

UN SENIOR OFFICIALS REMAIN COMFORTABLY OUTSIDE THE LAW

The six black holes of UN non-accountability that IO Watch has analyzed portray a very bumpy road, leading to this concluding subsection. They are: (1) the UN corruption coverup, the second most debilitating area; (2) whistleblowers, the still forgotten and hidden one; (3) UN non-transparency, the most pervasive problem; (4) freeing largely incompetent UN managers, the most audacious and subversive area; (5) non-independent UN oversight, the most half-finished, overloaded, and confused problem; and finally (6) the diplomatic immunity, and parallel impunity, of UN senior officials, leading to UN “rule without law”, which is the most important black hole, and which underlies and is the key to resolving the other five.

“The rule of law” is widely accepted as the foundation of liberties in the Western world, probably dating back to the Magna Carta in England in 1215. It protected the rights of lords, but, for the first time in history, outlined legal procedures that even the king had to follow. Its article 39 stated that:

“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him or send others to do so, except by the lawful judgment of his equals or by the law of the land.”

This guidance has developed over the centuries, along with guarantees of due process, as the principal check on arbitrary state power, and as the original human right. It has evolved through the British Parliament, the US Constitution, and many other documents. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights (readily available under “Search” at Google), which states in its articles 6, 10, 11, and 28 that:

“Everyone has the right to recognition everywhere as a person before the law. ... Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. ... Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. ... Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

In one of his many admonishment speeches to the world upon his departure from the UN in December 2006, entitled “Human rights: We must do better”, Secretary-General Kofi Annan stated that:

“The United Nations has a special stake, and a special responsibility, in promoting respect for human rights worldwide ...

[A decade ago many almost despaired] ... that an organization of governments, many of which are themselves gross violators of human rights, could ever function as an effective human rights defender.

One of my priorities as secretary general has been to try ... [to make] human rights central to all the UN’s work. ...

We must put an end to impunity. ... We must fight terrorism in conformity with

international law ... [including those portions] that give anyone detained against his or her will the right to due process and the judgement of a court.

Once we adopt a policy of making exemptions to these rules or excusing breaches of them, no matter how narrow, we are on a slippery slope. ...

... In office my biggest concern has been to make the United Nations an organization that serves people ... as individual human beings, not abstractions. ... And it is that individual person whose rights must be preserved and respected. The task of ensuring that that happens lies at the very heart of the UN's mission."

Unfortunately, these essential and eloquent prescriptions for the world, and the specific protections of the Magna Carta (except imprisonment) and the Universal Declaration, are not applied in a most embarrassing place – in the very United Nations Secretariat (and throughout the United Nations System), which Mr. Annan led from 1997-2006. The UN leadership enjoys widespread and very comfortable impunity. It does not provide its staff with due process and the procedures of a real court system. It also engages in fundamental exceptions to and many breaches of these rules and principles. These realities indeed put its leaders on a very slippery slope. They have in fact done little to protect the rights of UN staff members, whose human rights and therefore performance, most definitely do not lie "at the very heart of the UN's mission".

The exceptional UN legal status arises because senior UN officials (perhaps as many as a thousand?) have enhanced functional immunity through their diplomatic status. That is, they are not bound by, or subject to, any national laws or courts. Only when the Secretary-General makes an exception, on a case-by-case basis and at his sole (and unappealable) discretion, can their immunity be lifted and their cases taken to national courts.

There are two major negative consequences of this situation, beyond elemental UN hypocrisy. The Secretary-General and many senior officials have not only immunity but impunity. They know that, whatever they do, they will almost never be sent before a national court, and if so, only because persistent outside forces (media pressure, bad publicity, outside groups) force the issue through whistle-blowing and exposé, as in the UN's Iraq Oil-for-food programme scandal.

For all other staff, however, the UN provides only a weak, home-made, "internal justice" system. It is thoroughly controlled by the administration, provides few due process protections, and almost never reverses negative managerial decisions. Even for staff who "win" their appeals after literally years of trying, the system provides only modest financial recompense, if any. Even worse, the Secretary-General (and other senior officials who speak in his name) can summarily dismiss UN staff members who displease them, without any explanation, and providing them only a slow and stilted procedural recourse that takes years and years to complete..

