

UN CODE OF CONDUCT

The preceding subsections have traced long-standing flaws and failures in UN internal legal and administrative processes. Yet all the flaws cited have only been exacerbated by the UN policy changes and events of the last ten years: the failure to firmly establish and apply management accountability and sanctions, "managerial freedom" expansions, and many new conduct patterns and rules which only further confuse the existing situation of UN staff rights and legal procedures.

Exactly 50 years ago, the International Civil Service Advisory Board (ICSAB, which preceded the ICSC) published a report on the standards of conduct in the international civil service, which is not only very well written but has been highly regarded over all the years, particularly for its sections on "Basic considerations," especially integrity, and "Conduct within a Secretariat." For instance, in 1982, incoming Secretary-General Javier Pérez de Cuellar, in his first meeting with the UN staff, commended the ICSAB standards and had them reissued and distributed to all UN staff, "so that they use it as a guide in their daily life" and can "conduct themselves at all times in a manner befitting their status as international civil servants."

"Report on the standards of conduct in the international civil service 1954", International Civil Service Advisory Board, COORD/CIVIL SERVICE/5, **October 1954**, [and included as Annex V of the following document],

"Status, basic rights and duties of United Nations staff members", ST/SGB/1998/19 of 10 December 1998, and

"Subject: Standards of conduct", information circular to UN staff, ST/IC/82/13 of **26 February 1982**.

In 1986 the ACC noted that many organizations had over the years given a copy of the ICSAB report to every new staff member. The ACC further observed that major changes had occurred in the 32 years since 1954, chiefly the vast increase in field programmes and progress in staff representation and activities. They decided that the report should be reissued because of its value to staff, and that:

"What has not changed is the need for the highest standards of efficiency, competence and integrity in the international civil service; without those qualities, the

organizations could no longer fulfil ... their established purposes. The pressures which threaten the independence and impartiality of international civil servants are, however, greater today than ever; it is, then, all the more important that staff members, for their part, conduct themselves in a way which will enhance the impact of their service and will give no foothold to attempts to influence them improperly for the performance of their duties. ...

The executive heads trust that this report will provide them with ... knowledge that the standards they are expected to uphold are the same as have been set for staff members since the inception of the United Nations system or organizations."

"Preface" added by the ACC in **1986**, as included in

"Status, basic rights and duties of United Nations staff members", ST/SGB/1998/19 of **10 December 1998**, p. 35, Annex V.

[emphasis added.]

In 1986 the "Group of 18" external experts also emphasized the importance of clear rules, stating firmly that:

" efficient management of the staff should rest on clear, coherent and transparent rules and regulations. This will enable the Organization to secure and retain the services of staff meeting the highest standards.

Clear and coherent rules and regulations are not in themselves, however, sufficient ... The officials responsible for the management of the staff, that is, not only the office responsible for human resources management, but also every manager who is in charge of a unit ... must implement these rules and regulations. It is important, indeed fundamental, to develop an institutional spirit in the Organization and to strengthen it as an entity. In this respect, staff members at every level have an indispensable role to play. Special responsibility for creating a healthy climate rests with the senior managers.

Recommendation 42

The personnel management of the Organization must be based upon clear, coherent and transparent rules. Present inconsistencies and ambiguities should be eliminated. The current staff rules and regulations should be revised to take into account the resolutions and decisions on personnel policy already adopted by the General Assembly ... measures to implement [them] should be clearly set out in a personnel manual which should be widely available and kept up to date. ..."

Report of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations, A/41/49, **1986**, paras. 45, 47, 48 and Recommendation 42.

[emphasis added.]

Progress in implementing this resolution was quite slow. Meanwhile, the JIU 1993 report on accountability and oversight observed in a subsection on "Personal accountability" that:

" ... the existing code of conduct, although a quite sensible and useful one, was issued in 1954. ... it has never been updated. OHRM has recently issued guidance on such matters as equal treatment of men and women, sexual harassment, and assistance in substance abuse cases. The Inspectors believe, however, that after 40 years it is long past time to issue comprehensive, up-to-date guidance on staff conduct which incorporates not only these topics but such other recent concerns as:

- discrimination based on age or race;
- privacy issues in the computer systems era; and
- financial disclosure and conflict of interest matters."

