United Nations enjoys immunity from the jurisdiction of States ... [but has undertaken] to provide effective means of settling disputes to which it is a party ... a failure to do so could have grave effects. It is therefore vitally important and urgent to remedy the present situation.

It is evident that at present the JAB is quite unable to cope with the large backlog and the unprecedented influx of new cases ... It is further evident that a proceeding before the JAB is very costly to the Organization ...

All told, it would not be surprising to find that the man-hours consumed by even a simple case cost the Organization over \$50,000."

Mark A. Roy, on a 1981 study by an outside consultant, in "Administration of justice in the United Nations Secretariat", Secretariat News (New York), 19 June 1984, pp. 4-7, [5-6]. [emphasis added]

[Note: Mr. Roy was the Chairman of the Legal Committee of the Staff Council, and the consultant referred to was Mr. Gordon Wattles, former Principal Officer in the UN Office of Legal Affairs.]

Another staff member added two very important insights on the gross flaws and very questionable tactics of the UN internal justice system, which are still in effect. First:

"A complaining staff member is immediately classified as a 'personnel case', presumably because he or she has had the temerity to intervene. If the complaint has to do with management direction, all hands in OPS [Personnel] and its affiliates close ranks to gather material to fashion as strong a personnel case as possible, and no recognition whatsoever is made of the key management issue. ....OPS has scant choice but to bypass the administrative implications of the case and propel it rapidly to the quasi-legal restraints of the Joint Appeals Board where it can be confined. The upshot is that a staff member must sue to force a management director to do his administrative duty.

The guilty persons can get away with this kind of irresponsible performance more readily in the bureaucratic system of the UN than in any foreign office, however small. There is no really effective vertical responsibility upwards within the UN table of organization, nor effective direction downward ..."

Donald Dunham, "Management by personnel action", Secretariat News (New York), **November 30, 1984**, p. 11. [emphasis added]

Second, the same author added a fascinating insight on the decisive way in which an obscure Administration official had cleverly shortchanged the appeals process, in a minor decision that negatively affected the very core of the internal justice process forever after:

"An agonizing reappraisal [of manipulations by the Personnel office to help managers evade their responsibilities] might go back to the beginning of the UN operation before the default of management responsibility began in earnest. Whenever staff members complained against a director the latter would have to appear with them (or send a representative) before the Joint Appeals Board. Then along the line an ingenious administrative officer manoeuvred the procedure so that all managers [in all] units would be represented by OPS [Personnel] itself. OPS then became both prosecutor -- it assumes an adversary position automatically and no longer seeks an even-handed solution -- as well as judge. It holds the power of veto over JAB decisions. The restitution of the original procedure would help but not solve the problem entirely."

Tools of its trade should be revamped for OPS and it should return to its legitimate function of dealing solely with personnel problems on a forthright even-handed basis."

Donald Dunham, "Management by personnel action", Secretariat News (New York), **November 30, 1984**, pp. 11-12. [emphasis added]

[Note: In 1998 the Administration finally and formally acknowledged this its "obligation" to defend all managers. In 2000, though, Secretary-General Annan cited this issue of shielding of managers from accountability, or even from any involvement in defending their decisions, as a "perception" (see the first 1 August 2000 entry below.)

In the mid-1980s the UN staff began to pressure the Administration to be more forthcoming about its handling of

disciplinary and fraud matters. One such effort observed that:

"The Administration has recently dealt with a number of cases of alleged fraud relating to taxes and education grants within the Secretariat. In the process, different administrative actions have been undertaken ... [including] summary dismissal, referral of cases to the Joint Disciplinary Committee, resignation and recovery of overpayment.

- What are the criteria according to which summary dismissal -- the hardest penalty -- has been meted out to some, but not to others?
- Under what circumstances it is decided that a case should be submitted to the [JDC]?
- What are the circumstances under which the Administration accepts the resignation of staff involved?
- By what criteria is it decided that only the recovery of the overpayment should be made?

We are concerned that the established judicial procedures which are intended to guarantee staff a minimum of due process should not be undermined. ... There is a need to explain to the staff the circumstances governing the choice of measures being invoked. In cases that are similar, justice will require that staff are not only equitably treated but that they are seen to be equitably treated."