This discouraging state of affairs is described in more detail in the Rule without law paper in the Legal subsection of this website, in the introductory IO Watch archive section of Where is the Rule of Law? , and in hundreds of other pages of the archive.

This brief Black Holes 6 overview provides a small but representative sampling of four critical UN "rule of law" issues:

- A. the long-standing weakness of staff rights in the UN Secretariat;
- B. the UN's own home-made, severely criticized, and so-called "internal justice system";
- C. entrenched and widespread managerial impunity and shabby management practices, punishments, and manipulations in violation of the rule of law; and
- D. at least in the central area of UN "internal justice"; the recent, and sharpest-ever, criticisms from the General Assembly and outside experts of the processes which UN staff have been objecting to, and suffering from, for decades, which just might bring some change. [For more information on all these matters, see also the "Interested

in more details?" box at the end of this subsection.]

A. UN staff rights

Staff rights in the UN Secretariat came under severe attack as early as the 1950s. They have continued to deteriorate ever since, as indicated by the following brief sampling of key and representative quotes from the IO Watch Archive, in particular its subsection on Staff Rights?.

"[Dag] Hammarskjöld sought and largely obtained from the General Assembly administrative powers that, invested in the Secretary-General, were at variance with the intentions of the [United Nations] Charter toward the international civil service. [His] actions were condemned in a searching study, by Claude Julien, of erosion of rights at the United Nations [in 1953] -- a study that may be read with much interest today

The renewed insistence [of successive Secretary-Generals] on unconditional loyalty to a personality, whose requirements are equated with those of the United Nations, again illustrates the remoteness of the U.N. service from democratic procedures. Hammarskjöld's inaccessibility to rational opinion is disquieting. His failure to recruit or retain persons of talent, or to expel sycophants, were part of a striking remoteness from realities by then besetting the U.N. service....."

[An expert on UN operations in the 1950s, emphasis added, 1989]

"An end must be put to everything that seems to make the Secretary-General's post an autocratic one, to everything that tends to make the staff subject to the whims and caprices of their superiors and makes careers -- and even employment -- dependent on blind obedience to such absolute power."

[A French UN delegate, emphasis added, 1953]

"Given the diffidence accorded 'executive privilege,' the difficulties of staff organizations in establishing themselves as a countervailing force to that privilege, and the disinterest ... of those whose help can make a difference-- for instance, members of delegations and the press -- then, what are the chances for review and reform of the system of due process?"

That question asked 18 years ago [in 1974] needs to be raised again. For, as put by the distinguished professor of international law, M. N. Akehurst (University of Paris):

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

[A 1974 staff report, emphasis added, as cited in a 1992 article]

"Problems relating to the professional staff of the [UN] Secretariat are usually considered in political, administrative, and budgetary terms. The time has come to discuss them in legal terms too, or rather, in the light of the purposes and the requirements of the Charter. Indeed, given the political and social stresses to which the staff is exposed, **it is imperative to focus on, to reinvigorate the role of law, and to develop proper procedures, counterbalances, safeguards, and due process.** ..."

[A UN legal expert, emphasis added, 1977]

"Recently there appears to have occurred a marked decline in the number of requests for legal opinions from the Secretary-General and various departments, including the Office of Personnel Services. This may be another indication of the politicization of the Secretariat, of the diminishing role of law in the Organization, and of the increasing power of the various departments that want to be free to establish policy."

[The same legal expert, 1977]

"In the late 1970s, the U.N. staff union in New York engaged the American labor negotiator Theodore Kheel to represent it in its dealings with the U.N. administration. **His ... experience with the U.N. hierarchy -- which he likens to 'the court of Henry VIII' -- [focused in particular on] its propensity for abrogating formal agreements on basic matters of staff rights ...**

'The thing that utterly amazed me' Kheel said recently, 'was the position taken by the Secretary-General of the United Nations [then Kurt Waldheim] to disregard the elementary established rights of employees; that the agency created to maintain standards of human decency and to bring about peace by negotiated settlement would violate its own agreements and see no necessity for compliance with its own word.'

[An expert UN observer, emphasis added, in 1989]

"Eight members of the U.N. procurement office [were suspended following alleged procurement irregularities in UN peacekeeping operations]

By contrast, the eight's boss, ... who signed many of the documents in question, received a similar job he wanted in Geneva, while no action was taken against the senior officials on the contracts committee who are supposed to approve all deals.

