

REVISION OF THE CODE OF CONDUCT

In its 1986 report which launched the current era of UN management reform, the "Group of 18" experts highlighted two critical areas regarding personnel. The first was sharp criticism of politicized staff selection. The second was the importance of the rules. The report stated, at some length but with tremendous clarity:

"The efficiency of the United Nations depends to a large extent on the performance of its Secretariat and other organs; the quality and usefulness of the Secretariat are, in turn, dependent upon the quality and dedication of its staff. ...

The Group is convinced 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. ...

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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.]

For decades the UN Secretariat at least had a fairly clear and well-written set of conduct standards, prepared by the ICSAB in 1954. As late as 1982, Secretary-General Javier Pérez de Cuellar commended them to all UN staff "as a guide in their daily life," and the ACC had them reissued throughout the UN system in 1986. As summarized in 1970, they provided:

" ... four positive duties defined as basic considerations:

1. Integrity to be judged on the basis of the individual's total behavior, taking into account personal qualities such as honesty, truthfulness, fidelity, probity, and freedom from corruption influences, bearing in mind that the international civil servant is a public as well as an international official.
2. Loyalty to the international organization, combined with an international outlook flowing from understanding [and tolerance]
3. Independence of any authority outside the international organization.
4. Impartiality in the form of objectivity, lack of bias, tolerance, and restraint.

These fundamental standards were supplemented with emphasis upon the need for deliberative effort to overcome, within the secretariat, biased attitudes [and, externally,] the international official's fundamental principle of independence which

has been, and continues to be, challenged by national spokesmen."

John W. Macy, Jr., "Towards an international civil service", Public Administration Review (US), **May/June 1970**, pp. 258-263 [259]. [emphasis added], and

"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],

In the 1990s, however, as the Secretariat dragged its feet in revising and streamlining the UN rules and administrative issuances as required by the Group of 18, it became clear that an updated code of conduct was needed to meet changing circumstances, such as workplace discrimination and financial disclosure requirements.

As discussed under this archive's subsection on Major ongoing flaws, the Secretariat prepared a new draft UN "Code of Conduct" which caused considerable controversy. Staff and experts argued that it was just a cumbersome collection of revised staff rules; that it placed heavy emphasis on staff obligations but gave little attention to staff rights; and that there was very little consultation with staff in preparing it. In 1998 the General Assembly did approve it, but only after adding various provisions on management responsibilities and conduct.

"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**, and

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

During this same period, however, Secretary-General Annan had launched his "quiet revolution" to "transform" the organization, partly motivated by a strong distaste for "the rules", as stated in a 1998 OHRM document:

"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. [emphasis added]

Not surprisingly, the resulting 47-page Code of Conduct was not a proper code, but merely an amended compilation of rights (with few mentioned) and duties (with many specified in detail). It was issued to all staff, with the old 1954 standards appended as background information. Yet reflecting on the code in 2000, Secretary-General Annan 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

In 2000, however, Mr. Annan admitted in another report that "task tools" still needed to be developed to "assist" managers in applying the new rules, and in 2000 and 2002 he reported that work was still only beginning on simplifying substantive aspects of the Staff Rules and Regulations.

Meanwhile, Mr. Annan launched still another agenda for management change in 2002, including reforms to simplify the types of staff contracts, permit UN managers to make their own staffing decisions, and launch a grand new mobility system to move staff among assignments worldwide. Staff and others have expressed many concerns about the impact of these major policy changes on the staff and indeed on the international civil service itself, as discussed in the subsection on OHR (Mis-)management .

In the midst of all this, the UN Code of Conduct itself was reissued in 2002, primarily to include a new "Standards of conduct for the international civil service" adopted by the ICSC in 2001 and "welcomed" by a General Assembly resolution in December 2001. The new code therefore replaced all former references to the 1954 ICSAB code with references to the 2001 ICSC standards of conduct.

"Status, basic rights and duties of United Nations staff members", ST/SGB/1998/19 of **10 December 1998**, pp. 2, para 1.2, and p. 5, para. 7.