From a "Group of concerned staff", "Fraud and due process," Secretariat News (NY), **16 July 1986**, p. 2.

A JIU report in 1986 presented detailed reform proposals to speed up and rationalize the system, and to vest conciliation procedures in an Ombudsman office, with judicial procedures produced by a two-step Claims Court and the UNAT. The report (which was earnestly received but never really implemented) also stated *inter alia* that:

"Long delays ... have been identified ... the number of cases pending before the JAB in New York as of 31 March 1986 was 94 ... Each case filed costs the Organization an average of \$24,000, excluding the costs involved in the UNAT. ...

Generally speaking, the Administration loses more than 50 per cent of cases before the UNAT, many of which are of a similar nature. ... The Administration should ... make the officials in charge of the application of the Staff Regulations and Rules ... aware of the responsibility of the Administration and of the consequences of an ill-founded decision. These measures may include some penalties or disciplinary action."

Joint Inspection Unit, "Administration of justice in the United Nations", UN document A/51/640 of **23 September 1986** and A/C.5/41/14, paras. 5, 99.

[Note: nothing on record to this day indicates that sanctions of any kind have ever been imposed on UN managers whose decisions resulted in a judgement against them in the internal justice system.]

In 1987, the UN's top manager warned of the grave consequences which continuing acceptance of the poor internal justice system could have for the UN as an organization:

"... 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.  
[emphasis added]

Mr. Ahtisaari had himself moved quickly to accept JAB recommendations in 44 of 47 cases sent to him in 1987, including reopening and settling a number of earlier cases. He also established a Working Group to Review the Functioning of the Appellate and Disciplinary Processes, which:

"...in its report found the 'shortcomings so profound that nothing short of fundamental change' could remedy the problem.

Finding the appellate system was geared neither to resolving disputes at the earliest stage, nor to dealing efficiently and promptly with cases, the Group called for a major overhaul to reduce the case length from its current average of 2.5 years to within four months of filing."

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

In the late 1980s and early 1990s, the Secretariat produced still more reports on administration of justice reform, but they did not result in any significant action. The very widely-recognized flaws of the existing system continued on.

"Administration of justice in the Secretariat: Report of the Secretary-General, UN document A/C.5/43/25 of **28 October 1988**,

"Administration of justice in the Secretariat: Report of the Secretary-General, UN document A/C.5/44/9 of **20 October 1989**, and

"Administration of justice in the Secretariat: Report of the Secretary-General, UN document A/C.5/46/7 of **10 September 1991**.

In 1992 another UN top manager tried to give impetus to the appeals process, stating his intent to use appeals decisions as a learning process for managers, so that they would avoid making similar mistakes. Apparently nothing ever came of this idea (although Secretary-General Annan's 2000 reports indicated that in future managers -- but not staff, or the public -- may be kept more informed of appeals outcomes):

"At the annual Joint Appeals Board meeting, Under-Secretary-General [for management] Dick Thornburgh gave a new dimension to the administrative justice system and clarified once and for all its *raison d'etre*."

[He said that the staff appeals process is important] not only because it maintains staff morale and offers an acceptable channel for venting discontent, but also because it is valuable for management, providing it with an opportunity to enhance the quality of administration.

He said he was particularly concerned that managers learn from the process [and that] "I intend to make sure that we look at what kind of cases are filed and how they are resolved [so managers have insight into good management practice and] to provide better management training programmes for managers .... to enable us to avoid similar appeals in the future."

During the ensuing debate, the issue of conciliation (which is almost never used) was raised, and .... the accountability of supervisors under staff rule 112.3 (financial responsibility.) JAB members pointed out that in some instances, large amounts [must] be paid due to errors of management."

L.S., "Commentary: Administrative justice: Thornburgh: Managers must learn from mistakes", U.N. Staff Report (New York), **July/August 1992**, p. 3.

In 1993 UN staff representatives raised their hopes again that a strong General Assembly resolution on administration of justice might finally lead to significant improvements:

" ... a historic first encounter between employers and staff [gave] hope that the Fifth Committee would [call for] a comprehensive report on Administrative Justice in the Secretariat [for presentation to the General Assembly].