A [staff member] explained ... 'the unique hierarchical structure of the U.N. which leaves all decisions to the underlings. When everything works, they take the credit. When it goes wrong, they wash their hands of it.'

At the U.N., the presumption of innocence ought to be enhanced, if only because all too often the guilty there are promoted, not punished."

[A news article, emphasis added, 1993. Note: In 1997 the UN Administrative Tribunal completely exonerated the eight staff members charged, with blunt criticism of the UN's lack of due process. The eight received \$20,000 each, but barely an apology, and the investigation and case cost the UN millions of dollars. Apparently as well, no hint of a reprimand was given to the senior officials who decided to prosecute.]

"Geneva. "The United Nations Wednesday denied reports that it briefly suspended a senior official earlier this year for sexually harassing up to 10 women after a disciplinary committee inquiry into sexual harassment allegations by 10 secretaries

Even if a senior official is brought to trial, he or she cannot be forced to testify because of diplomatic immunity. Most senior U.N. officials enjoy the protective blanket of immunity which can only be revoked by the U. N. Secretary-General.

'It's an old boy's club and when you have reached the diplomatic level, they all protect each other', said one secretary who requested anonymity."

"[An article, emphasis added, 1994]

"The joyless nature of the United Nations 50th anniversary was underlined this week by a public spat between the Staff Union and Management ... The [staff-management joint] agreement, that [a] performance rating resulting from a staff member's

challenge to a low evaluation would be binding, was [subsequently changed by [management with] ... the addition of a proviso that it was **without prejudice to the ultimate authority of the Secretary-General as Chief Administrative Officer.**

In effect, management could ignore a finding in favour of a staff member by invoking the Secretary-General's ultimate authority. **('You know how many people speak in the name of the Secretary-General in this house!')** says Staff Committee President Mohammed Oummih, underlining why the change is unacceptable.) ...

A general meeting of staff on 10 October endorsed the [related] Staff Council resolution by a vote of 730 to 0 with one abstention."

"[An astute UN-affairs newsletter, 1995]

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

The UN has the power of legislating for its staff ... but there are limitations on the right. The most important is that amendments must not interfere with 'acquired rights' (acquired rights are, in other words, fundamental conditions of employment.) ...

There are grounds for questioning the validity of the amendments ...:

(a) Lack of consultation in good faith and in an appropriate fashion -- ...;

(b) Improper motive -- ...

(c) Inconsistency 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.) ...

[for example] ... (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."

[An expert on international organization law, 1997]

" While staff representatives in other [UN 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.**

[A UN staff journal article, emphasis added, 1999]

"UN internal reform has done little to solve what staff see as the real problems of the Organization.

The U.N. does not apply its own international conventions on, say, collective bargaining, on the technical grounds that not being a state, it cannot sign them.'

Where there's no will, there's no way. However, even if the U.N. really couldn't sign the conventions securing basic rights ... it could still consider committing itself to applying them and, to prove its good faith, even designate an independent tribunal as the ultimate arbiter. But let's stop daydreaming.

'Staff effectively surrender their labour rights when they join [the U.N. They are] not covered by [national] labor law, and, in the event of a dispute with their employer are obliged to appeal through the internal justice system, which is administered by that same employer."

[A staff journal article, emphasis added, 2000]

"[The UN Staff Union President], said that ... in the last six years, [UN] ... management had been reforming itself and increasing managerial authority, while reducing accountability. **The Staff Union ... could not support, however, the erosion of staff rights and dissolution of oversight mechanisms** as a means of implementation ...

The [2004 UN integrity survey] ... revealed that staff ... feared reprisals for exposing breaches of ethics, and they perceived that the disciplinary process was applied unevenly. Their view of integrity among senior managers was less than positive..

It was essential that [expanded delegations of personnel authority] ... be carefully examined and, if abuses were found, such delegation should be revoked. ...

The Fifth Committee may wish to recommend that concrete individual accountability be developed, in consultation with staff representatives, on a priority basis."

[A speech to the General Assembly's Fifth Committee, emphasis added, 2004]

"The UN Secretariat failed to adhere to at least one of the fundamental principles of the [the UN's own Global Compact for corporations]: freedom of association and effective recognition of the right to collective bargaining. [It] should not continue to advocate ideals that it did not practice ...