The eloquent language and quality of the 1954 ICSAB standards has thus been tossed in the "dustbin of history", and in the process some very important principles have disappeared. For instance, the 1954 standards gave staff the duty to question an apparent irregular situation and the right to record their views in the official files, and called on supervisors to exercise "scrupulous care" in allowing those views to be heard,

particularly where those views are opposed to their own. The 2001 ICSC standards, unfortunately, omit these essential points.

"Status, basic rights and duties of United Nations staff members", ST/SGB/1998/19 of 10 December 1998. pp. 38-39, paras. 15-16, 12-13.

In a 21st century UN, where the managers have been unleashed to do pretty much what they want to, any such questioning and expression of "opposed" views to one's supervisor is career suicide. The views of the staff in the 2004 integrity survey clearly indicate this current mistrust:

"... the UN has [examined the] ... Secretariat's perception of its own integrity. ... [The Integrity Survey politely explains there are concerns about accountability] ...

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

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

The new ICSC code-of-conduct language, while not as heavy-handed as the current Staff Regulations and Rules, is still much more colorless and vague than the 1954 ICSAB version, to the great detriment of staff understanding, protection, and strong support for UN staff appeals to the UNAT [to the extent that the UNAT listens to such things at all.]

The 1998/2002 "non-code" document has thus been essentially ignored or regarded sceptically by staff. As one staff member expressed it in comments cited in the June 2004 UN integrity survey:

"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.

The UN therefore has no real, understandable, and usable code of conduct. Yet elsewhere in the world a "code of conduct" is regarded as an important and essential document. As a recent fraud examiner's article on a robust fraud prevention programme emphasizes:

"... the cornerstone of an effective fraud prevention program is a culture with a strong value system founded on integrity ... often reflected in a code of conduct. The code of conduct should reflect the core values of the entity and guide employees in making appropriate decisions during their workday.

A code must include written standards that are reasonably designed to deter

wrongdoing. It **must promote honest and ethical conduct by all employees** no matter their positions within the ... [organization]. **It should advise employees what they can and cannot do ...**"

Martin T. Biegelman, "Designing a robust fraud prevention programme: Ounce of prevention does equal pound of cure", White Paper, Association of Certified Fraud Examiners (ACFE), **January-February 2004**, pp. 30-33 [33],. and **March-April 2004**, pp. 23-24, 45-46.

[emphasis added.]

Organizations which use codes also realize that they must be living documents, which are: developed and discussed in an inclusive, open, and transparent process; drafted carefully in language that is as clear as possible; seek to link organizational ethics with organizational regulations; and are periodically reassessed and updated.

Montgomery van Wart, "Codes of ethics as living documents: The case of the American Society for Public Administration", Public Integrity (USA), **Fall 2003**, pp. 331-346.

The Group of 18's call in 1986 for clear, coherent, and transparent rules is now expressed only in the quite unsatisfactory 2002 code. As noted above, and in the archive subsections on the UN's continuing Hodgepodge of rules and the UN code of Conduct discussion under Major ongoing flaws, IO Watch believes that the present lack of clear and current substantive rules and the irresponsible continuing reliance on the 1998 "non-code:

-- undermine a robust fraud prevention strategy, as mentioned above;

-- frustrate staff worried about what the "staff rules" really are in the face of a rapidly changing UN work environment and an Administration that is steadily "streamlining", decentralizing, delegating authority, and changing the substance of those rules "on the fly"

-- must also be considered in light of the UN Global Compact emphasis, for corporations, on adherence to fundamental UN (ILO) principles of labor rights, and aligned with the eminently reasonable UN staff association views that the UN should itself be bound by these rights:

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.]

-- occur in a Secretariat where staff rights have always been weak, where newly-unleashed amateur managers can investigate matters in their programmes at will, and where the Secretary-General (and the many personnel and other officials who act in his name) can autocratically declare exceptions to those UN rules as "he" sees fit, as discussed in detail in this section's introduction and under Staff Rights? and The most serious loopholes ;

-- and convey an atmosphere of many staff obligations but vague (or even unmentioned) rights, including in particular a fundamental ambiguity on matters of due process, as cited not only by staff groups but in a very expert assessment:

"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**, pp. 12-13 [13].