Such report had been mandated by the General Assembly in 1990 for submission in 1992. An interim report, depicting a rosy picture of Administrative Justice, and avoiding the issue of an independent Ombudsman, was submitted in 1991, but did not generate any action by the Committee. Now, in view of renewed criticism of the system by both staff union and member states ... the thorny issue may be resolved. At present only 20% of complaints by staff ... are resolved by mediation and conciliation procedures. The rest end up in the 'courts' of the Joint Appeals Board and the Administrative Tribunal, at an average cost for each case of at least \$50,000."

"Fifth comes first: Breakthrough in staff relations between Committee and Staff Union ...", UN Staff Report (New York), **January 1993**, p. 1.

And the General Assembly did indeed bluntly and firmly instruct the Secretary-General to develop a "just, transparent, simple, impartial and efficient" system. He agreed in 1994 that the existing system was woefully outdated, overloaded, slow, confused, and expensive. He in turn proposed major reforms to professionalize and accelerate the appeals process. After much discussion and debate, however, this effort also foundered, and it eventually died in the General Assembly's legal committee. Once again the parties could not agree, and the old system limps along.

"Personnel questions", General Assembly resolution 47/226 of **30 April 1993**, Part II, "Administration of justice in the Secretariat",

"Reform of the internal system of justice in the United Nations Secretariat: Report of the Secretary-General", UN document A/C.5/49/13 of **8 November 1994**,

"Reform of the internal system of justice in the UN Secretariat", UN document A/C.5/50/2 of **27 September 1995**, and

"The internal system of justice: Reform -- To be or not to be", UN Staff Report (New York), **March 1997**, pp. 10-11.

Erskine Childers and Brian Urquhart added one more very authoritative expert view to the critique of flawed internal justice in 1994. They called for drastic, substantive administrative justice reform for the good of the UN, in sharp and refreshing contrast to all the endless talking and tinkering of the Secretariat over the past decades:

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

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

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

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

Meanwhile, two other important components of staff redress within the UN Secretariat were deteriorating. In earlier years the UN staff Panels on Discrimination and Other Grievances, established in 1977, had carried out important conciliation functions. A 1985 report stated with pride that they managed to resolve disputes informally and at an early stage in some 80 percent of the cases. They also -- quite unusually for the internal justice system -- attempted to provide regular, published annual reports at various duty stations on their activities, patterns of cases, and solutions achieved. Another Secretary-General's report in 1995 emphasized their importance to move swiftly to provide early reconciliation and resolution of disputes and thereby preserve staff morale.

"Establishment of panels on discrimination and other grievances," UN document ST/AI/308/ Rev. 1 of **25 November 1983**,

[Reports, for example] "Report on the work of the Panels on Discrimination and Other Grievances (Geneva)," UN document ST/IC/88/64 of **7 December 1988**, and

"Reform of the internal system of justice in the UN Secretariat: Report of the Secretary-General", A/C.5/50/2 of **27 September 1995**.

But the panels clearly fell apart during the late 1990s. The Secretary-General's 2000 report bluntly stated that they had become under-utilized, because of their volunteer members' inexperience, and "their findings are often not substantiated by evidence and managers thus resist cooperating with them."

"Human resources management reform: Report of the Secretary-General", A/55/253, **1 August 2000**, Annex V, para. 3. [emphasis added]

[As in other areas, UN managers, who have no more legal expertise than the panels, were thus given an option to simply reject the cases out of hand, and no one, the Secretary-General included, seemed to object to such cavalier treatment.]

Second and similarly, "rebuttal panels" had traditionally provided staff with a rare chance to contest performance ratings

that they disagreed with, and to actually reverse negative decisions. Managers complained that the rebuttal process tied up much of their time, but in fact a detailed JIU report analysis in 1994 showed that it was not abused and often worked in favor of the staff.

Joint Inspection Unit, "Toward a new system of performance appraisal in the United Nations Secretariat: Requirements for successful implementation", UN document A/49/219, **1994**.

Yet this important rebuttals process seems now also to have lapsed *de facto*, as discussed in this archive's subsection on Staff performance ratings under OHR (Mis-)management . The new performance appraisal system installed in the late 1990s theoretically allows staff to contest ratings, but indications are that the Administration works hard to discourage staff from contesting them, which is of course another major victory for UN managers but another critical loss for the staff, who with no recourse are left at the mercy of their managers in the critically-important area of their personal performance ratings.