The absence of an independent judicial system placed staff in a situation where their right to fair and impartial adjudication was compromised. ...

The [General] Assembly had requested ... [proposals through consultations for internal justice reform]. The management had made no attempt to consult with the staff on that issue, even after staff representatives submitted a proposal on their own initiative. Agreements reached at the SMCC were frequently not implemented, partially implemented, or delayed for years.

Staff representatives in New York had withdrawn participation from the central review bodies in April 2003, she continued, at the request of the staff at large, because there was no meaningful role for those bodies."

[The same speech, emphasis added, 2004]

"Integrity sponsor unit 35:

The staff council:

[Recalling its April 2004 request that the Secretary-General establish an independent investigation of violations of the delegation of authority in the OIOS] ...

Regrets the decision of the Secretary-General to accept the findings of an incomplete investigation; ...

Further considers that the failure to fully investigate the allegations ... upholds the findings of the [staff integrity survey] that there is a lack of integrity particularly at the higher levels of the organization;

Recalls that the Secretary-General declined to accept the honourable action of the deputy Secretary-General who tendered her resignation as a result of the Baghdad bombing of a UN compound that resulted in 22 staff members perishing, to hold accountable the head of UNHCR for alleged sexual harassment and to hold accountable the chef de cabinet whose son was employed by the Secretariat in contravention of staff rules;

Decides that the senior management no longer displays the level of integrity expected of all employees of the organization;

Requests:

i. The president to convey this vote of no confidence to the Secretary-General and president of the General Assembly ..."

"[Text of staff resolution, 2004]

"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 ... "

[UN Deputy Secretary-General, in response to the staff Integrity survey and the Volcker panel criticisms, 2005]

B. The UN "internal justice" system

The UN internal justice system has, for decades, been widely criticized by staff, experts, and the General Assembly as severely inadequate. However, it has never been seriously reformed, as indicated by the following brief sampling of key and representative quotes from the IO Watch Archive, particularly in its lengthy subsections on Inept "administration of justice" system and the bibliography attached.

"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, ... 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, ... or against disciplinary action."

[As cited in a staff legal expert's article in 1984]

"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 ... 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 ..."

[A staff union report, 1974]

"[in 1978]... a former justice of the [International Court of Justice reviewed a staff dispute with management] ...

[He found that] **'The [UN internal justice] problems ... have accumulated over a long period ...[because the existing machinery fails] 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 .. , [have clear and publicized procedures, and] ... 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 some management] officials'

'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?'

[A 1978 expert review, cited in a senior UN official's article, emphasis added, 1984, Note: the answer?: at least into the year 2007, and perhaps well beyond.]

"[A 1981 expert consultant report on ... continuing crises in Secretariat administration of justice and remedies stated 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."

[A UN legal expert in 1984]

"... Lamenting that 'Something has gone very wrong with our [internal justice] 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.'"

[A staff journal article, 1987]

"[The report of a working group on internal justice functioning] ... 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."

[The same staff journal article, emphasis added, 1987]

"It is practically impossible for [UN] staff members to secure justice in accordance with the fundamental principles of due process of law, fair play and impartiality in the administration of justice. ...

... there is no separation of executive and judicial powers in the United Nations and consequently OHRM virtually acts as 'prosecutor, judge, jury and executioner' contrary to democratic principles and practices. ...

The [appeals secretariats] are directly under the administrative control of the USG for DAM. Similarly, the Panel of Counsel is [also under his control] ...

The Office of Legal Affairs ... renders legal advice to OHRM on all appeals and disciplinary cases ... and is responsible for vigorously defending the arbitrary, discriminatory or prejudicial administrative decisions, right or wrong, on behalf of the Secretary-General, before [the UNAT] ...

Thus, **for all purposes, the entire appeals and disciplinary procedures in the United Nations virtually constitute a 'mockery of justice.'**"

[A legal expert's staff journal article, emphasis added, 1993]

"The General Assembly ...

Stresses the importance of a just, transparent, simple, impartial and efficient system of internal justice in the Secretariat:

Requests the Secretary-General to undertake a comprehensive review of the system of administration of justice ... [including Member State suggestions and] in

consultation with the staff representatives as appropriate, and to submit a report thereon including inter alia, information on costs arising to Member States from the system ..."

