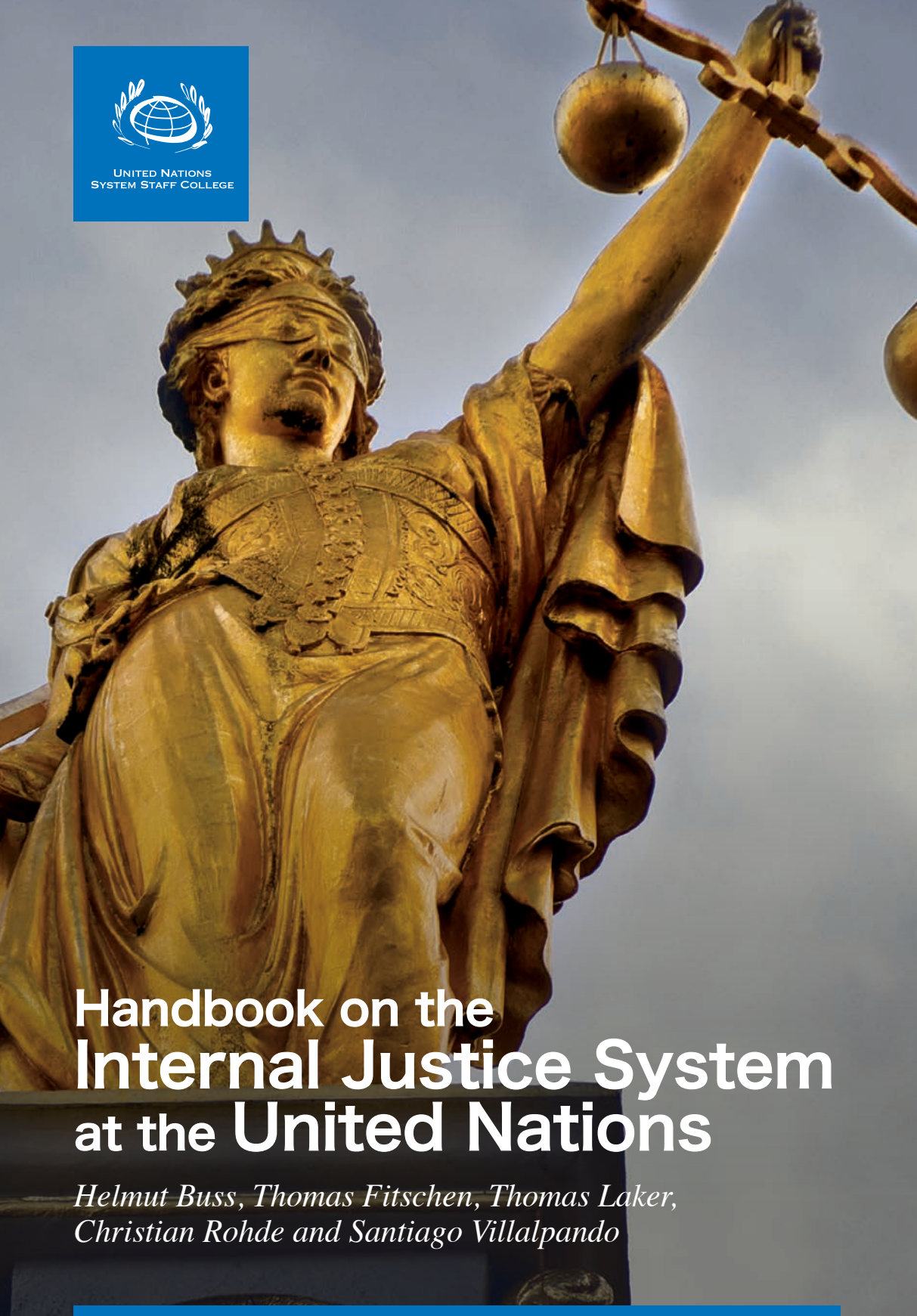

United Nations
System Staff College

Handbook on the Internal Justice System at the United Nations

Helmut Buss, Thomas Fitschen, Thomas Laker, Christian Rohde and Santiago Villalpando

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Editor's Preface

The decision of the authors to write a book on the new system of administration of justice at the United Nations is timely and well-taken. As the Organization continues to pursue a process of change to strengthen its ability to meet new demands and deliver its vital services in the most effective and efficient ways, the authors of this volume provide a thoughtful account of how committed actors have worked together within the context of the United Nations' intricate governance structure to successfully achieve needed reform. In 2008, the United Nations General Assembly established an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice. While the system remains in constant evolution, it has already significantly improved both the informal and formal processes for dispute resolution. In better reflecting the way the Organization has changed in recent decades and better internalizing the values promoted by the United Nations, the system sets a milestone and a good practice model for all other reform efforts.

The establishment of the new system is evidence of the Organization's reinvigorated efforts to "walk the talk" by taking steps to better safeguard the rights and obligations of staff members - and the accountability of staff members and managers alike - based on the standards of due process established in international human rights instruments. This is an essential endeavour for an organization in the business of converting ideals into reality. United Nations practitioners are well acquainted with the multi-pronged approaches required to translate international normative frameworks into law and practice. Every context is unique and requires its own solutions. However, to ensure that an access to justice reform is catalytic and self-reinforcing, a key strategy is to make certain that all the links in the justice system are included and understood by rights-holders and duty-bearers.

From the staff capacity development perspective, the United Nations System Staff College, as a centre of excellence in learning and training, has a special interest in this publication. The collection of chapters fosters a deeper appreciation of the history of efforts to reform the system of administration of justice at the United Nations, while elucidating the range of formal and informal mechanisms available to the workforce in the new system. The informal system, with the Office of the Ombudsman and Mediation Services at its centre, is highlighted as a key element of the reform, to be used to the maximum extent possible as a preliminary means of dispute resolution to avoid unnecessary litigation. A discussion of the success factors for informal conflict resolution provides lessons and reminders of relevance to United Nations personnel in their roles as staff and managers, and as practitioners. The formal dispute resolution processes are further examined in detail, from the newly introduced management evaluation process to the judicial review system, including the jurisdiction of the United Nations Dispute and Appeals Tribunals and the kinds of issues that may be decided by these bodies.

It is the hope and conviction of the United Nations System Staff College that by learning more about this cornerstone of the United Nations personnel system, its genesis and internal workings, staff and managers will be empowered to use the system effectively and efficiently, in the interest of promoting greater fairness, accountability and transparency at the United Nations.

Jafar Javan, Director, United Nations System Staff College
Turin, June 2014

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List of acronyms

ACABQ	Advisory Committee on Administrative and Budgetary Questions
ICJ	International Court of Justice
ILOAT	Administrative Tribunal of the International Labour Organization
JAB	Joint Appeals Board
JDC	Joint Disciplinary Committee
JIU	Joint Inspection Unit
OAJ	Office of Administration of Justice (United Nations Secretariat)
OHRM	Office of Human Resources Management (Department of Management, United Nations Secretariat)
OIOS	Office of Internal Oversight Services (United Nations Secretariat)
OSLA	Office of Staff Legal Assistance (Office of Administration of Justice, United Nations Secretariat)
SMCC	Staff-Management Coordination Committee
UNAdT	United Nations Administrative Tribunal
UNAT	United Nations Appeals Tribunal
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNFPA	United Nations Population Fund
UNHCR	(Office of the) United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOMS	Office of the United Nations Ombudsman and Mediation Services
UNOPS	United Nations Office for Project Services
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women

Introduction

On 1 July 2014, the new system of administration of justice at the United Nations celebrates its fifth anniversary. As early as 2010, one year after the implementation of the reform, the General Assembly of the United Nations noted with appreciation the achievements produced since the inception of this new system and commended the efforts of all who were involved in managing the transition from the previous internal justice system and those involved in the implementation and functioning of the new system.[1]

Although the new system has been considered as one of the most important achievements regarding staff-management relations at the United Nations and the protection of each staff member's individual rights *vis-à-vis* the Organization, practically no relevant literature on it has yet been published. Apart from the helpful, but rather basic, fifteen-page brochure *A guide to resolving disputes*, prepared by the Office of Administration of Justice in 2009, no comprehensive presentation of the new system exists.

This book is a contribution to close the gap, by providing a detailed examination of the different facets of the new system of administration of justice at the United Nations. Of course, such a project cannot satisfy all needs. It may be less academic than the scientific community would expect. And it may be more technical than an interested layperson might prefer. Our objective was to present the system in plain language, making it accessible to all interested parties, without over-simplifying the issues. The book intends to give guidance to those who have contact with the system in various and different ways.

Our addressees are, first of all, the users of the system. This is essentially a book for staff members of the United Nations who, for whatever reasons, want to learn about the new system and how it really works. The book is also addressed to the practitioners in the system, who might be interested in having a sort of a compendium which addresses some of the most important questions arising in their day-to-day practice. This latter group of readers could include counsel appearing before the system, human resources administrators, legal officers in the United Nations, and even judges. The book, however, may further be of interest to the academic world of public international law and the general public if they are in search of a volume that would provide a comprehensive description of a cornerstone in the internal structure of the United Nations.