In 1999 a tiny peek behind the curtains that cover the internal justice process was provided in Geneva by M. L. Fayache. UN staff appeals made to the Joint Appeals Board in the mid-1990s in New York were reported to be about 66 to 72 percent successful, not bad for action in "the staff's" process, the JAB, as compared to the grim Joint Disciplinary Committee, which is considered to be UN management's "playground."

Fayache found, however, that 97 percent of the JAB Geneva cases were decided against the staff, i.e., they lost 30 of 31 cases for which information was available over a two-plus year period. This is a terrible record. The Geneva senior manager who was serving as presiding officer of the Geneva JAB Panel made an indignant rebuttal and defense of the Geneva JAB secretariat, but did not provide any information to counter the analysis.

M. L. Fayache, "Défense des droits du personnel," UN Special (Geneva), **février 1999**, pp. 23-25.

In 1999 the General Assembly dutifully called on the Secretary-General to make another review to ensure the "timely, fair and objective" administration of justice. This process too bogged down, but it is of some value to explore the many current problems which the Secretary-General at least affirmed in that report.

"Human resources management", General Assembly resolution 53/221 of **23 April 1999**, Part IV. paras. 8, 10-11 .

Mr. Annan's August 2000 report on accountability and responsibility stated firmly, and centrally, as previously noted, 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. A just and effective system is also an indispensable aid to maintaining staff morale, as well as enforcing accountability."

"Accountability and responsibility: Report of the Secretary-General, UN document A/55/270 of **3 August 2000**, para. 39.

However, in a second report on human resources management reform, he undermined this firm statement of responsibility by admitting the internal justice system's many grave operational flaws and that, as so often before, improvements were needed. Most specifically, the Secretary-General acknowledged that the system's performance was in the "interest of neither justice nor the staff or management," that the system is too slow, takes too long, and is carried out by staff volunteers with little if any legal background. Above all, he cited the perception that the internal justice system "shields managers from being held accountable." But he did not bother to rebut this perception, nor did he promise to correct it.

"Human resources management reform: Report of the Secretary-General," UN document A/55/253 of **1 August 2000**, para. 51, and Annex V.

The Secretary-General's 2000 reform report also noted problems with a major initial phase of appeals, "administrative reviews" by personnel officials to attempt to resolve disputes quickly at an early stage. A several-month period is taken at the very beginning of the appeals process for this function, and in the past it had proven useful to help weed out cases which could be easily resolved. But the Secretary-General acknowledged that the Administration increasingly made no comments on many or most of the cases submitted to it, and it had become merely an empty delaying step. However, he did not suggest any actions to restore the value of this function, and it continues to delay almost all staff appeals from the very beginning.

"Human resources management reform: Report of the Secretary-General," UN document A/55/253 of **1 August 2000**, Annex V, para. 4.

Further, the Secretary-General called for establishing an ombudsman. In fact, Secretary-Generals Pérez de Cuellar (in 1985 and 1986) and Butros-Ghali (in 1995) had already made detailed reporting and this same promise, but no action had ever been agreed upon and taken.

"Feasibility of establishing an office of Ombudsman at the UN: Report of the Secretary-General", UN document A/C.5/40/38 of **5 November 1985**,

"Establishment of an office of ombudsman in the Secretariat and streamlining of the appeals procedures: Report of the Secretary-General" , UN document

A/C.5/41/14 of **3 November 1986**, and  
"Reform of the internal system of justice in the UN Secretariat: Report of the  
Secretary-General", UN document A/C.5/50/2 of **27 September 1995**.

In addition, the Secretary-General's 2000 reform report cited vague plans to finally give staff volunteers some training to help them fulfil their JAB duties more competently, and a process for finally informing managers (but not the staff at large or Member States, or anyone else) more systematically of the subject matter and patterns of judgements reached by the Administrative Tribunal as "lessons learned".

"Human resources management reform: Report of the Secretary-General," UN document A/55/253 of **1 August 2000**, Annex V, para. 5.