[A resolution on personnel questions, emphasis added, 1993]

"In its operations the Joint Appeals Board deals almost solely with written evidence ... rarely permitting oral testimony or the summoning of witnesses. ...

In fact, those familiar with its modus operandi, say [JAB] hearings constitute a shuffling of paperwork -- almost exclusively a perusal of written documents."

Adversarial proceedings are infrequent, as are opportunities for the aggrieved employee to have his or her 'day in court.' ...

The atmosphere of virtual secrecy and lack of publicly available data appears to exacerbate the problem by spawning rumours and allegations ... [and contributes] to the Kafkaesque climate. But, most significantly, it **complicates attempts to make completely objective judgments about how justice is, and is seen to be, administered in the United Nations.**

[Expert article in staff journal, emphasis added, 1994]

"The jurisdictional immunity of the [United Nations] 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."

[A Secretary-General's report on accountability and responsibility, emphasis added, August 2000]

"While there is currently a comprehensive system of [internal] 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.**"

[Another Secretary-General's report, emphasis added, also August 2000]

"Whenever the actions of Secretariat officials are found by the appellate bodies to be wrongful or grossly negligent, these officials should be held accountable as appropriate for any financial loss suffered by the Organization as a direct result of those actions."

[An external report on administration of justice, 2000]

"The UN Sexual Harassment Policy, although in some respects reading well on the surface, is deficient when measured against standards presently applicable under host country [US] law. It is not enough to simply have a written policy which prohibits sexual harassment and purports to provide a mechanism for making and resolving complaints ...

... The UN Policy is remarkable for its complete failure to mention retaliation. In addition, it [seems to involve] ... disciplinary procedures which are confusing, cumbersome, bureaucratic and painfully slow ...

... We believe... that the [UN policy] would not meet [US] current standards for an effective anti-sexual harassment policy. ... **The 'four P's' are either not sufficiently present or are lacking entirely, i.e., Policy in writing, Prompt investigation, Protection of the victim, Punishment of the harasser.**

[An independent expert assessment, emphasis added, 2001]

"The General Assembly: ...

"Notes with concern that the present system for the administration of justice at the United Nations is slow and cumbersome; ...

[requests 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 staff rules] **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 ..."

[Resolution on human resources management, emphasis added, 2001]

" Although no specific qualifications are stated for either [group] ... except ... different nationalities, in practice [United Nations Administrative Tribunal] members include persons of a wide variety of backgrounds [including many with "some years" as diplomats at the UN] ..., while [the International Labour Organization Administrative Tribunal] 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."

"[Secretary-General's report, 2002]

"It is hoped that unanimous [JAB] recommendations will be more reliably supported by the evidence, will be in accordance with the applicable law, and therefore possible to accept. **The Secretary-General, however, would still have the discretionary authority to reject unanimous JAB recommendations in the interest of the Organization.**"

[Secretary-General Annan's report on administration of justice, emphasis added, 2002]

"I am asked to advise the staff union of [the ILO] as to whether the [ILOAT operation] conforms to the requirements of international human rights law. ... It serves as the final arbiter of employment issues for some 35,000 international civil servants, deprived by their occupation of recourse to domestic employment law ...

In principle, a tribunal of this potency and importance must operate, and be seen to operate, to the highest standards of transparency and fair play. ...

There are ... fundamental ways in which ILOAT fails to conform to the requirements for a judicial body ... the deficiencies in compliance with human rights standards have produced a perception of injustice, and have denied to unsuccessful complainants a proper opportunity to press their case ...[which consequences] require urgent rectification.

It can be said that **the Tribunal is in breach of human rights rules which have a jus cogens quality, and should therefore be a defining characteristic of every international judicial body.**"

"[human rights law expert's assessment of the ILO tribunal, generally considered superior to the UNAT, emphasis added, 2002]

"The General Assembly: ...

Regrets the serious delays in the [internal justice] 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; ...

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] ..."

[Resolution on administration of justice, emphasis added, 2003]

"The [UNAT] 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."

"[Report of the UNAT, emphasis added, 2004]

"Enhancing the rule of law

On 24 September 2003, the Security Council held its first general consideration of the topic of justice and the rule of law. ...