[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 conservative, autocratic UN Administration with a long-standing belief in secrecy will indeed resist any clear statement of UN staff rights and duties and conduct, as the Group of 18 sought two decades ago. Yet a very short and simple statement, from the US Department of State, illustrates how concisely and clearly one can state general standards of conduct in law that

"help to ensure that employees avoid any action that might result in, or create the appearance of inappropriate, unethical, or illegal behaviour, including:

- Using public office for private gain;
- Giving preferential treatment to any organization or person; except as required by law, regulation, or policy;
- Impeding ... [government] efficiency or economy;
- Losing independence or impartiality of action;
- Making a government decision outside authorized channels;
- Affecting adversely the confidence of the public in the integrity of the ... government."

"Standards of conduct: A Guide to Ethical Conduct for Department of State Employees ...", Office of Inspector General, US Department of State, Washington D.C.

A similar succinct statement would at least be a start to allow UN staff, and anyone else dealing with the UN, to readily recognize and assess improper conduct. It would allow UN staff, and anyone else dealing with the UN, to much more readily

recognize and assess improper conduct. The existing 1998 and 2002 guidance, however, is a tangled web of complexity, with its extensive volume of rules (both central and trivial), extensive but unofficial commentary, and overall opacity. All these complicating factors make it very easy for the Administration's experienced "rules interpreters" in the personnel and legal offices to readily fend off and evade challenges of mismanagement and misconduct, both informally and in the UN's internal justice system.

IO Watch concludes that a very unaccountable UN urgently needs an updated set of standards, rules, and a code, to clarify acceptable behaviour by managers and staff. The 1998 "non-code" of conduct must be updated, beginning with a focus on a single corrective step.

While the 1998 and 2002 code include staff obligations to cooperate fully with any and all UN internal investigations and investigators, it totally omits the very important requirement for the Secretary-General to ensure and protect the rights of staff whistle-blowers and those involved in any way in UN investigations, and to include those procedures in the staff rules. The General Assembly's resolution establishing the OIOS in 1994 clearly specified that it:

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

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

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

[emphasis added]

The guidance was elaborated on in even more detail in "Establishment of the Office of Internal Oversight Services", Secretary-General's Bulletin ST/SGB/273 of **7 September 1994**.

In his response to the staff criticisms expressed in the integrity survey of June 2004, Secretary-General Annan stated to the staff that he will "develop measures to reinforce formal protection for whistle-blowers". The best way for Mr. Annan to do this, of course, is to act urgently to reverse the shameful exclusion of the General Assembly's express language on whistle-blower protection from the code of conduct by his Office of Legal

Affairs. This failure has grievously handicapped and punished UN whistleblowers for years.

Kofi A. Annan, "Dear colleagues", letter [concerning the June 2004 UN "integrity survey" of **4 June 2004**, p. 3.

The omission of these staff rights has firmly suppressed and punished UN whistleblowers who have acted since 1994 in good faith, with the (naïve?) belief that the explicitly-stated UN policies would in fact be implemented. The failure apparently continues on, with all the attendant damage that it does to urgently-needed UN fraud prevention efforts and to the proper day-to-day exercise of staff integrity.

The specific details of this 1994 Assembly resolution, the Secretary-General's own guidance, the relevant staff rules, and the consequences of this grievous whistle-blower omission from the staff rules -- including its relevance to the current scandals surrounding the UN-administered oil-for-food programme in Iraq -- are presented in this archive's subsection on Suppressed whistle-blowers .

This archive section is entitled "Where is the Rule of Law?" in the UN, and the current UN "non-code" of conduct shows its absence vividly. A classic legal work states that eight criteria need to be met for the rule of law to exist, and the UN seems to presently fall far short on applying them. 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.

IO Watch believes that Mr. Annan, after firmly establishing the 1994 staff rights for whistle-blowers, should then give priority attention to urgently preparing a proper, up-to-date, clear, and transparent UN code of conduct and regulations and rules. This time it should be done with full and proper

consultation and contributions by staff groups and the General Assembly) as the Group of 18 called for, without success, nearly two decades ago. The process would address three critical elements:

-- UN staff, who must apply and live with the code, should have a proper voice in establishing it, not to manipulate it but to make it workable and "co-owned";

-- the UN is currently engaged in a new, and somewhat frenzied, effort to change the scope and staffing of its worldwide operations (see the archive subsection on OHR (Mis)management), a process in which the 1998/2002 code of conduct and related staff rules will become even more inconsequential if they are not studiously kept up to date and disseminated;

-- staff representatives and the General Assembly, if finally given the proper time and opportunity to scrutinize the Administration's version of a revised set of rules and code before finalization, might well find other major elements of General Assembly and other directives which the Administration has unfortunately "misplaced". They could ensure that, this time, they are included.