Finally, in his 2000 reform report the Secretary-General provided a brief narrative summary of at least one year's activities in the administration of justice system. The report noted cheerfully that:

"... a comprehensive system is in fact in place. A small number of administrative reviews are being requested by staff (221 such requests were made in 1999.) As far as disciplinary cases are concerned, only 32 such cases were initiated by the Administration during 1999. Also, in 1999, only 101 new appeals were made to the ... [JAB.] The ... [UNAT] receives approximately 30 cases a year from [UN] Secretariat staff. Yet even with this small volume, improvements can be made in the system of administration of justice."

"Human resources management reform: Report of the Secretary-General," UN document A/55/253 of **1 August 2000**, Annex V, para. 2.

IO Watch believes that the modest number of UN staff making appeals through "their" administration of justice system is not a measure of staff contentment, as implied. It is much more a feeling of hopelessness -- that it is not worth spending several years of effort in the slight chance of obtaining some modest monetary damages (no other remedy is possible.)

This "death march" aspect is demonstrated by the sharp drop in the number of cases at each stage: 221 staff requests for administrative review, 101 new appeals, and about 30 cases to the UNAT. The people grow weary and drop out, rather than waste up to five years of their lives, and incur continuing administrative hostility as a "troublemaker", all to attempt to obtain modest recompense for a wrongful decision (a result that the Secretariat is quite happy to live with.)

In the year 2000, a great opportunity arose to closely examine the workings of the internal justice system, as a basis for fundamental and urgently-needed change. The JIU made a

review of the topic, and one could have hoped that it would have used its full access to all records to do an incisive analysis of the detailed operations of the system.

Unfortunately, as in many other areas, the JIU did not examine JAB processes, caseloads and flows and backlogs, judgments, subsequent appeals, UNAT judgments and awards, and above all the costs and juridical results (such as patterns of judgments, or key issues raised) of the internal justice process. It did not even assess the lack of reform progress versus the excellent report it had made on the same topic in 1986.

Instead, the JIU merely compiled observers' opinions about the system's problems, and various patch-up ideas to "fix it." This report did at least reawaken General Assembly interest, but it also played right into the hands of the Administration in continuing to encourage token changes to a broken system.

Joint Inspection Unit, "Administration of justice in the United Nations," UN document A/55/57, **2000**.

[The excellent predecessor report was

Joint Inspection Unit, "Administration of justice in the United Nations," UN document A/41/460, **1986**.]

[Note: The General Assembly, in its resolution 55/159 of 31 January 2001, "Review of the Statute of the [UNAT]," did amend parts of that statute, most noticeably to allow members to be appointed for a four-year period, and then to be reappointed once.]

The General Assembly's next resolution on human resources management, in 2001, had a specific and important section on the administration of justice. The Assembly noted with concern the slow and cumbersome internal system, welcomed the plan to establish an ombudsman, welcomed the intention to train new JAB and JDC participants, and requested the Secretary-General to report annually on the work of the JAB. In particular it requested the Secretary General to:

" ... establish a clear linkage between the administration of justice and the system of accountability when the decisions of the Administrative Tribunal result in losses to the Organization due to management irregularities;

[and] ... take urgent measures in accordance with financial rule 114.1 and staff rule 112.3 to recover financial losses caused to the Organization by wrongful actions or gross negligence of senior officials of the United Nations, particularly as a result of the judgments of the Administrative Tribunal ..."

"Human resources management," General Assembly resolution 55/258 of **27 June 2001**, section XI. [emphasis added.]

This resolution was quite significant. At last, someone, and especially the General Assembly, was finally tying action against "management irregularities" [i. e., waste, fraud, and

abuse, although these specific but ugly words are rarely mentioned in the pious UN even today] and the "system" of accountability to the internal justice system. The Assembly then requested urgent measures by the Secretary-General to deal with financial losses caused specifically by misbehaving "senior officials."

Sadly, the entire internal justice system, including the UNAT, almost always excludes "the managers" from their deliberations, assessing only whether the staff member who is appealing was sufficiently injured by "the decision" to receive some monetary compensation (and not very much at that for careers often destroyed, see the ACABQ report below of 13 February 2002 on UNAT judgments and damages awarded.) But the Assembly's action was at least a sign of hope.