This book is not only addressed to practitioners. It is also written by practitioners. All its authors have first-hand knowledge of their respective subjects. Thomas Fitschen was the coordinator of the informal consultations of the Working Group of the Sixth Committee of the General Assembly on Administration of Justice at the United Nations from 2008 to 2012 and the Vice-Chairman of the General Assembly's *Ad Hoc* Committee on the Administration of Justice; in those functions, he chaired, *inter alia*,

1 See GA res. 65/251 of 24 December 2010, paras. 4 and 5.

the informal negotiations on the statutes of the two new Tribunals established in 2009. Santiago Villalpando was a member of the Secretariat's legal team that assisted the Sixth Committee in this topic and served as Registrar of the Dispute Tribunal in New York. Helmut Buss, as the Ombudsman of the United Nations Funds and Programmes, has a leading position in the informal system and a lot of experience as mediator. Christian Rohde is the Chief of the Management Evaluation Unit at the United Nations Headquarters. Thomas Laker is Judge at the Geneva Registry of the Dispute Tribunal since the first day of its inception.

The book is divided in five Chapters, which examine the various aspects of the system of administration of justice and its origins.

Chapter I provides a short history of the efforts to reform the system of administration of justice at the United Nations. The internal justice system set up in the early days of the Organization was largely based on peer review, in which the Secretary-General as the chief administrative officer of the Organization had a strong position. The system, initially established for a much smaller organization, could not keep pace with the steady growth of the United Nations and its funds and programmes, as well as the establishment of various field offices and missions. From the 1980s on, the system was coming increasingly under strain. Providing effective redress for tens of thousands of staff members worldwide through a justice system which relied heavily on volunteers was becoming more and more burdensome and inefficient, as procedures were delayed, ultimately eroding the trust of staff and managers alike about its capacity to provide justice. In the absence of any possible recourse to national courts in respect to employment-related matters, and in view of its standard setting role in advocating for the rule of law, the United Nations had to practice what it preached and offer its staff an internal justice system that fully complied with international standards. Thomas Fitschen describes the various efforts undertaken to improve the system, from the initial resistance to change and the various models that were discussed in the process up to the rather swift implementation of what can be described as one of the most far-reaching single pieces of management reform ever undertaken at the United Nations: the decision in 2007 to fundamentally redesign the system of administration of justice, building a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice. Building on the report of the Redesign Panel, Member States (in the General Assembly and its Fifth and Sixth Committees), the Advisory Committee on Administrative and Budgetary Questions, the Secretariat and a wide range of stakeholders managed - in often complex and lengthy consultations involving challenges to balance legal requirements with budgetary constraints - to develop the new framework and to make the new system operational as of 1 July 2009. This new system remains in constant evolution, through measures aimed at its strengthening, the ongoing monitoring by Member States and support by all parties involved.

Chapter II examines the institutions of the system, which are fundamental to understand how the administration of justice at the United Nations works. Santiago Villalpando describes how the new system of administration of justice lies on the articulation between two main branches: the informal system and the formal system, providing a range of options to the workforce to settle disputes with the Organization. The system

puts strong emphasis on informal conflict resolution, wherever possible, providing for a wide range of actors to assist in this process, with a single integrated and decentralized Office of the United Nations Ombudsman and Mediation Services at its centre with an all-encompassing mandate in the area of informal conflict resolution. But it also comprises a reinforced formal system, which has moved from the traditional peer review system, with a single judicial body (the United Nations Administrative Tribunal) to a two-tiered judicial mechanism, in which the first-instance United Nations Dispute Tribunal and the United Nations Appeals Tribunal render binding decisions on the disputes submitted to them. The system, however, also comprises several other offices and structures, which ensure its efficiency and transparency, including the Internal Justice Council, the Office of Administration of Justice (with its Office of Staff Legal Assistance) and the Management Evaluation Unit.

Chapter III illustrates the opportunity of informal conflict resolution and develops the roles of ombudsmen and mediators in that process. Guiding principles in their work namely confidentiality, neutrality and impartiality, independence and informality are explained with examples. Informal conflict resolution tools aim at addressing conflict early and at providing a protected, safe space to identify interests and needs of the parties in conflict and help identify options for solutions that remain in the hands of the parties themselves. An ombudsman's bird's eye view of the organization and the fact that an ombudsman is not subject to line management supervision provides for a unique tool in offering options for solutions across all organizational boundaries. Helmut Buss explains the role of the mediator, the mediation process and the opportunities of mediation in providing a unique space of trust and confidence to be the door to honest dialogue, consensus-building and successful resolution. Success factors of informal conflict resolution include the need for early engagement, corporate support, a collaborative organizational culture, the levelling of power imbalances and an openness to listen and reflect.

Chapter IV describes the newly introduced management evaluation process, a mandatory first step in the formal process, explaining the role and responsibilities of the Management Evaluation Unit, the processing of requests for management evaluation with related formal requirements and the Organization's options when taking a final decision on a management evaluation request. Christian Rohde shows how the new management evaluation process provides for a range of lessons learned that have also become instrumental in strengthening managerial accountability and organizational risk management.

Chapter V portrays the restructured judicial review system of the new system of administration of justice, including the jurisdiction of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal, the proceedings before the Tribunals and major problems illustrated by way of selected case law of the Tribunals. Thomas Laker explains the binding character of judgments upon parties, highlights the limitation of access to the Tribunal to staff members only and develops the nature of remedies that may be ordered in a judgment. Selected case law, illustrating problems building on the frequency of their occurrence and their importance for the relations between staff and the Organization, includes cases related to renewal of appointment, promotion, disciplinary measures, harassment complaints and compensation.

Given its objective to provide practical information on the system of administration of justice at the United Nations, the book's general approach is rather descriptive than analytic. In the authors' view, it is for others with less close ties to the system to undertake a critical analysis of its merits and shortcomings. On the other hand, the views expressed in this book do not necessarily reflect those of the United Nations. It goes without saying that each author takes full responsibility for his chapter and all errors which may have occurred. Readers are kindly invited to contribute to the improvement of this volume in possible forthcoming editions by sending comments to our editors.

Finally, the authors would like to express their great appreciation to the editors at the United Nations System Staff College for their support and professionalism.

Helmut Buss - Thomas Fitschen - Thomas Laker - Christian Rohde - Santiago Villalpando
Geneva / New York, June 2014

Chapter I
Reforming the system of administration of justice at the United Nations - A short history

Thomas Fitschen *

A. The old system and its critique

1. Addressing grievances through peer review: Boards advise, the Secretary-General decides

Prior to the reforms that led to the new system of administration of justice which this book tries to explain, the process available to staff members who sought redress for a work-related dispute followed an administrative approach. Under the old system,[1] it was ultimately the Secretary-General as the chief administrative officer of the Organization who - based on a peer review of the case carried out in different advisory boards and committees - took the final decision on cases regarding employment-related issues.

A staff member looking for legal or other advice on how to raise work-related issues could first of all take the case to a Panel of Counsel, staffed by United Nations staff members volunteering to advise their colleagues. On the more formal side, the most important bodies were the Joint Disciplinary Committee (JDC) for disciplinary matters and the Joint Appeals Board (JAB) - located in the main duty stations New York, Geneva, Vienna and Nairobi - for appeals of staff of the Secretariat and the various funds and programmes concerning other work-related issues.

In disciplinary matters - i.e., in cases of misconduct or other violations of professional responsibility of a staff member where, under Article X of the Staff Regulations, the

* *The views expressed in this Chapter are solely those of the author and do not necessarily reflect those of the United Nations.*

1 For a short overview, see Phyllis Hwang, "Reform of the Administration of Justice System at the United Nations", *The Law and Practice of International Courts and Tribunals* 8 (2009), at 183-191.

Secretary-General had the right to impose disciplinary measures - the Secretary-General first had to refer the issue to a JDC. For the United Nations Development Programme (UNDP), the United Nations Office for Project Services (UNOPS) and the United Nations Population Fund (UNFPA), the competence to decide on disciplinary measures laid with the Administrator of UNDP, and these funds and programmes therefore had their own JDCs. The Secretary-General or the Administrator could take a disciplinary measure only after the respective JDC had given its advice.

In other cases arising out of an administrative decision on grounds of non-observance of the terms of contract or other pertinent rules and regulations, a staff member who wished to formally contest that decision first had to request an administrative review. The administrative review was to be conducted by the Office of Human Resources Management (OHRM). If the staff member was not satisfied with the results of this review, he or she could lodge an appeal with the JAB.

Even though the role of both bodies was different - the JDC being involved *before* a decision by the Secretary-General could be taken, whereas the JAB intervened *after* the initial decision by the Secretary-General - the basic structure of both bodies was similar: both the JABs and the JDCs were composed of one member selected by the Secretary-General, one member selected by the staff and one Chairperson appointed by the Secretary-General in consultation with the staff, all of them serving voluntarily and in addition to their regular duties. Both were advisory in nature: they could not, as a body, determine the rights of the person concerned in an individual case, but were limited to making a recommendation to the Secretary-General. The latter retained full discretion to decide the matter, including the right to disregard the advice of the JAB or JDC.