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

[We must] ... recognize and respect **the rights of victims and** ensure that relevant processes include specific measures for **their participation and protection** ..."

[Secretary-General Annan's annual report, in marked contrast to all the above assessments of actual UN internal justice practice, emphasis added, 2004]

C. UN managerial impunity and abuse of staff

UN management impunity, and managers' autocratic and hidden actions against staff, have emerged and become entrenched in the legal void of UN operations and a defective Secretariat management culture (see Unleashed managers, Major ongoing flaws, Management culture deterioration and Staff self-defense in the IO Watch archives.) The following brief sampling of key and representative quotes from the IO Watch Archive highlights the way in which these very unfortunate practices have become embedded in Secretariat operations.

"**[Secret political screening of US staff at the UN** by the US Federal Bureau of Investigation from 1949, which ultimately led to the resignation of Secretary-General Trygve Lie was] ... the ascertainable point at which ... [the UN Secretariat] conclusively delivered itself into the hands of national interest ... **in direct violation of the [UN Charter insistence on] a scrupulous independence** from national pressures. ...

Staff representatives who [spoke out] ... were among the earliest and least ceremonious departures ... accompanied by intimidating and abusive statements from the administration to those remaining. ...

... **Each department had its informers, and its victims.**

The total of United Nations employees affected ... undoubtedly runs into the hundreds ... [but is difficult to determine] ... since employees were permitted to resign with extra indemnities, ... [or in] terminations disguised as 'economies,' or ... deportations to the field, or careers shunted [permanently] into sidings ... [or] a secret blacklisting ...

Above all, there is no accounting for the deterrent effect of Trygve Lie's policies on those who might have wished to serve a differently administered United Nations secretariat."

[the UN in 1949, from an expert observer, emphasis added, 1973]

"The United Nations staff union has called for an independent investigation into allegations of corruption and maladministration in UN internal affairs.

Longstanding discontent among the 2,700 professional staff at the New York headquarters burst into the open when a senior UN official was allowed to resign quietly although serious allegations had been made about his financial affairs and staff appointments.

... Staff morale is low. Most staff members indulge in place-seeking and status preferment rather than the original spirit of dedication to UN principles. Finding jobs for one's own group, or for those sharing ideologies, is a major pre-occupation."

[An article in 1980]

"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 ..."

[A staff article, emphasis added, 1984]

"UN officials who advocate a cleanup [of the organization]... say that management by ... top officials has been inept and, occasionally, corrupt. 'There is no [regular] supervision of any agency' ... said [a senior official.] Governing councils ... are 'basically rubber-stamp bodies.'

The U. N. Board of Auditors [report] many problems that appear to be recurring' and point to **a 'lack of determination to enforce regulations and rules and make the heads of units of the organization accountable,**' the report says.

A recent confidential internal paper circulating in the U. N. Development Program ... put the problem more bluntly. **Citing 'a deplorable vacuum of basic ethics' in the system, it noted widespread criticism of 'prolific structures, pompous-Byzantine attitudes of ranking officials, operational inefficiency and ... gross mismanagement** of financial and personnel resources."

[A nine-month US newspaper investigation, emphasis added, 1992]

"[Concerning allegations of corruption at UNHCR in the investigation above], a courageous staff member in Angola reported ... the Boubakar wrongdoing to my

attention. The case was airtight, and U.N. headquarters found it impossible to avoid our recommendation for dismissal.

In the more complicated Lukika case in Uganda, UNHCR's recommendation for dismissal was equally strong. The Secretary-General's office rejected it (on grounds that the United Nations lacks precedents in firing for incompetence) and forced UNHCR to take Lukika back. Threats and intimidation in no way dampened our efforts in UNHCR to deal with corruption and incompetence. The Secretary-General at the time just did not support us. Ensuing troubles with Lukika after headquarters directed that he stay in UNHCR should surprise no one."

[A staff journal letter from the deputy commissioner of UNHCR, emphasis added, 1992]

"The Staff Council in UNHCR agrees with the thrust of the criticisms ... [of a critical British newspaper investigation report on UN mismanagement.] ...