Joint Inspection Unit, "Accountability and oversight in the United Nations

Secretariat", UN document A/48/420, 1993 , para. 137.

Two years later, a JIU report on management reform progress found that little had happened on updating the rules, as the Group of 18 had recommended almost a decade earlier. The JIU noted that the Secretary-General's 1994 report on reform had emphasized (a) that staff responsibilities must be clearly defined, and (b) that the legislative norms to which all staff are accountable must be clear, unambiguous, coherent, comprehensible, duly promulgated and available to both the supervisors and those supervised.

Joint Inspection Unit, "Management in the United Nations: Work in progress", JIU/REP/95/8, A/50/507, 1995.

The 1994 Secretary-General's report was

"Establishment of a transparent and effective system of accountability and responsibility: Report of the Secretary-General", UN document A/C.5/49/1 of 5 August 1994, paras. 12 and 109.

The 1995 JIU report noted that the Secretariat had listed a dozen areas for revision, but were quite vague about the status, completion dates, and preparation responsibilities. The JIU cited the particular importance of re-establishing key manuals and handbooks with very clear guidance, since the Administration was stressing the urgent need to delegate authority throughout the Organization.

Joint Inspection Unit, Chapter II.B., "Progress required," in "Management in the United Nations: Work in progress", UN document A/50/507, 1995, paras. 59-66.

In October 1997 some much-needed progress began to be made. The OIOS observed that:

"Another area to be tackled is the huge mass of rules and regulations that has piled up over the decades and which now confuse rather than guide administrative activities, most particularly in the fields of financial and human resource management. Efforts to weed them out are under way, but the results have yet to be seen. On the other hand, the work of OIOS recently brought into the open significant lacunae in the legal instruments of the United Nations. ... We have presented our ... [related] findings to the authors of the draft Code of Conduct, which has meanwhile been approved by the Secretary-General and would remedy this gap in the UN rules. Furthermore, OIOS has noted that the staff regulations and rules and the administrative issuances are not as clear as they should be. Indeed, they have too often protected staff members from being held accountable for their actions and have done too little to protect the interests of the United Nations. Efforts made by our colleagues, notably in the Office of Legal Affairs, to streamline and strengthen the rules have the full support of OIOS ..."

"Report of the Secretary-General on the activities of the OIOS", UN document A/52/426, 1997, "Preface". [emphasis added.]

Unfortunately, other major participants in revising the Code of Conduct -- the staff representatives and the General

Assembly -- were not so successful. In a concurrent New York staff journal issue entitled "Standing up for our rights." One staff representative stated that:

"International civil servants could not sit idly by when confronted with a Code of Conduct which concentrated mainly on their obligations. The UN system was not an aristocracy in which obligations took precedence over basic rights. International civil servants laid claim to five fundamental labour rights: the right to bargain collectively on working conditions; the right to petition and address governing bodies; the right to strike; the right to due process and independent legal review of workers' complaints; and the right of staff representation to initiate class actions. The UN must now practice what it preached to the rest of the world."

"Standing up for our rights: FICSA Statement," UN Staff Report (New York), **December 1997**, p. 3.

Another article observed that with the UN reform process in full swing since mid-1997, questions arose as to whether there were any real consultations, since Secretary-General Annan had promised to "minimize disruption and alleviate any anxiety felt by the staff". Yet a random survey of staff representatives, despite noting consultation mechanisms on some reform actions in some departments, found overall that there was little such explicit consultation going on. "We were given information, that's all" said one, "There's been no consultation."

"Consultations: a phantom? Staff initiatives missing in discussions of reform", UN Staff Report (New York), **December 1997**, p. 4.

UNOG staff had requested an expert legal opinion on the code of conduct. It disclosed *inter alia* that:

"The title of 'Code of Conduct' is inappropriate for what is essentially an amended version of the existing Staff Regulations and Staff Rules. ...

... The right to amend is not questioned but there are limitations to the right. The most important is that amendments must not interfere with 'acquired rights' (acquired rights are, in other words, fundamental conditions of employment. ...