In cases where a staff member would not accept the Secretary-General's decision - whether the latter was in consonance with the recommendation of the JDC/JAB or not - he or she had the right to challenge it in a judicial procedure before a single judicial body, the United Nations Administrative Tribunal.

2. Appealing against the decision of the Secretary-General: The role of the United Nations Administrative Tribunal

The United Nations Administrative Tribunal was created in 1949[2] to hear and pass judgements upon applications alleging "non-observance of the contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members"[3], as well as applications alleging non-observance of the rules and regulations of the United Nations Joint Staff Pension Fund arising out of decisions by the Fund.[4] The Administrative Tribunal also had authority to hear disputes regarding the staff of the International Maritime Organization, the International Civil Aviation Organization, the

2 For the statute see General Assembly resolution ("GA res.") 351 A (IV) of 24 November 1949, amended by GA res. 782 B (VIII) of 9 December 1953, GA res. 957 (X) of 8 November 1955, GA res. 50/54 of 11 December 2000, GA res. 52/166 of 15 December 1997, GA res. 55/159 of 12 December 2000, GA res. 58/87 of 9 December 2003, and GA res. 59/283 of 13 April 2005.

3 Art. 2 of the Statute of the United Nations Administrative Tribunal ("UNAdT Statute").

4 Art. 14 UNAdT Statute.

Registries of the International Court of Justice and the International Tribunal for the Law of the Sea, and the International Seabed Authority. Furthermore the competence of the Tribunal extended to the secretariats of funds and programmes, such as the United Nations Children's Fund (UNICEF), UNDP, UNFPA, as well as the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The other Specialized Agencies and other parts of the UN system are affiliated with the Administrative Tribunal of the International Labor Organization (ILOAT), which also serves a number of international organizations outside the UN system.

The Administrative Tribunal was composed of seven "members" of different nationalities. Candidates were nominated by United Nations Member States and elected by the General Assembly. The original Article 3, para. 1, did not state any specific qualifications which the Tribunal's members were supposed to have.[5] It was only in 2000 that the Statute was amended to require the Tribunal's members to "possess the requisite qualifications and experience, including, as appropriate, legal qualifications and experience".[6] The criteria were further refined in 2005 when the General Assembly amended the Statute again to require members to possess "judicial experience in the fields of administrative law or its equivalent within their national jurisdiction".[7]

Where the Administrative Tribunal concluded that the application was well founded, it could order the rescinding of the contested decision or the specific performance of the obligation invoked.[8] But the Secretary-General had the right to decide - within thirty days of notification of the judgement and where it was "in the interest of the Organisation" - not to do so, and instead pay compensation. The amount to be paid in this case had to be fixed by the Tribunal in the judgement.[9] As to the amount of compensation, the Statute limited it - "in normal circumstances" - to two years net balance salary of the claimant. The decision of the Administrative Tribunal was the last word on a given case, the Tribunal's judgements were "final and without appeal", as Article 10 of the 1949 Statute had expressly said.[10]

A possibility to submit a case decided by the Administrative Tribunal to the International Court of Justice for review was introduced in 1955, but was abolished again in 1996. In an

5 A proposal to require that the members "shall be persons who have held high judicial office and who should preferably have experience in international administrative or labour questions" was made in 1987, see *Feasibility of establishing a single Administrative Tribunal, Report of the Secretary-General*, A/42/328 (15 June 1987), p. 41. The proposal was not pursued, however, after the Administrative Tribunal had found itself "unable to agree", arguing that such a qualification would be "unduly limiting" and "would have deprived" the Tribunal "of some of its most distinguished members"; Report, p. 63.

6 Review of the Statute of the United Nations Administrative Tribunal, GA res. 55/159 of 12 December 2000. On the qualifications required for the Judges of the United Nations Dispute and Appeals Tribunals, see Chapter II, sec. B.4.(d), below.

7 GA res. 59/283 of 13 April 2005, para. 40.

8 Art. 10 para. 1, UNAdT Statute.

9 *Ibid.*

10 Unlike the UNAdT Statute, the Statute of the Administrative Tribunal of the ILO did contain, in its art. 12, a provision that allowed the ILO Governing Body to request, in certain cases of disagreement, an advisory opinion from the IJC.

advisory opinion of 1954[11] of the International Court of Justice concerning the effects of awards of compensation made by the UNAdT the Court had pointed out that when adopting the Statute the General Assembly could have provided for an express means of redress against decisions of the UNAdT, but as it had not done so the decisions of the UNAdT were indeed binding upon the United Nations. So in 1955 the General Assembly added a new Article 11 to the Statute which gave any Member State, the Secretary-General or indeed any person in respect of whom a judgement of the Administrative Tribunal had been rendered the right to apply for an advisory opinion from the Court. The primary purpose of Article 11 was not to give an applicant another level of appeal, but rather to enable States to challenge a decision of the Administrative Tribunal when they found it unacceptable.[12] In practice, however, most of the applications for an advisory opinion came from staff members.

As under Article 96 of the Charter of the United Nations only the General Assembly, the Security Council and other organs of the Organization can request an advisory opinion, the General Assembly set up a subsidiary organ, called the Committee on Applications for Review of Administrative Tribunal Decisions, that looked at the application and had to decide whether or not the case warranted a request for an advisory opinion. The Committee was composed of representatives of the Member States who served on the General Committee of the most recent session of the General Assembly. In its first advisory opinion issued under the new procedure - 18 years after the latter's introduction - the Court examined the role of the Committee on Applications and described it as a "political organ" fulfilling functions "which (...) are normally discharged by a legal body". But in view of the particular circumstances and conditions under which the Committee operated within the review procedure, the Court ultimately found "no necessary incompatibility between the exercise of these functions by a political body and the requirements of a judicial process".[13]

Over time, however, it became more and more evident that a Member State-controlled body had no place in deciding labour-related disputes between a staff member and the Organization: by 1994 - almost forty years after its inception - the Committee had been approached 92 times, but it had decided to request an advisory opinion from the Court in only three cases.[14] Following an initiative in the Sixth Committee in 1993, the General Assembly, in its resolution 50/54 of 11 December 1995, noted that the procedure under Article 11 had "not proved to be a constructive or useful element in the adjudication of staff disputes", but on the contrary had rather "caused confusion and criticism". It therefore decided to delete Article 11 from the Statute.[15] This left staff members where their predecessors had

11 *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, I.C.J. Reports 1954*, pp. 55-56.

12 *Feasibility of establishing a single Administrative Tribunal, Report of the Secretary-General*, A/42/328 (15 June 1987), p. 28, para. 76.

13 *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion* of 12 July 1973, I.C.J. *Reports 1973*, p. 176, para. 25.

14 All three judgments of the Administrative Tribunal were affirmed by the Court, see *Feasibility of establishing a single Administrative Tribunal, Report of the Secretary-General*, A/42/328 (15 June 1987), p. 27, para. 73.

15 For the full background and the arguments against the involvement of the General Assembly in a procedure to review the decisions of a judicial body, see *Review of the procedure provided for under art. 11 of the Statute of the Administrative Tribunal of the United Nations, Report of the Secretary-General*, A/C.6/49/2 (17 October 1994).

been in the early days of the United Nations, namely with no possibility of appeal against a judgement of the Administrative Tribunal[16].

Another effort to reform the UNAdT undertaken in the 1980s also did not yield any specific result. In view of the differences between the jurisprudence of the UNAdT and the Administrative Tribunal of the International Labour Organization (ILOAT) - the other large judicial review mechanism within the UN system which even antedated the UNAdT - the General Assembly in 1978 asked the Secretary-General and the Administrative Committee on Coordination (ACC) to look at possibilities to establish a single administrative tribunal for the entire common system.[17] The ACC, however, quickly dismissed the idea, so the next question which the General Assembly asked itself was whether the statutes and procedure of the two tribunals could at least be harmonized.[18] A first report of the Secretary-General was submitted to the General Assembly in 1984. But it was not before 1987 that an updated report on this topic which compared the jurisdiction, composition and practice of the tribunals and made a number of proposals[19] for a more streamlined procedure was discussed at some length among the Secretariat, Member States and the International Labour Organization. But the exercise soon ran out of steam, and the General Assembly decided to defer further consideration of the issue.

3. Rising discontent and early attempts to change the system

In the meantime, however, the General Assembly became more and more concerned about the performance of the system in general. In 1984, it made a request to the Secretary-General to "strengthen the various appeals machinery with a view towards eliminating the backlog of cases",[20] which was followed, one year later, by another call on the Secretary-General to "streamline the appeals procedures".[21] The effects of these appeals were marginal at best.[22] By the end of the decade the system was only too visibly coming under strain. Due to the growth of the Organisation in terms of personnel and offices around the world and ever larger peacekeeping and other missions, the sheer number of cases to be covered by the system had grown dramatically. The work of the Administrative Review Unit which had to undertake the first round of review was increasingly "impeded" by the rising number of cases, and for the JABs alone the volume of cases had grown sevenfold between 1970 and 1993; likewise the JDCs as well as the United Nations Administrative Tribunal also reported more work than ever.[23] On the whole, it was becoming more and more difficult to find qualified volunteers to hear staff members' claims and appeals; as a

16 An appeal to the International Court of Justice is still possible, however, with regard to cases decided by the ILOAT for the staff of those organizations that have joined this other Administrative Tribunal.