In early 2002 attention was indeed shifting to the distant and mysterious UNAT, and a second "spotlight" was shown on this final level of internal justice. An article in a Geneva staff journal examined ILO Administrative Tribunal judgments from 1995 to mid-2001 and found a "bleak and disconcerting picture for international civil servants facing ever-increasing attacks upon their rights and job security."

The statistics revealed that staff won an average of only 29 percent of the cases at the ILOAT over this period (ranging annually from 18 to 41 percent.) A "win" was very liberally defined to include some damages awarded, usually for inexplicable delay, even though the appellants had all their claims rejected by the ILOAT. Although the ILOAT has long been viewed as a fair and impartial body, the article concluded that it now seems more a rubber stamp than an unbiased forum. A similar study could not be done for the UNAT, which had not made its decisions publicly available, purportedly due to lack of funding, a rather grave violation of due process.

"The legal corner: That losing feeling," UN Special (Geneva), **January 2002**, pp. 15-17.

In February 2002, the Secretary-General responded to "certain aspects" of all this in a report which the Assembly had requested. He prevented four technical options: to make the JAB advisory-plus; to maintain the status quo; to make it semi-judicial with authority to take decisions, or to make other changes resulting from staff consultations.

He also provided a first annual report on JAB work (but only "appeals filed" and "appeals disposed of.") He asserted his

"quite high" acceptance of JAB unanimous decisions (without saying who those judgments favoured), but urged that those judgments "be more reliably supported by the evidence" and "in accordance with the applicable law." However, he reserved his right to reject unanimous JAB recommendations "in the interest of the Organization". Finally, he stated that some legal training courses were finally being provided for new JAB and JDC members in New York, with training at other duty stations to follow at an unspecified date.

"Administration of justice in the Secretariat: Report of the Secretary-General," UN document A/56/800 of **13 February 2002**, sections I, II, and IV.

The report included two more items of interest. Finally, after all the years of discussion, an ombudsman was established. To "preserve ... independence and ensure the effectiveness of the function" the ombudsman, although servicing all duty stations, including field missions, is located in the office of the Secretary-General and assisted by one legal officer. The new ombudsperson is thus independent of all officials [except the Secretary-General himself] and considers "conflicts" in the Secretariat in which s/he can advise staff but has no decision-making powers.

The power of two people working right next to the Secretary-General to advise on conflicts among 15,000-35,000 staff worldwide is clearly a "mission impossible", and quite probably just a gesture rather than a useful force. IO Watch will follow the adventures of this "lone ranger" in the future.

"Administration of justice in the Secretariat: Report of the Secretary-General," UN document A/56/800 of **13 February 2002**, section III and Annex II.

[Note: the first Ombudsman, Ms. Patricia Durrant, was appointed, for a non-renewable five-year term, in October 2002.]

Finally, the Secretary-General's 2002 report ventured into the powers of the UNAT and ILOAT. He noted that the UNAT statute does permit it to rescind a contested administrative decision or specific performance of the obligation invoked, and noted that, since 1987, the Secretary-General has acted to implement the order of UNAT to reinstate staff members or comply with related orders "where possible" (but as usual with no statistics provided.) He stated also that he might reconsider his position on specific performance IF the ILOAT and UNAT tribunals were "fully harmonized," and that the "damages" awarded to successful UNAT appellants could be raised.

"Administration of justice in the Secretariat: Report of the Secretary-General," UN document A/56/800 of **13 February 2002**, section V.

[emphasis added.]

The Secretary-General then noted an interesting contrast between ILOAT judges and UNAT "members," in another inadvertent testimony to UN support of "amateurism" and "good old boys" in the selection of staff for key posts:

" Although no specific qualifications are stated for either [group] ... except ... different nationalities, in practice UNAT members include persons of a wide variety of backgrounds [including many with "some years" as diplomats at the UN] ..., while ILOAT is staffed by professional judges from the highest levels of national court systems. ...

ILO judges are appointed by the International Labour Conference, after nomination by Director-General of ILO and following consultations with the ILO Staff Union ... by contrast, UNAT members are nominated by governments, and their election in the Fifth Committee is confirmed by the General Assembly."