Moreover, amendments of non fundamental terms must not be arbitrarily carried out; they must not amount to an abuse of discretion; among other things, they must be made in good faith and not be prompted by improper motives; amendments must be made in a reasonable manner ... [including] after proper and due consultation with the staff.

... there are grounds for questioning the validity of the amendments. ...

(a) Lack of consultation in good faith and in an appropriate fashion ... There was no genuine and open-minded consultation ...

(b) Improper motive -- There is evidence ... [of] a punitive intent ...

(c) Inconsistence of amendments with fundamental terms of employment (acquired rights) or jus cogens (fundamental and unchangeable principles of international administrative law) or a higher law (Charter or Convention, etc.): ... [examples provided]."

Professor C. F. Amerasinghe, "The 'Code of Conduct'", UN Staff Report (New York), **December 1997**, pp. 12-13. [emphasis added.]

[Note: Professor Amerasinghe is the author of The law of the international civil service (as applied by International Administrative Tribunals), 2 vols., 2d ed., Clarendon, Oxford (UK), 1994., and

Principles of the law of international organizations, Cambridge, Cambridge (UK), 1996.]

A staff group reviewed the above opinion, which had also been sent to the Secretary-General, and recommended that staff representatives insist on further consultations in good faith. Other groups shared the concerns and objections on the draft and agreed to continue working together on the matter.

"CCISUA update: Code of Conduct", UN Staff Report (New York), **December 1997**, p. 11.

The General Assembly was also somewhat uneasy. Nevertheless, having considered the Secretary-General's report (already submitted in the midst of the above events, in late 1997, and having considered (apparently some) staff comments, it adopted the revised text of Article I of the Staff Regulations and Chapter I of the 100 series of the staff rules in September 1998, to become effective on 1 January 1999. It added several specific changes, not apparently involving the matters above, and observed the following:

"Noting with concern the limited time it had at its disposal to consider this matter;

...

4. Emphasizes that the implementation of new staff regulation 1.2 (b) should take into account the definition of integrity provided in the [1954 ICSAB report] and in accordance with ... the comments of the ICSC;

6. Further emphasizes that managers ...are bound by the duties set out ... and that their higher-level functions and responsibilities entail increased accountability for proper performance of all their duties ...

7. Requests the Secretary-General to emphasize in the commentary ... [that the above higher level of managerial responsibilities entails a commensurate increase in [their] accountability;

8. ... requests the Secretary-General to issue to every staff member [with the new rules], the explanatory commentary, [this resolution] and the 1954 report of [the ICSAB on "Standards of conduct in the international civil service ."

"Proposed United Nations Code of Conduct: Report of the Secretary-General", UN documents A/52/488 of **17 October 1997** and Add. 1 of **28 July 1998**,

"Revisions to article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules of the United Nations", General Assembly resolution A/52/252 of **29 September 1998**.

An early 1999 article observed that staff efforts to influence the Code had failed, and put it in a larger context of hypocrisy.

" ... last June, the Palais des Nations [in Geneva] hosted the International Labor Conference, as thousands of delegates from ILO's tripartite constituencies gathered to review the implementation of state-of-the-art labor norms and standards and to foster the rights of workers worldwide. On the other hand, the U.N. is trying to implement a 'Code of Conduct' which, according to [Professor Amarasinghe's analysis cited above, is seriously flawed.]

The 'paradox' ... for UN staff representatives after submission of the Code of Conduct is not a new phenomenon. ... While staff representatives in other Common System organizations 'negotiate' with their management counterparts, here at the UN we continue to be 'consulted' only ... on the most important issues ... once a year in the SMCC (Staff-Management Consultative Committee). ... [Worse still] staff representatives receive the proposals submitted by management at the last minute, too late to 'grasp' the full ...implications, After the meeting, they are politely told 'thank you very much ... see you next year'.

With the President of FICSA [a system-wide staff group], *we believe that the time has come to demand that our employers comply with a 'Code of Labor Ethics' in all common-system organizations, and particularly at the United Nations.*"

Xavier Campos, "Down with those walls", UN Special (Geneva), **February 1999**, p. 17. [emphasis added.]