17 GA res. 33/119 (19 December 1978), section I, para. 2.

18 For an overview of the entire process see *Feasibility of establishing a single Administrative Tribunal, Report of the Secretary-General*, A/42/328 (15 June 1987), para. 1-9.

19 *Ibid.*, p. 40-55; see also the draft resolution prepared by the Secretariat at p. 55-56.

20 GA res. 39/245 of 18 December 1984.

21 GA res. 40/258 A of 18 December 1985.

22 For a short account, see *Administration of justice at the United Nations, Report of the Joint Inspection Unit*, JIU/REP/2000/1, pp. 1-2. For a more in-depth description, see Hwang, op. cit., at 195-198.

23 See *Reform of the internal system of justice, Report of the Secretary-General*, A/C.5/49/13, para. 3.

result the processing of complaints took longer and longer, leading to growing backlogs[24] and rising doubts from staff about the capability of the system to provide justice. The Joint Inspection Unit, in a 1986 report on the administration of justice, criticized the JAB as "a quite primitive procedure of home-made justice" that was "lengthy, slow, costly and time-consuming", and concluded that it was a "procedure neither in accordance with the administrative development and the growth of the United Nations, nor with the present needs of an international civil service".[25]

Beginning in 1987, the General Assembly passed a number of resolutions to initiate improvements,[26] but it was only in 1993 that it finally requested the Secretary-General to "undertake a comprehensive review of the system".[27] At the 49th session of the General Assembly, the Secretary-General came up with list of proposals which went beyond the usual quest for efficiency gains through technical or administrative measures, and instead aimed at changing the very structure of the system. Four proposals stood out:

a. The establishment of ombudsman mediation panels to serve as mediators and a second layer of dispute resolution when earlier efforts had failed; the panel members were to be appointed jointly by the existing staff/management machinery, but the panels' recommendations would be non-binding;
b. The transfer of the function of administrative review performed by the Administrative Review Unit located in the Office of Human Resources Management to a new unit directly under the authority of the Under-Secretary-General for Management and staffed by full-time administrative review officers;
c. The transformation of the JAB into an arbitration board composed of a full-time professional team of arbitrators, instead of part-time volunteers. The chairperson of the board would be externally recruited, and the other two members and two alternates would be appointed by the Secretary-General from a list of qualified staff members presented by staff and the administration. However, the most unprecedented proposal was probably the Secretary-General's suggestion that the arbitration board be authorized to make binding decisions in specified cases between the administration and a staff member;
d. The replacement of the JDC by a full-time professional disciplinary board, which would operate along the same lines as the arbitration board, but without a conciliation or arbitration function.

The latter two proposals caused quite a stir. To justify his bold step the Secretary-General had pointed out that there was widespread dissatisfaction with the existing system of justice, which had been established many years earlier and was deemed "inadequate in

24 In one case the procedure before the JAB in Geneva had taken no less than five years to conclude, see *Feasibility of establishing a single Administrative Tribunal, Report of the Secretary-General*, A/42/328 (15 June 1987), Annex II, para. 17.
25 *Report of the Joint Inspection Unit on the Administration of Justice*, A/41/640 (23 September 1986), para. 24.
26 See GA res. 42/220 B of 21 December 1987, GA res. 43/224 B of 21 December 1988, GA res. 44/185 B of 19 December 1989.
27 GA res. 45/239 B of 8 April 1993.

current circumstances".[28] The reactions among Member States in the General Assembly, as well as from the other parts of the system and indeed from the staff itself, were outright negative.[29] The Administrative Tribunal found that the JAB had, on the whole, performed commendably, and it praised the role of "experienced and knowledgeable" volunteers who had the advantage of knowing the unique features of United Nations staff relationships; it drew attention to the costs and indicated its preference for a phased approach to reform. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) seconded the views of the Administrative Tribunal. It pointed out that progress towards a more expeditious disposal of cases was already being made and did not align with the proposal either. The United Nations Staff Union believed that staff should have a right to have their cases heard by their peers and withdrew support for the Secretary-General's proposal. The Sixth Committee, which after an extensive debate in the Fifth Committee was tasked by the General Assembly to look at the legal side of the matter,[30] expressed support for putting in place a system that was to be simple, open, efficient and expeditious, but did not agree with the view that it was the participation of staff members in the JAB which had created the problems. Many delegations also had doubts concerning the role and recruitment of "outside" arbitrators who would be unfamiliar with the United Nations staff rules.[31] Having drawn so much fire, the Secretary-General conceded that the whole question of arbitration would have to be rethought and promised fresh proposals, which would fit better into the existing system.[32]

4. Targeting the Joint Appeals Boards (again)

Five years later the general situation of the system of administration of justice had still not improved considerably. The Joint Inspection Unit (JIU), which in 1999 had once again undertaken to review the administration of justice machinery from its legal foundations, recalled "numerous attempts at reform" which had "failed to bring about the desired results",[33] and concluded that the system was "slow, costly and cumbersome" and "in several significant ways far less effective that it could or should be".[34] The JIU criticized the fact that a relatively high proportion of the recommendations issued by the internal volunteer bodies - even those adopted unanimously - were rejected by the Administration,[35] and recommended better informal resolution of disputes early in the process through the introduction of an ombudsman system, the strengthening of the independence of the JABs

28 See the statement in the Sixth Committee, A/C.6/51/7, Annex.

29 For the following description, see *Administration of justice in the Secretariat, Report of the Secretary-General*, A/56/800 (13 February 2002).

30 GA res. 50/240 (7 June 1996), para. 2.

31 See *Letter dated 12 November 1996 from the Chairman of the Sixth Committee*, A/C.6/51/7 (12 November 1996), p. 3.

32 See the statement by the Under-Secretary-General for Management in the Fifth Committee, A/C.5/51/SR.31, paras. 57-62.

33 *Administration of Justice, Report of the Joint Inspection Unit*, JIU/REP/2000/1, p. 1.

34 *Ibid.*, Executive summary.

35 The Secretary-General had already made it his declared policy, in 1987, to accept the unanimous recommendations of the JAB, except where a major question of law or principle was involved. Such instances occurred where the Secretary-General believed that "compelling reasons of law or principle or departure from established practice" so required. See: *Note by the Secretary-General on the Report of the Joint Inspection Unit*, A/57/441/Add.1, para. 10.

and JDCs, and the establishment of a higher recourse instance in respect of the decisions of the Administrative Tribunal.

Having considered the report, the General Assembly, in its resolution on human resources of 2001,[36] shared the JIU's assessment of the system as "slow and cumbersome" and welcomed the Secretary-General's proposal to establish a function of ombudsman. As the performance of the JAB seemed to be the key cause of many problems, the General Assembly also requested the Secretary-General to review the role of JABs and suggested four options for that process, with "maintaining the JAB in its current form" at the conservative end of the spectrum and "changing its nature from an advisory body to a semi-judicial body with the power to take decisions" at the more revolutionary one.

In his response[37] to the latter suggestion, the Secretary-General somewhat dryly recounted the events of 1995 that had led to the withdrawal of his own proposals in this regard. He then recalled the constitutional problem by which, under Article 97 of the Charter, United Nations staff members who were subject to the Secretary-General's authority could hardly render decisions binding on him. That problem could only be resolved by replacing the JABs with a new body not composed of staff members - a measure, however, which "in view of the negative reactions" to his own proposal to do so[38] only a few years earlier, did "not seem to be a viable option". The Secretary-General rather preferred not to touch the JABs, and the reasons he gave at this stage were quite the opposite of his earlier position on this issue. The Secretary-General praised peer review by an advisory body as "a very important feature and one of the preferred solutions in many countries". He conceded that the current system did "not function... perfectly", but for him it was the lack of resources, rather than the participation of staff as such, that caused the delays. The Secretary-General thus recommended to "maintain the positive elements of the current system, that is, advice provided by a joint body of peers"[39], and to rectify the problems otherwise. The Secretary-General was seconded in this proposal by the ACABQ, which criticized the JAB in even stronger terms - "the handling of appeals to the Board is currently fraught with unacceptable delays" -, but held that there was "no need to change the nature of the Board".[40] The ACABQ did support, however, the JIU's proposal to make "judicial experience" a condition for future candidates on the Administrative Tribunal, as this would "obviate the need for a third tier" as proposed by the JIU.[41]

5. A first step towards modernization: the Ombudsman

Following the endorsement by the General Assembly in 2001,[42] the United Nations finally modernized the informal part of its system of administration of justice by introducing an Ombudsman in 2002. Already in 1993, UNHCR had appointed its first Mediator (this

36 GA res. 55/258 of 14 June 2001, Chapter XI.
37 *Report of the Secretary-General*, A/56/800 (13 February 2002), paras. 15-21.
38 The Secretary-General's 1995 proposal would have done exactly that, because the professional arbitrators would no longer have been simple staff members on voluntary service, but "officials" (*ibid.*, para. 15).
39 *Ibid.*, para. 21.
40 *Administration of justice in the Secretariat, Report of the ACABQ*, A/57/736 (18 February 2003).
41 *Ibid.*, para. 13.
42 GA res. 56/253 of 24 December 2001, para. 79.

position would be renamed "Ombudsman" in 2009) and, in June 2002, the executive heads of UNDP, UNFPA and UNOPS established a common Office of the Joint Ombudspersons. On 25 October 2002, the Secretariat followed suit and established its own Office of the Ombudsman,[43] located in the Executive Office of the Secretary-General, which became the "primary means of informal dispute resolution".[44] The first United Nations Ombudsman was soon appointed.