In May 2005 the Secretariat released a new management reform document for "real action now" and immediate reform, "particularly in the critical areas of management, oversight and accountability." With regard to "enhancement" of the code of conduct, it stated that:

"While the UN has in place a detailed Code of Conduct, it has not been disseminated to staff in an effective manner. [OHRM] is reviewing the practices of other organizations in disseminating such information in more accessible and easy-to-read formats ... Special additional rules are also being developed for staff engaged in procurement activities. A UN Supplier Code of Conduct is also being formulated.

Status: Materials should be produced and ready for dissemination in the field."

"Fréchette unveils UN reforms responding to Volcker panel's criticisms", UN News Service, 17 May 2005, and

"UN management reforms 2005: Management reform measures to strengthen accountability, ethical conduct and management performance", **May 17, 2005**, p. 5, available at www.un.org/reform_update.html.

The fundamental guidance of the "Group of 18" experts in 1986 on the importance of "the rules" and their implementation, quoted at the beginning of this subsection, needs to be finally carried out -- namely to ensure clear, coherent, and transparent rules, kept up to date, eliminating inconsistencies and ambiguities, and taking into full account General Assembly resolutions and decisions on personnel policy (including, at

present, not just procurement procedures but whistle-blowing protections as well), as the General Assembly emphasized once again in December 2004.

"The General Assembly ...

Recalls its request to the Secretary-General of ... [1997, 1999, and 2003] to enhance managerial accountability with respect to human resources management decisions, including imposing sanctions in cases of demonstrated mismanagement of staff and willful neglect of, or disregard for, established rules and procedures, while safeguarding the right of due process of all staff members, including managers, and requests the Secretary-General to report comprehensively thereon at its sixty-first session."

"... all administrative issuances of the Secretary-General related to the implementation of its resolutions and decisions shall be in full compliance with such resolutions and shall be reported to the General Assembly in conformity with the established regulations, rules and practices."

"Human Resources Management", General Assembly resolution 59/266 of 23 December 2004, Sections 1, especially paragraph 14, XVI and XVII.

Further, the OECD has provided excellent guidance on a proper "ethics infrastructure" to firmly support public sector transparency and accountability, not just "communicating" policies, but taking firm actions to build public trust by emphasizing both prevention and rewards, with careful monitoring to ensure compliance and deal with wrongdoing.

"Citizens trust public institutions if they know that public offices are used for the public good

Lessons from the OECD survey suggest the following steps for building trust in public institutions:

- Defining a clear mission for the public service. ...
- Safeguarding values while adapting to change. ...
- Empowering both public servants and citizens to report misconduct.
- ...
- Co-ordinating integrity measures: a precondition for success. ...
- Shifting emphasis from enforcement to prevention. ...
- Anticipating problems. ...
- Taking advantage of new technology. ...

...the following steps are necessary to build a consistent system of supportive mechanisms, namely the Ethics Infrastructure:

- Communicate and inculcate core values and ethical standards for public servants in order to provide clear guidance and advice to help solve ethical dilemmas.
- Promote ethical standards by preventing situations prone to conflict of interest and rewarding high standards of conduct through career development.
- Monitor compliance and report, detect and discipline wrongdoing."

"Annex I: OECD public management policy brief on building public trust: Ethics measures in OECD countries," in Organisation for Economic Cooperation and Development, Public sector transparency and accountability: Making it happen, OECD, Paris, 2002, pp. 193-194.

It is time for the UN Secretariat to move past its current focus on "paper-pushing" and words, and instead directly and

seriously address these central elements of applying and monitoring ethical standards. Only in this way can the Secretariat clearly and properly honor the United Nations Charter insistence on the all-important virtue, and "highest standards", of integrity.

"Article 100. ...

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101.

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly. ...

3. **The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.** Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

Charter of the United Nations, 1945, Articles 100 and 101.

[emphasis added]