The General Assembly further noted many unfinished tasks within the Code of Conduct effort. It called on the Secretary-General to expedite a report by 1999 on regulations and rules governing the status, rights and duties of the Secretary-General and other non-Secretariat officials. It also called for preparation of additional rules for staff groups such as finance and procurement officers, and staff of separately-funded organs; to prepare amended rules for [other UN employment groups]; and noted that it awaited the results of the separate review of the 1954 standards by the ICSC.

"Revisions to article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules of the United Nations", General Assembly resolution A/52/252 of **29 September 1998**.

The Secretary-General's Bulletin containing the "Code of Conduct" was published and took effect on 1 January 1999. However, it noted that the extensive commentary it contained is *not part of the rules, is not a legal "norm" or imperative, and does not have the status of a rule.* It is interesting to note that almost all the recent guidance about managerial accountability and responsibility, which the Assembly had insisted be emphasized in the Code, is part of this commentary, that is, it is also not part of the rules but mostly "advisory" material to "use" in interpreting and applying them. Similarly, the 1954 ICSAB standards are included, but only as an annex often cited, but not part of the set of rules that bind staff -- and managers.

"Status, basic rights and duties of United Nations staff members", ST/SGB/1998/19 of **10 December 1998**.

Reflecting on this document in 2000, the Secretary-General stated confidently that the Secretariat had updated the basic rights, duties, and status of UN staff members in order:

"... to ensure that those provisions would be clearly and unambiguously stated, and would take into account current situations and needs."

"Accountability and responsibility: Report of the Secretary-General", A/55/270 of **3 August 2000**, para. 8, and

However, even after all this turmoil and apparently definitive action, Mr. Annan admitted in another concurrent 2000 report that "task tools" still needed to be developed to "assist" managers in applying the new rules, and that work was only ready to begin on the simplification of the substantive aspects of the rules themselves. In 2002 he reported again that work had still not begun on simplifying substantive aspects of the Staff Rules and Regulations, in part due to UN system-wide discussions.

"Human resources management reform: Report of the Secretary-General", A/55/253 of **1 August 2000**, paras. 26-32, and

"Human resources management reform: Report of the Secretary-General," UN document A/57/293 of **8 August 2002**, paras. 20-25.

IO Watch believes that this situation was very troubling. The Secretariat continued to make drastic changes to free its managers, but it was still figuring out, "on the fly", the mechanisms and processes that those managers needed to apply the rules that were adopted in 1998. Yet the Secretary-General stated, four years later in 2002, that simplifying the substance of those rules still remained to be done, sometime.

Over the last ten years, in various ways, at various times, and with various degrees of specificity, the Administration has in fact introduced much new or revised guidance on conditions of service and/or standards for all UN staff. It has dealt *inter alia* with accountability; carefully-documented management decisions; investigations of waste, mismanagement, abuse of authority, fraud, and whistle-blower protection; harassment; transparency; performance appraisal; core values; organizational competencies; integrity and probity; post classification; redeployment programmes; staff relations with government representatives; and personal conduct.

This guidance is being introduced in a seemingly never-ending stream from multiple, competing, and sometimes conflicting Secretariat channels as the pace of overall management reform races ahead. It includes General Assembly resolutions and follow-up guidance; public statements of principle and intent by UN senior officials; new Staff Regulations and Rules and added commentary thereon; Secretary-General's Bulletins; and administrative bulletins and various instructions and detailed implementing guidance.

Meanwhile, the UN staff rights and duties were reshaped in

midstream, as it were, in 1998, with a new overall tone that shifted drastically from an earlier balanced code of conduct to a new version which seems brusquely focused on staff obligations and responsibilities, and might be more at home on the bulletin board at some minimum-security prison or at a drug-abuse recovery center.

As a UN staff member observed in comments on the recent, grand, UN integrity survey of June 2004, of course,

"The UN has a 'phone book' of rules and regulations which are totally useless as they are never practiced."

"Report criticizes the way UN fights corruption", International Herald Tribune, **June 16, 2004**.