6. A growing sense of urgency

For the rest of the system, however, the general tone of the debate was, by 2003, becoming strained, and one could sense that the General Assembly's patience was beginning to wear thin. "Administration of justice within the Secretariat" received a separate full resolution (GA res. 57/307 of 15 April 2003), in which the Assembly expressed its regret that the system continued to be "slow, cumbersome and costly". It stressed that the need to ensure effective and expeditious administration of justice was now "urgent". The Assembly also regretted the "serious delays" in the appeals process and requested the Secretary-General to ensure full cooperation and accountability of the managers whose decision were challenged by an appellant. At the same time, the General Assembly was careful enough to counterbalance the criticism of the system by praising the work of those who volunteered to sit on the various bodies: their functions were "official in nature" and "valuable to the Organization", and the Secretary-General was encouraged to give them sufficient time off from their regular duties and to readjust their normal work if needed.[45] The organization of basic legal training courses for new members of the JAB and the JDC was welcomed,[46] and the General Assembly envisaged the possibility of returning to the issue of tightening the conditions for the eligibility of members of the Administrative Tribunal at its following session. The Assembly also welcomed the Secretary-General's initiative to charge the Office of Internal Oversight Services (OIOS) with undertaking a management review of the appeals process, and requested the Secretary-General to submit a report containing "alternatives on strengthening the administration of justice by means of ensuring transparency and fairness in the provision of justice to staff".

B. Next exit: Reform

1. The turning point in 2005: A Panel to "redesign" the system

The 59th session of the General Assembly was the turning point in the history of the reform of the system of administration of justice. After considering reports and comments from the Secretary-General,[47] OIOS,[48] the JIU[49] and the ACABQ,[50] the Assembly, in its resolution

43 For the terms of reference of the Ombudsman, see ST/SGB/2002/12.
44 Cf. GA res. 59/283, para. 18.
45 *Ibid.*, para. 18-19.
46 *Ibid.*, para. 13.
47 *Report of the Secretary-General*, A/59/449.
48 *Note of the Secretary-General*, A/59/486.
49 *Report*, A/59/280, and Comments of the Secretary-General, in Add.1.
50 *Interim Report of the ACABQ*, A/59/715.

59/283 of 13 April 2005, noted once again the "continuing backlog of appeals in various parts of the system" and regretted the "serious delays in the appeals procedure".[51] The General Assembly expressed concern that the system "continue(d) to be slow, cumbersome and costly" and stressed that the system of justice as a whole should be "independent, transparent, effective, efficient and fair". The General Assembly recognized that a "transparent, impartial and effective" system of administration of justice was a "necessary condition for ensuring fair and just treatment" of UN staff and "important for the success of human resources reform" in the Organization. The administrative law framework of the Organization had to "allow all levels of United Nations staff to obtain due process regardless of their location, grade or contractual arrangement" (para. 6). Again the Assembly made clear that its criticism was not directed against the individual staff members working in the system when it expressed its appreciation for the "efforts of staff members volunteering their services" and invited the Secretary-General to provide proper training and to give them sufficient time off from their substantive responsibilities. The Assembly also adopted an amendment to Article 3 of the Statute of Administrative Tribunal in order to professionalize the Tribunal[52] and to bring it at par with the Administrative Tribunal of the International Labour Organization (ILOAT).

It had become clear for the General Assembly, however, that these and many other measures would not solve the underlying problems completely. So the Assembly decided, in one crisp and short sentence without much fanfare (at para. 47 of its resolution), that the Secretary-General should form a panel of external and independent experts to consider "redesigning the system of administration of justice". This Panel (which later became known as the "Redesign Panel") was to consist of five members, including "a pre-eminent judge or former judge with administrative law experience", and "expert in alternative dispute resolution methods", a "leading academic in international law", a person "with senior management and administrative experience in an international organization" and a "person with United Nations field experience".

The Panel's mandate was quite far-reaching. It was supposed to propose nothing less than "a model for a new system for resolving staff grievances in the United Nations" that had to be "independent, transparent, effective, efficient and adequately resourced" - key terms to characterize the requirements to be fulfilled which have kept reappearing in subsequent resolutions and reports ever since. The new system would have to ensure "managerial accountability", while "acknowledging the uniqueness of the United Nations system". Concerning the Administrative Tribunal, the Panel was expressly tasked to "review the functioning of the United Nations Administrative Tribunal... with a view to further professionalizing" it, and to look at possibilities of forming an "integrated judicial system with a two-layer structure of first and second instance".

In terms of procedure, the General Assembly told the Panel to get in touch with "all relevant stakeholders regarding the existing mechanisms" and to "consult with United Nations staff, including individual staff members, the Staff Union and managers". The timeframe set by the General Assembly for this enormous task was extremely tight: the panel, which was to start

51 GA res. 59/283, para. 2.
52 See above, sec. A, 2

its functions "not later than 1 February 2006", had exactly six months to submit its findings and recommendations by the end of July 2006.

2. The experts deliver: "a fundamentally different system"

The Panel, established by the Secretary-General as requested, took up its work on 1 February 2006. Its members were Mary Gaudron (Australia), Louise Otis (Canada), Ahmed El-Kosheri (Egypt), Diego Garcia-Sayan (Peru), and Kingsley Moghalu (Nigeria), with Sinha Basnayake (Sri Lanka), serving as Secretary.

The report of the Redesign Panel[53] was submitted in July 2006, and it was the starting signal of what might be seen as one of the most far-reaching single pieces of management reform ever undertaken at the United Nations. After lengthy consultations with a large number of stakeholders, experts and representatives of other tribunals, the Panel came to some fairly devastating conclusions regarding the old system. It described the existing system of administration of justice as "outmoded" and "dysfunctional", being "neither professional nor independent". The system was criticized as "extremely slow, underresourced, inefficient and, thus, ultimately ineffective", failing to meet "many basic standards of due process established in international human rights instruments" and carrying "enormous" financial, reputational and other costs. The system that had been established half a century earlier for a much smaller organization and was based largely on peer review mechanisms had simply "outlived its relevance". The JABs and the JDCs did "not meet the basic standards required for guaranteeing their independence", with delays in the JABs being qualified as "egregious".[54] The structure of the formal system was found to be "fragmented and overcentralized", "slow, expensive and inefficient" and failing to guarantee individual rights.[55] As a matter of consequence, the Panel had found United Nations staff members to have "very little or no confidence" at all in the system. To be able to command the "confidence of managers, staff members and other stakeholders", however, and to guarantee "the rule of law within the United Nations", any new system would have to be "independent, professional and adequately resourced" to sustain "certainty and predictability". In the eyes of the Panel, simply trying to improve what was there would not be enough - the entire internal justice system needed to be "fundamentally redesigned"; the system of peer review was no longer sustainable, and "a fundamentally different system" needed to be adopted.

To remedy the flaws of the old system, the Panel recommended the creation of a new, decentralized, independent and streamlined system with major changes on both the informal and the formal side. The informal system was to be strengthened through providing a strong mediation mechanism in the Office of the Ombudsman and merging (but decentralizing) the offices of the United Nations Ombudsman and those of the funds

53 *Report of the Redesign Panel on the United Nations system of administration of Justice*, A/61/205 (28 July 2006); for an early assessment of the formal system as proposed by the Panel see A. Reinisch / C. Knahr, "From the United Nations Administrative Tribunal to the United Nations Appeals Tribunal - Reform of the Administration of justice System with the United Nations", *Max Planck Yearbook of United Nations Law* 12 (2008), 446.

54 *Ibid.*, para. 66.

55 *Ibid.*, para. 73.

and programmes. In the formal part of the system, the advisory boards and committees were to be replaced with a professional, decentralized first-instance body for the formal adjudication of disputes that could take binding decisions, with a possibility for both sides to appeal to a second-instance court of appeals. For both areas, the Panel also recommended that staff be granted access to professional and decentralized legal representation in the form of a professional Office of Counsel. The new system should be open to all individuals performing work for the organization by way of personal service - staff in the formal sense as well as other persons performing personal service under other types of contract, including consultants and locally recruited personnel. For the administrative side of the new system, the creation of an Office of Administration of Justice was recommended.