"Administration of justice in the Secretariat: Report of the Secretary-General,"  
UN document A/56/800 of **13 February 2002**, section V, paras. 39-40.

Another important UNAT "piece of [future] business" was added in late 2002 by a JIU follow-up report on possibilities for appealing UNAT judgments. The Inspectors did not address substantive law but noted that they had "identified large substantive and procedural lacunae in law which may allow organizations to evade the worst consequences of improper decisions by their officials." They then made recommendations [for quite drastic changes] to ensure staff members recourse options equivalent to those of civil servants in domestic jurisdictions:

- more independence of internal justice bodies;
- more informal conciliation;
- considering eventually harmonizing and merging the UNAT and ILOAT;
- generally accepting appeals bodies' unanimous decisions, reporting regularly on their work, and having them hold oral hearings;
- arranging for comprehensive legal insurance for staff in these procedures, and
- lastly, the JIU report stated that the General Assembly might wish to study:

" ... the desirability of establishing an ad hoc panel ... to review [the judgments of] the existing two tribunals or a single future tribunal ...

[with] ... Applications ... founded on the following criteria: ... the tribunal has exceeded its jurisdiction or competence; ... has failed to exercise jurisdiction vested in it; ... has erred on a question of law relating to the United Nations Charter; ... has committed a fundamental error in procedure which occasioned a failure of justice; and ... that the tribunal has deviated substantially from its jurisprudence."

Joint Inspection Unit, "Report of the [JIU] on reform of the administration of justice in the United Nations System: Options for higher recourse instances",  
UN document A/57/441 of **27 September 2002**, especially Recommendation 5.

A little of the mystery about the operations of the UNAT had already been dispelled by an ACABQ report in 2000. It

included information on the number of JAB cases from 1995-2000 and UNAT case judgments rendered from 1994-1999. Of most interest, however, was some information pulled together on payments made as a result of UNAT judgments. It stated that the UNAT had only "very rarely" awarded compensation as recommended by JAB, but more importantly that payments made to implement UNAT judgments from 1996-1998 were paltry indeed: about one-quarter were for \$5,000 or less, the majority about \$20,000 to \$50,000, and the highest two were for \$85,000 and \$112,000.

"Administration of justice in the United Nations: Report of the [ACABQ]," UN document A/55/514 of **23 October 2000** .

[Note: many of the sums are not small, but where they concern destruction of professional careers and a five-year appeals effort, they seem small indeed (especially since the managers who created the whole mess remain untouched.)]

In February 2003 the ACABQ also recommended that the UNAT be strengthened by requiring at least that candidates "possess judicial experience in the field of administrative law or its equivalent in the candidate's national jurisdiction." In October 2003, however, the Sixth Committee (legal) of the General Assembly adopted an oral revision of a draft resolution, without a vote, which

" ... replaced the words 'judicial experience' with the words 'judicial or other relevant experience.'"

"Administration of justice in the United Nations: Report of the [ACABQ]," UN document A/57/736 of **18 February 2003** , and

"Administration of justice at the United Nations: Report of the Sixth Committee," UN document A/58/521 of 17 October 2003.

[Note: The resulting General Assembly resolution 58/87 of 8 January 2004, "Administration of justice at the United Nations", dutifully included the Sixth Committee's widened scope, but followed it with the ACABQ's language above, minus its first three words.]

Even more importantly, the Secretary-General had mentioned in his February 2002 report that the delays in the appeals process were of concern to everyone. He therefore requested the OIOS to make a management review of the entire appeals process to that effect. One can hope that the OIOS study will carefully analyze the performance of the entire appeals system as the JIU report in 2000 did not. The ACABQ stated, for instance, that

" ... the [OIOS] study should also attempt to quantify the cost of ... selected cases from the beginning until the [completion at the UNAT] ... and whether a strategic increase of the resources available could ... lead to a speedier handling of the cases concerned."

"Administration of justice in the United Nations: Report of the [ACABQ]," UN document A/57/736 of **18 February 2003** , paras. 6-7.