The staff wants to weed out corruption, mismanagement, nepotism, double-dippers, desk-warmers, and all other irregularities ... Staff representatives have been tirelessly pointing out unsavory management tendencies and reported to the governing body of UNHCR ... on how to strengthen the organization and to ensure the effective use of its human resources. The question is: what do these government representatives do with these reports when they return to their capitals?"

[A staff article, emphasis added, 1993]

"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. ..."

[two prestigious senior UN officials, emphasis added, 1994]

"UN employees -- who request anonymity because they fear they will suffer more professional harm than the corrupt officials they want to expose -- have provided numerous accounts of officials' being transferred rather than dismissed after being caught breaking the rules.

This happens frequently in cases of sexual harassment, nepotism, and occasionally violence, according to these accounts. Whistle-blowers are neither encouraged nor rewarded."

[A news article, 1997]

" ... Staff dream of an Organization where decisions are taken according to clear rules and guidelines. The real situation is far different. Staff representatives are mandated by ... the Staff Regulations and Rules to defend staff interests and welfare ... [but are often] denied access to the information and documentation needed to perform this essential function. Staff are switched from core posts to short-term funded posts without their knowledge, placing their continued employment in jeopardy. Decisions are unilaterally taken in isolation and under a cloak of secrecy.

We continue to hear about the need for accountability along with stories of physical and verbal abuse against staff members by senior officials which remain unaddressed. A steady flow of appellants in the internal justice system attests to the faulty managerial decision-making which continues unabated."

[A staff article, emphasis added, 1997]

"The General Assembly ...

Deplores the high number of exceptions to the established procedures for the recruitment, placement, and promotion of staff, **in particular in the Office of Human Resources Management ...**"

"[Resolution on human resources management, emphasis added, 1997]

"Challenges to implementation

... No amount of money or resources can substitute for the significant changes that are urgently needed in the culture of the Organization.

Unless the United Nations takes steps to become a true meritocracy, it will not be able to reverse the alarming trend of qualified personnel, the young among them in particular, **leaving the Organization. Unless ... the Secretary-General and his senior staff ... seriously address this problem on a priority basis,** reward excellence and remove incompetence, **additional resources will be wasted and lasting reform will become impossible.**"

[Prestigious expert group report conclusion, emphasis added, 2000]

" ... As is the obligation of all the offices in the UN which are charged with responsibility for conducting **any investigative activity, whether ongoing or ad hoc** *, the Investigations Section operates in conformity with established United Nations regulations, rules and administrative instructions.

* For example, investigations are **conducted by, among others, programme managers,** by boards of inquiry ... [and] by joint disciplinary committees, **none of which have published their own formal procedures ...** "

[an OIOS report, 2000]

"After all these years, the United Nations is still struggling to adjust its human resources policies and practices to the reality that surrounds it. ...

Several [crippling] dilemmas ..., however, remain unresolved and this organizational pathology stands in the way of the UN's efforts to remain meaningful.

[They include:]

-- the persistent gap between its perennial promises to improve human resources management and its capacity to deliver; and

-- its obsession with cosmetic reforms, hiding the root causes of dysfunctionality.

For most pathologies, there is a cure. For the UN, faith healing will not suffice."

[A UN personnel expert, 2003]

"A new [UN integrity survey, as part of a UN campaign against global corruption] of internal perceptions of integrity of [UN] officials **shows** that while structures for reporting and combating corruption exist, most staff members are either unaware of how to use them or afraid to do so for **fear of high-level retaliation.** ...

'The UN has a 'phone book' of rules and regulations which are totally useless as they are never practiced', a staff member is quoted as saying in the report.

'Senior leaders caught in serious breaches of ethics should be punished, not promoted as usual.' another says.

'Get rid of the old boy network,' one staff member is quoted as saying. That network is wide, tenacious and powerful. It is the ruin of UN officers. So long as you can wind your way into that network, you are OK. If not, you are

doomed. Opposing the network is certainly the end of a UN career."

[A news article, emphasis added, 2004]

"[The Integrity Survey report above notes 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"**

[A news article, emphasis added, 2004]

"James O. C. Jonah, ... [who worked at the UN for three decades] ... and served as head of personnel from 1979 through 1982, ... [said that the Fifth] Committee should also have a serious look at the results of the integrity study. Never had the staff perception of integrity been so low. ... In some respects, the reforms had weakened the Secretariat considerably.