3. The Secretary-General agrees - and puts a price tag on the reform

The Secretary-General, after consultations within the Secretariat and with his staff in the Staff-Management Coordination Committee (SMCC),[56] agreed that an entirely new, unified system was needed. To the surprise of many, he subscribed to most of the Panel's recommendations in their entirety.[57] The Secretary-General recalled that staff members had no legal recourse to national courts in respect of employment-related grievances. The Organization therefore needed to offer them recourse in the form of a system that fully complied with international human rights standards. With respect to its own staff the United Nations, as an organization involved in setting norms and advocating the rule of law, had to practice what it preached.[58] The internal justice system based on peer review by volunteer staff members had been designed at a time when the United Nations had only a few thousand staff, mostly at Headquarters. With over 30,000 Secretariat staff members - half of them performing functions outside headquarters locations - and more than 25,000 working for the funds and programmes, the Organization now needed to adapt to changing requirements and offer a justice system that accorded effective access to all staff, wherever located. A justice system was only as good as the respect and confidence it commanded, and in this sense - noted the Secretary-General - "the existing system fails".

On the whole, the Secretary-General supported all of the structural changes proposed by the Redesign Panel on both the informal and the formal sides. The Secretary-General also consented to enlarging the system beyond United Nations staff in the strict sense and to covering also all other persons who performed work by way of their own personal service for the Organization (but excluding military or police personnel in peacekeeping missions, volunteers, interns and gratis personnel), irrespective of the type of contract they had. Acknowledging that the full impact of this extension was difficult to predict, the Secretary-General estimated the costs[59] for the next biennial budget to be roughly 37 million US dollars, or about 25 million US dollars in additional resources.

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56 See report of the SMCC, doc. SMCC/SS-VII/2007 of 6 February 2007.
57 *Note by the Secretary-General on the Report of the Redesign Panel*, A/61/758 (23 February 2007).
58 *Ibid.*, para. 5.
59 *Ibid.*, Chapter VII: financial implications.

C. Negotiating the new system in the General Assembly 2007 - 2009

1. Setting the parameters for change

The reaction of Member States in the General Assembly was surprisingly quick and consensual. Within two months after having received the reply of the Secretary-General to the Redesign Panel's report, the General Assembly adopted a large number of decisions that would constitute the parameters and workplan for all future negotiations on the new system.

In its resolution 61/261 of 4 April 2007[60], the General Assembly repeated its assessment that the current system of administration of justice at the United Nations was "slow, cumbersome, ineffective and lacking in professionalism". The Assembly further:

- decided "to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike";
- recognized informal resolution of conflict as a crucial element of the new system, and emphasized that "all possible use should be made of the informal system in order to avoid unnecessary litigation";
- decided to create a "single integrated and decentralized Office of the Ombudsman for the secretariat and the funds and programmes" and affirmed mediation as an "important component of an effective and efficient informal system" that should be available to any party to a conflict at any time before the final judgement of the matter;
- agreed that the future formal system - which was to replace the existing advisory bodies - should be two-tiered, comprising a decentralized first instance Dispute Tribunal and an appellate instance, the Appeals Tribunal;
- acknowledged the need for a process of efficient, effective and impartial process of management evaluation; and
- agreed to establish a new Office of the Administration of Justice to ensure the overall coordination of the new system.

The deadline given to the Secretary-General and to the Sixth and the Fifth Committees to implement the new system was short: everything was to be in place "not later than January 2009" - by United Nations standards nothing less than a Herculean task for the Secretariat and the negotiators in the General Assembly itself.

2. Seizing the day: The General Assembly sets up the new institutional framework

But at that precious moment in 2007-2008, the political will was there in the General Assembly

60 *Cp.* Annex IIa.

to undertake a major piece of management reform and to take the rule of law within the Organization to a new level. Already in its following resolution, only eight months later, the General Assembly - based on a report of the Secretary-General,[61] which was considered in the Sixth[62] and the Fifth Committees[63] - was able to take all of the basic decisions on the future organisational structure of the new system in a single resolution. In its resolution 62/228 of 22 December 2007, it established in one go:

- the Office of Administration of Justice (para. 10);
- the Office of Staff Legal Assistance, to replace the Panel of Counsel (para. 13);
- the Office of the Ombudsman in its new single, integrated and decentralized form, with branch offices in Bangkok, Geneva, Vienna, Nairobi and Santiago (paras. 25-26);
- the Mediation Division, as of 1 January 2008 (para. 30);
- a five-member Internal Justice Council, by 1 March 2008 (para. 36);
- a two-tier formal system of administration of justice comprising a first instance United Nations Dispute Tribunal (to be located in New York, Geneva and Nairobi and composed of, initially,[64] three full-time judges and two half-time judges) and an appellate instance called United Nations Appeals Tribunal, composed of seven members (para. 39-44);
- a Registry for the Dispute Tribunal and a Registry for the Appeals Tribunal (para. 46); and
- an independent Management Evaluation Unit (para. 52).

With these basic decisions almost all proposals coming from the Redesign Panel had been realized. In one key aspect which keeps haunting the system until today, however, the General Assembly decided not to follow the Panel's wisdom: by limiting access to the new system - for the time being[65] and in fact mostly for financial reasons - to "staff" in the proper sense, the Assembly deliberately excluded from the new system huge numbers of people working for the United Nations under other types of contracts, including consultants and contractors. This step almost halved the number of potential claimants that the Secretary-General had added up in his initial report, paving the way for the consent of a number of States who were initially extremely sceptical of the entire reform due to the potentially high costs.

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61 *Report of the Secretary-General*, A/62/294 (23 August 2007).

62 *Letter from the President of the General Assembly*, A/62/C.5/11 (20 November 2007).

63 *Report of the Fifth Committee*, A/62/597 (28 December 2007).

64 In the Sixth Committee, many delegations had supported the proposal of the Redesign Panel and the Secretary-General to have nine judges, working in panels of three or singly, but the Fifth Committee decided to start the new system for a trial phase with a single judge for each location of the Dispute Tribunal, plus two part-time judges, as well as *ad litem* judges to assist with the backlog of old cases.

65 The question of how to give the different categories of non-staff personnel (for the different sorts of non-staff and the means of redress available to them, see *Report of the Secretary-General*, A/62/782 (3 April 2008), pp. 3-13) "the most appropriate types of recourse" while ensuring "that effective remedies are available to all categories" has been discussed repeatedly in the Sixth and Fifth Committees, see GA res. 62/228, para. 8, GA res. 64/223, paras. 8-9, GA res. 65/251 para. 55, GA res. 66/237, paras. 38-40. A proposal to set up a special arbitration procedure for consultants and contractors (see *Report of the Secretary-General*, A/66/275, Annex II) that would replace the current arbitration under the UNCITRAL Rules (cf. *General Conditions of Contracts for the Services of Consultants and Individual Contractors*, ST/AI/1999/Amend.7, Annex) was finally shelved in 2012, when the GA decided to "remain seized of the matter" (GA res. 67/241 of 24 December, para. 51); for the Sixth Committee's views on the legal aspects of this issue, see *Letter from the President of the General Assembly*, A/C.5/67/9 (23 October 2012), Annex, pp. 2-3.

For the remaining details, the resolution requested the Secretary-General to come up with additional information and proposals, including draft statutes for the future Dispute and Appeals Tribunals.

3. Making the new Tribunals operational

The Secretary-General submitted full-fledged draft statutes for the two new Tribunals in March 2008.[66] After an intensive and extended period of negotiations in an Ad Hoc Committee on Administration of Justice, between April and July[67] of that year, and later in the Sixth Committee,[68] the General Assembly was able to adopt the Statutes of the Tribunals in its resolution 63/253 of 24 December 2008. In the same resolution, the Assembly decided that the Dispute and Appeals Tribunals were to be operational as of 1 July 2009; the JABs, JDCs and the disciplinary committees of the funds and programmes were abolished as of the same date, with their remaining pending cases to be transferred to the Dispute Tribunal. The Administrative Tribunal was abolished on 31 December 2009, and three so-called ad litem judges were attached to the Dispute Tribunal to help reduce the backlog of pending cases. In the same resolution, the Assembly requested the Secretary-General to submit, as soon as possible, the rules of procedure of the Tribunals (which, under Articles 7 and 6 of their respective Statutes, were to be established by the Tribunals themselves and to be submitted to the Assembly "for approval"). The Assembly also decided to undertake a review of the Statutes "in the light of experience gained, including on the overall functioning of the Tribunals", and of the question of the number of judges and the panels of the Dispute Tribunal at its sixty-fifth session.[69]

The Rules of Procedure of the Dispute and Appeals Tribunals[70] were approved by the General Assembly in its resolution 64/119 of 16 December 2009. The legal framework for the work of the judges was completed by the adoption of a code of conduct for the judges in the following year, by resolution 66/106 of 9 December 2011, and a mechanism for addressing possible misconduct of judges was added by resolution 67/241 of 24 December 2012.