The General Assembly resolution in May 2003 on all these

matters was most encouraging. It stated *inter alia* that it:

- "4. ... regrets the serious delays in the appeals process, and requests the Secretary-General to ensure full cooperation and accountability in the internal system of justice of the manager whose decision has been challenged, at all stages of the process;
5. Requests ... steps to ensure the independence of the [UNAT and its separation from the OLA] ... and to study [and report on] its financial independence ...;
8. Welcomes the initiative of the Secretary-General in requesting the [OIOS] ... to conduct a management review of the appeals process ...
9. Requests the Secretary-General [taking account of the findings of the OIOS report] ... to submit ... alternatives on strengthening the administration of justice by means of ensuring transparency and fairness in the provision of justice to staff ...;
10. Also requests ... OIOS to include ... measures to shorten the period required for the disposal of cases ... including imposing deadlines at all stages of the process; ...
16. ... [consider issues] of comprehensive legal insurance schemes to cover legal advice and representation for staff, with a view to ensuring equality ... in adversary procedures ...;
20. Requests the Secretary-General ... with the Ombudsman and staff representatives, to submit detailed proposals on the role and work of the Panel on Discrimination and Other Grievances ...;
21. Also requests the Secretary-General to include statistics on the disposition of cases and information on the work of the Panel of Counsel in his annual report on the administration of justice in the Secretariat; ...
24. Reiterates ... its request to ... establish a clear linkage between the administration of justice and responsibility and accountability [in the UN Secretariat when decisions of the UNAT result in losses ... due to management irregularities] ...;
25. Reiterates its request to the Secretary-General to develop ... an effective system of personal responsibility and accountability to recover financial losses ... caused by management irregularities ... [that result in UNAT judgments], and to report thereon ...;
26. Requests the Secretary-General to expeditiously finalize and issue an administrative instruction on the implementation of resolution 55/258, Section XI, para. 9 [i.e., to recover financial losses caused to the Organization by wrongful actions or gross negligence of senior officials ... particularly as a result of the judgments of the [UNAT]];

"Administration of justice in the Secretariat," General Assembly resolution 57/307 of 22 May 2003. [emphasis added.]

In January 2004 the UNAT presented an equally-promising report on its activities, as requested by the General Assembly. Most of the text laboriously reviewed the UNAT's organization, jurisdiction, and general functioning, with two vague paragraphs on its judicial work and finances (no dollar figures were given). However, it did make four important points, and especially the last:

- the average time for a case to reach the Tribunal ranges from two to three years, with an additional two years to conclude it;
- the Tribunal's independence, and confidence in it, is curtailed because the UNAT is dependent on the Office of Legal Affairs [which represents the Administration in most UNAT cases] for its administration, budget implementation, staffing, and physical facilities. Separating the UNAT from the OLA and giving it its own staff, like the ILOAT,

would "indelibly imprint ... the appearance of independence and impartiality" and also preserve the Tribunal's reputation and thus sustain confidence in the UN judicial process;

-- The restriction on the UNAT's ability to impose specific performance seriously limits the rights of UN staff to redress, and the time has come to "close the gap";

-- The Tribunal would very much like to present an annual report to the General Assembly to keep it informed of emerging jurisprudence and some of the main conflicts that erupt between the Administration and staff members. For example,

"the Tribunal has on several occasions suggested that the Secretary-General consider invoking Staff Rule 112.3, thereby deciding that the officials who violate staff regulations and administrative instructions should be held personally accountable for the monetary damages occasioned by such violations. The Tribunal has held ... that invoking staff rule 112.3 would deter staff from deliberately flouting the rules and prevent the Organization from having to pay for the intentional violation of the rules by its officials."

"Comprehensive report on the activities of the [UNAT]: Report of the [UNAT]", UN document 58/680 of **14 January 2004**, esp. paras. 24-29 and 33.  
[emphasis added.]

These developments were encouraging, and provided potential for major breakthroughs after decades of frustration about the weak UN administration of justice system:

-- the General Assembly resolution of May 2003, with its many firm proposals for improvement and action;

-- the important points and proposals made by the UNAT in its report of 14 January 2004;

-- and the planned report of the OIOS on delays in the internal justice appeals process.

Note: Discussion of this topic, and a lengthy list of useful sources, continues in the subsection on Inept "Administration of Justice" System, II.