When he served as head of personnel, his biggest fight had been with programme managers, who were most resistant to reform

Governments should not take what was happening lightly."

[Expert comment in Fifth Committee, 2004]

"Two lawyers for U.N. whistle-blowers urged the United Nations on Wednesday to protect staffers who want to disclose corruption at the world body, including the oil-for-food program for Iraq.

But based on [their] advice, none of [those staff] ... have gone public, [one] said. 'I know them. They won't. They are very quiet and under a lot of stress.' ...

While U.N. rules call for wrongdoers to be punished, they do nothing to shield staff members from reprisals when they come forward with evidence, [they] said.

'There is irreparable harm when freedom of speech is canceled, irreparable harm to the institution,'

[A newspaper article, emphasis added, 2004]

"Integrity sponsor unit 35:

The [New York] staff council: ...

Recalls that the Secretary-General declined to accept the honourable action of the deputy Secretary-General who tendered her resignation as a result of the Baghdad bombing of a UN compound that resulted in 22 staff members perishing, to hold accountable the head of UNHCR for alleged sexual harassment and to hold accountable the chef de cabinet whose son was employed by the Secretariat in contravention of staff rules;

Decides that the senior management no longer displays the level of integrity expected of all employees of the organization;

Requests:

i. The president to convey this vote of no confidence to the Secretary-General and president of the General Assembly ..."

[news article, 2004]

"The General Assembly ...

6. Emphasizes the importance of establishing real, effective and efficient mechanisms for responsibility and accountability;

7. **Regrets that** despite previous information provided by the Secretary-General on the establishment of accountability mechanisms, including the accountability panel, **such mechanisms are not in place**, thereby affecting the efficient and effective functioning of the Organization ..."

[Resolution, emphasis added, of December 2004]

" ... When I worked in Liberia in the mid-Nineties a new [UN] chief administrative officer [replaced the previous CAO, who was taking kickbacks on UN procurement contracts.] ... The new CAO [moved aggressively for] ... a 15 percent kickback on everything we purchased.

[He also tried to force many] ... young 'local staff' to sleep with him ... I was the human rights lawyer and these girls would come to my office in tears ... [I wrote many memos. but] ... **when I visited the UN [personnel] office in New York, they laughed at my naïve outrage: 'It happens all the time in the field', they said. 'There is nothing we can do.'** ...

That CAO had been knocking around West Africa for years, always mired in corruption, never disciplined, always promoted and reassigned ... - during which time the head of personnel was Kofi Annan. [The CAO] ... was eventually indicted by US federal prosecutors in New York for \$1.5 million of fraudulent kickbacks ... He has since died.]

What kind of leadership would tolerate this conduct 10 years ago? ... Precisely the same leadership that [has now] ... permitted the oil-for-food scandal and the sex-for-food scandal."

[An eloquent, veteran ex-UN field staff member and lawyer, emphasis added, early 2005]

"Anyone who was shocked by the most recent revelations of sexual misconduct by [UN staff has never been] ... **in a U.N.-sponsored refugee camp.** ... The [UN] and its staff lack accountability. ...

I arrived in Sierra Leone as a legal aid worker in ... 2003. ... I found abuse of a sexual nature almost every day ...

In fact, ... injustices of one kind or another were perpetrated by U.N. missions or their affiliated ... [NGOs] every day in the camps I visited. **Corruption was the norm**, in particular the embezzlement of food and funds by NGO officials, which often left camp resources dangerously inadequate. ...

If the UN ... is to enjoy ... immunity, it ... [must] police itself aggressively and thoroughly. Yet the recent stonewalling over a series of scandals ... [is] typical of a bureaucracy dedicated to self-preservation. This code of behavior travels rapidly down the organizational chart. **The message is: Cover your tracks and the United Nations will obstruct your prosecution.**

After [a] 2002 report documented sexual abuse, Kofi Annan's steely resolve [for 'zero tolerance'] led to exactly zero criminal prosecutions of U.N. officials for sexual abuse. The United Nations ... needs a housecleaning."

[An eloquent, young, ex-UN field staff member, emphasis added, early 2005]

Note: The "Interested in more details?" box for this Black Holes subsection is provided at the end of the **"UN officials remain comfortably outside the law II"** subsection, which follows.