4. Deciding without prejudicing: A note on procedure at the General Assembly

To be able to fully appreciate the complexity of the negotiations on this major piece of management reform, one has to understand the structure of the General Assembly and the procedural interplay between the Sixth and Fifth Committees, as well as the ACABQ. Personnel, management and administrative decisions as well as the allocation of the budget, fall within the exclusive purview of the Fifth Committee, which relies heavily on input from

66 *Report of the Secretary-General*, A/62/782 (3 April 2008), Annexes I and II.

67 *Report of the Ad Hoc Committee on the Administration of the Justice at the United Nations*, GAOR 63rd session, Suppl. 55 and Add.1.

68 For the result of the negotiations in the Sixth Committee, see *Letter from the President of the General Assembly*, A/C.5/63/9 (27 October 2008), Enclosures 1 and 2.

69 The review was postponed to the 66th session of the General Assembly in res. 65/251, para. 46. When examining the 2011 report of the Secretary-General (A/66/275), which contained a large number of proposals to change the Statutes, the Sixth Committee, however, found little to criticize and rejected most of the proposed amendments, see *Letter from the Preseident of the General Assembly*, A/C.5/66/9, p. 3-4.

70 GA res. 64/119 of 16 December 2009, Annexes I and II.

the ACABQ in the performance of its tasks. Under Rule 153 of its Rules of Procedure, the General Assembly can take no decision that has budgetary implications without the Fifth Committee's involvement. When the report of the Redesign Panel came out, it was clear that, given the breadth of the its proposals, the Fifth Committee would have to debate and decide almost all of these matters. On the other hand, however, the Panel's proposal to establish a new formal two-tiered system for the judicial review of grievances arising out of the contractual relationship between a staff member and the Organization quite clearly had a legal dimension, so here the Sixth (Legal) Committee seemed to be equally competent. And even proposals of a seemingly "administrative" character could reveal legal connotations if scrutinized under a rule of law perspective. The General Assembly therefore decided very early to assign the item "Administration of justice at the United Nations" to both the Fifth and the Sixth Committees, with the latter having to "consider the legal aspects" of the item, but "without prejudice to the role of the Fifth Committee as the Main Committee entrusted with the responsibilities for administrative and budgetary matters".[71]

A number of delegations interpreted this division of labour as a complete prohibition for the Sixth Committee in this process to "decide" anything at all that had the slightest bearing on the competence of the Fifth Committee, i.e. on the budget. They wanted to preserve their complete discretion in the Fifth Committee - with its particular working methods and balance of power and with the traditional role of the ACABQ in its work - to be able to revisit everything that came out of the Sixth Committee, especially those parts that would cost money. However, since in terms of procedure both Committees are equal and submit their draft proposals to the Plenary of the General Assembly for decision, and in view of the fact that the Sixth Committee usually meets earlier and concludes its work before the ACABQ has issued its comments and the Fifth Committee has even begun to consider the item, the lawyers in the Sixth Committee faced a dilemma: how could they consider, and express their views on, the "legal aspects" in a non-binding way that would be decisive enough, but not "prejudice" the role of the Fifth Committee? In other words, how could they spell out what was legally necessary, while leaving it to the budget people to take the final decision? The normal way of decision-making in the form of a (draft) resolution was ruled out for all matters not exclusively "legal",[72] as the Fifth Committee - not being superior to the Sixth Committee - could not "review", and eventually amend, a draft resolution coming from the Sixth Committee, and vice versa. If sending incompatible draft resolutions from two main Committees to the Plenary was to be avoided, a procedure had to be invented that would circumvent the strictures of the normal rules of decision-making.

The way out was finally found in a system of informalization of both the negotiations in the Sixth Committee and their outcome. For its work from the 62nd to the 67th sessions of the General Assembly, the Sixth Committee would set up a Working Group, which identified and considered the issues of a purely or predominantly legal character in the various reports received from the Secretary-General. Negotiations mostly took place in informal consultations, chaired by a "Coordinator". The Coordinator then reported back to the Working Group - orally and in his personal capacity - on the content of the informal consultations and the views expressed by delegations. Based on this oral report, the Chairman of the Working Group

71 GA res. 61/261, para. 35.

72 The Sixth Committee did indeed submit a couple of draft decisions to the Plenary, but only on procedural issues or questions of purely legal concern.

would then consult with all delegations to prepare the text of a letter of the Chairman of the Sixth Committee, which would constitute the outcome of the work of the Sixth Committee. The letter of the Chairman of the Sixth Committee would be sent to the President of the General Assembly, who in turn would bring it "to the attention of the Chairman of the Fifth Committee" and have it published as an official Fifth Committee document in all United Nations languages.[73] Such a letter "to the attention of the Chairman" was by definition non-binding and non-committal for Member States in the Fifth Committee as such, but it served the purpose of clearly expressing the (legal) views, if any, of the Sixth Committee in an official document. It would then be up to the delegates in the Fifth Committee to take note of, and draw their conclusions from, the input of their Sixth Committee colleagues when drafting the respective resolutions on administration of justice.

The question of deliberate "non-bindingness" took on an even more delicate form when the General Assembly decided, in 2008, to set up an Ad Hoc Committee on the Administration of Justice at the United Nations to deal with the draft Statutes for the Dispute and Appeals Tribunals. The Ad Hoc Committee being a Committee of the General Assembly as such, it was not subordinate to either the Sixth or the Fifth Committees, and consequently did not report formally to any of them. Crafting the Statutes of two Tribunals, describing their competences and the powers of the judges, setting out the formal conditions for the filing of a complaint and designing the procedures to be followed was clearly "legal" work, but delegations staffed by the Sixth Committee lawyers were of course acutely aware of the prerogatives of the Fifth Committee. Here again, the question was how the Ad Hoc Committee could negotiate two sets of draft provisions, which in the end contained 25 articles, comprising 179 paragraphs and subparagraphs of finely-tuned legal text, without ever really "adopting" any of them, even though "agreement" had indeed been reached after several readings.

The approach taken by the Ad Hoc Committee was again one of maximum "informalization". During its first session from 10 to 24 April 2008, the Ad Hoc Committee considered the draft Statutes in informal consultations coordinated by one of its Vice-Chairmen. The Vice-Chairman, in his capacity of Coordinator of the informal consultations, produced, with the help of the Secretariat and for each reading, a non-paper listing all proposals made by delegations and by himself to amend the Secretary-General's proposed draft Statutes, as well as reactions, comments and questions raised by Member States. At the end of the consultations, the Vice-Chairman reported orally to the Ad Hoc Committee, which then decided to reproduce the latest version of his non-paper in two annexes to its report, under the title "Coordinator's summary of the preliminary observations in the informal consultations on the draft statute".[74] Whereas this title was meant to express the largest amount of informality and non-bindingness imaginable, the content of the paper was actually as legally precise and all-encompassing as possible. By annexing the "summary" to the Ad Hoc Committee's report the result of ten days of negotiations was carefully reflected in an official United Nations document and was published in all six

73 In the form of a document of the Fifth Committee, see A/C.5/61/21 (26 March 2007), A/C.5/62/11 (2007), A/C.5/63/9 (27 October 2008), A/C.5/64/3 (22 October 2009), A/C.5/65/9 (2010), A/C.5/66/9 (4 November 2011) A/C.5/67/9 (23 October 2012), A/C.5/68/11 (11 November 2013).

74 *Report of the Ad Hoc Committee on the Administration of the Justice at the United Nations*, GAOR 63rd session, Suppl. 55, p. 7 *et seq*. See also the "explanation of terms" as used by the coordinator that precedes the summary.

official languages. The same method was followed when the Ad Hoc Committee decided to hold another three weeks of informal intersessional consultations between May and July 2008, again coordinated by the Vice-Chairman. On 5 August 2008, the Ad Hoc Committee met briefly to hear the oral report of the Vice-Chairman, in his capacity as Coordinator of the informal intersessional consultations, and a new "Summary of the preliminary observations" was annexed to the report.[75] So when the Sixth Committee met again in October 2008, its Working Group could pick up the annex, proceed with its own informal consultations, and feed its final word on the draft Statutes to the Fifth Committee via the usual letter.[76] Following the work of the Fifth Committee on the item, the General Assembly adopted the Statutes of both Tribunals on 24 December 2008 - less than ten months after the Secretary-General had submitted his first draft.

During the process that stretched over several years (and is still not quite finished) a number of issues were kicked back and forth between the Committees several times for repeated rounds of consultations, especially where the Committees required more information from the Secretariat. As a rule, the Fifth Committee more or less followed the advice from the Sixth Committee, but there were also some striking cases where the Fifth Committee chose to follow a different path. These nuances notwithstanding, what counts in the end for anyone wishing to interpret the parameters of the new system are the resolutions of the General Assembly (adopted in plenary) as the expression of the collective will of Member States.

D. Into the future: Strengthening and monitoring a still evolving system

In its most recent resolutions 67/241 of 24 December 2012 and 68/254 of 27 December 2013, the General Assembly reaffirmed that the new system was meant to be "independent, transparent, professionalized, adequately resourced and decentralized" and consistent with the relevant rules of international law and the rule of law and due process, so as to "ensure respect for the rights and obligations of staff members". It noted "with appreciation" the achievements produced since the inception of the new system regarding the disposal of the backlog as well as addressing new cases.