This is absolutely true for the vast majority of staff who keep their heads down and go about their work. However, should they ever misbehave, or have trouble with an administrative decision or especially with their manager or another senior official, that set of rules will be used by Administration officials very talented in these matters to undermine and shut down any appeals. This is more and more possible since the 1998 compendium of staff rules is falling further and further behind all the whirlwind "free the managers" changes still going on.

Even worse, those 1998 rules appeared to contain some very glaring omissions. As this archive discusses in the subsection on Disappearing Whistle-blowers and in detail in the section on more recent developments, Suppressed whistle-blowers, the explicit processes which the General Assembly called on the Secretary-General in 1994 to employ to ensure that UN staff whistle-blowers are protected were nowhere to be found in the 1999 revised staff rules and the new Code of Conduct, although an obligation of staff to respond fully to requests for information from all UN-authorized but amateur "investigators" was (and still is) included.

"Staff Regulation 1.2 (r)," in "Status, basic rights and duties of United Nations staff members," ST/SGB/2002/13 of **1 November 2002**, page 24.

Also, the Secretary-General has given the amateurish and procedurally-unbound Joint Disciplinary Committees increased responsibility to deal with very sensitive and serious disciplinary cases, but the whole crucial issue of due process in the JDC's and the entire UN administration of justice system remains very vague. As Professor Amerasinghe noted in his 1997 analysis of the draft Code of Conduct cited above:

"(vi) In the Staff Regulations and Rules dealing with investigations, etc., *the*

requirements of due process -- such as the right of defense -- *which are fundamental, are not clearly indicated.*"

Professor C. F. Amerasinghe, "The 'Code of Conduct'", UN Staff Report (New York), **December 1997**, p. 13.

One must wonder if the critical step of simplifying and clarifying substantive aspects of the UN staff regulations and rules will ever be achieved or even started. Has the UN Secretariat thrown out the precious "baby" (proper UN accountability, transparency, oversight functions, firm rules, and above all due process) with the "bathwater" of the accumulated old rules?

Of course, as this entire section on Where is the Rule of Law? discusses, UN managers have -- seemingly forever -- simply ignored the rules, streamlined or not, when it suits them, under the autocratic right granted to the UN Secretary-General, and delegated to dozens of his staff, to apply exceptions to UN Rules, and -- equally damaging -- to push any appellants into the internal justice system where UN rules concerning staff have been ignored or violated, often flagrantly. That provision, buried deep at the back of the lengthy rules volume, under "General provisions", states:

"Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any staff regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members."

"Rule 112.2 (b), in "United Nations Staff Rules: Staff Regulations and Rules 100.1 to 112.8", Secretary-General's Bulletin, ST/SGB/2002/1.

In any event, in 1998 the Secretariat made an apparently selective revision of the staff regulations and rules and added some "soft" commentary on important new human resource management responsibilities and issues. But the Secretary-General admitted in 2000 that "task tools" for managers to implement them were still needed, and in 2000 and again in 2002 that the critical work of simplifying the substantive aspects had still not begun. Thus, ***the "clear, coherent and transparent rules and regulations" which the "Group of 18 experts" called for in 1986 to ensure efficient management in the UN Secretariat still do not exist, almost 20 years later.***

A classic legal work states that eight criteria need to be met for the rule of law to exist. In very simplified form, they are as follows: (1) there must be rules, (2) created in a public forum and widely disseminated, which are (3) stable, (4)

consistent, (5) clear, and (6) impartially enforced, and (7) will not punish people retroactively for actions legal when they were committed or (8) attach blame unless a person acts intentionally or negligently.

Lon L. Fuller, The morality of law, 1974 (Harvard Law School) as summarized in Mike France, "Impeachment: Does the rule of law really rule?", in International Business Week, February 8, 1999, page 62.

In fact, the multiple policy and procedural changes of UN management reforms raise serious doubts that the so-called "Code of Conduct" restating the relevant staff rules -- can still be valid in 2004. IO Watch concludes therefore that **the criteria for the rule of law to exist within the UN are still not being met.**

IO Watch will return to this extremely important issue in the concluding subsection on Hope for the Future? , as Revision of the code of conduct .