The General Assembly also pointed out, however, that the new system of administration of justice was still "evolving" and needed careful monitoring in its implementation. It was thus only fitting that the Assembly invited "all who are involved in the implementation and functioning of the system" - including staff members and managers - "to contribute to strengthening" it with the aim of ensuring that the system have a positive impact on staff-management relations and improve the general performance of staff and managers alike. For the formal system of administration of justice, the General Assembly took up a suggestion by the ACABQ to conduct an "interim independent assessment", in a cost-efficient manner by independent experts. That assessment shall "examine the system of administration of justice in all its aspects, with particular attention to the formal system and its relation with

75 *Report of the Ad Hoc Committee on the Administration of the Justice at the United Nations*, GAOR 63rd session, Suppl. 55, Add. 1, pp. 3-32.

76 See UN Doc. A/C.5/63/9.

the informal system."[77] The Secretary-General was invited to submit a revised[78] proposal for consideration by the General Assembly at its 69th session.

On the question of improving the mechanisms for redress available to non-staff personnel,[79] the GA has decided not to pursue proposals such as an expedited arbitration procedure[80] anymore, but to "remain seized" of the issue.[81] For the time being, non-staff members, such as consultants or contractors, may, however, submit a complaint to the Office of the Ombudsman who will open a case where the issue raised also has an impact on staff members; the ACABQ has requested that information on the numbers and nature of such cases from non-staff personnel shall be set out in the annual report of the Office of the Ombudsman.[82]

77 GA res. 68/254, para. 12.

78 For a first outline of such an assessment see *Report of the Secretary-General*, A/68/346; for the views of the Sixth Committee, see *Letter from the President of the General Assembly*, A/C.5/68/11 (11 November 2013).

79 For the different categories of non-staff personnel and the means of redress currently available to them, see *Report of the Secretary-General*, A/62/782 (3 April 2008), pp. 3-13.

80 See note 47 above.

81 GA res. 67/241, para. 51. For the views of the Sixth Committee, see *Letter dated 23 October 2012 to the President of the General Assembly*, A/C.5/67/9, p. 3.

82 *Report of the ACABQ*, A/68/530, para. 44.

Chapter II
Institutions of the system of administration of justice

Santiago Villalpando *

The General Assembly's decision to establish "a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice"[1] required an overall institutional reform. The entry into force of the new system was therefore accompanied by the abolishment of several familiar bodies and the establishment of new ones. The result is an innovative structure, which aims at streamlining processes, decentralizing activities in various duty stations, putting mechanisms into place to ensure the fair and transparent delivery of justice, and offering several options to staff members to settle their disputes with the Organization. This complex edifice, however, may well become a labyrinth, if one is not familiar with the various actors involved, their structure and their role. The present Chapter will describe the institutions of the system, which are fundamental to understand how the administration of justice at the United Nations works.

The new system of administration of justice lies on the articulation between two main branches: (A) the informal system; and (B) the formal system. This basic structure was already present in the previous system, but has been further elaborated and enhanced in the new one.

A. The informal system

One of the key convictions that inspire the reform is that "informal resolution of conflict is a crucial element of the system of administration of justice" and that "all possible use should be made of the informal system in order to avoid unnecessary litigation".[2] The new system therefore puts a lot of emphasis on the different means of informal dispute resolution, and reinforces the structure and mandate of the offices active in this field. While different

* The views expressed in this Chapter are solely those of the author and do not necessarily reflect those of the United Nations.

1 GA res. 61/261 of 4 April 2007, para. 4.
2 GA Res. 61/261, para. 11.

actors may intervene in informal conflict resolution (1.), the Office of the United Nations Ombudsman and Mediation Services is placed at the centre of the informal system (2.).

1. The actors of informal conflict resolution

Informal conflict resolution entails processes that involve a myriad of different actors in the workplace. All the following stakeholders may therefore have a role to play in this area.

First, all staff members of the Organization, regardless of their grade, function and duty station, may have access to ombudsman and mediation services. The three main constituencies of the Office of the Ombudsman are:

a. the staff of the United Nations Secretariat, including those in field operations;
b. the staff of UNHCR; and
c. the staff of the funds and programmes (UNDP, UNFPA, UNICEF, UNOPS and UN-Women).[3]

All these categories of staff members, therefore, may have access to informal conflict resolution, and may participate in mediation processes.

The situation is somehow different for non-staff personnel. The general question as to whether to permit individual contractors and consultants to have access to informal conflict resolution services is currently under consideration (in connection with the issue of establishing expedited arbitration procedures for these categories of individuals), but has not been decided.[4] At present - building on still existing terms of reference - informal conflict resolution mechanisms are available to non-staff personnel of UNHCR and the funds and programmes; where feasible, the Office of the Ombudsman provides limited services to non-staff personnel of the Secretariat.[5]

While some conflicts are purely among staff members (sometimes at the same level, sometimes in a hierarchical relationship), others may involve the role of management. Whenever the latter issues are involved, a wide array of offices and individuals representing the Organization may be called to participate in informal conflict resolution, including the direct manager, higher management authorities, executive offices or offices of human resources. The importance of participation of management in this area has been emphasized by the General Assembly, which has occasionally pointed out that "the delayed response of departmental heads to the grievances of and issues raised by staff has an impact in respect of increasing the number of cases before the formal system". The Assembly has also underlined the importance of ensuring that "management responds to requests from the Ombudsman and Mediation Services in a timely manner".[6] Informal resolution

3 *Activities of the Office of the United Nations Ombudsman and Mediation Services, Report of the Secretary-General*, A/67/172 (24 July 2012), para. 8.
4 See GA res. 66/237 of 24 December 2011, para. 38 (b). In GA Res. 68/254, para. 3, the Assembly requested that information be provided to it, inter alia, on the number and nature of cases from non-staff personnel.
5 A/67/172, para. 59.
6 GA res. 65/251 of 24 December 2010, paras. 14 and 15. See also GA res. 67/241 of 24 December 2012, para. 23.

implies both engaging the relevant stakeholders in specific cases to reach a settlement and, in more general terms, building stable partnerships with several offices (such as human resources and personnel departments, disciplinary units, medical divisions, legal departments, management evaluation units), including with the highest authorities in the Secretariat, UNHCR and the funds and programmes (the Secretary-General and his direct advisors, the High Commissioner for Refugees and the executive directors of the funds and programmes).[7]

The Office also entertains regular relations with other offices active in conflict resolution or prevention. In addition to the entities that are directly involved in the system of administration of justice (such as, the Office of Administration of Justice, including the Office of Staff Legal Assistance (OSLA), and the Tribunals), these may include ethics offices, staff counsellors, peer support volunteers, focal points for women, respectful workplace advisors, etc.

Associations representing staff members may also have a role to play in the informal system. First of all, on occasion, conflicts may arise in which a staff association may be involved in a more or less direct manner. More generally, however, staff associations may be consulted by ombudsman services in the process of identifying and addressing systemic issues affecting the system. Already in the course of the establishment of the new system, staff associations were included among the various stakeholders consulted by the Redesign Panel, and they expressed their views on the reform to Member States, both through the Staff-Management Consultative Committee and other channels.

In addition, third parties may also be involved in informal conflict resolution. For example, while mediation does not generally require the presence of legal counsel, a party may choose to include in discussions a legal representative, a colleague or an attorney.[8] In particular, OSLA (which will be described hereinafter) may intervene already at this stage.

2. The Office of the United Nations Ombudsman and Mediation Services

The cornerstone of the institutional framework for informal conflict resolution is the creation of a "single integrated and decentralized" Office of the United Nations Ombudsman and Mediation Services (UNOMS), which, in its current form, started to operate on 1 January 2008.[9] This integration aims at achieving very concrete objectives: at the time of the establishment of the new system, the General Assembly urged the Office of the United Nations Ombudsman, the Office of the Joint Ombudsperson (UNDP/UNFPA/UNICEF/UNOPS) and the Office of the Mediator of the Office of United Nations High Commissioner for Refugees "to strengthen the ongoing efforts for coordination and harmonization of standards, operating guidelines, reporting categories and databases".[10]

7 See A/67/172, paras. 89-94.
8 See Office of the United Nations Ombudsman and Mediation Services, *Mediation Principles and Guidelines* (7 July 2010), para. 7.
9 See GA res. 61/261, para. 12; GA res. 62/228 (22 December 2007), para. 25.
10 See GA res. 62/228, para. 25.

The history of informal conflict resolution, however, predates the redesign of the system of administration of justice. Already in 1993, UNHCR appointed its first Mediator (this position would be renamed "Ombudsman" in 2009) and, in June 2002, the executive heads of UNDP, UNFPA and UNOPS established a common Office of the Joint Ombudsperson. In October 2002, the Office of the Ombudsman was established in the executive office of the Secretary-General, and the first United Nations Ombudsman was soon appointed.

UNOMS is headed by the United Nations Ombudsman and comprises dedicated ombudsmen for each of its three constituencies (the Secretariat, UNHCR and the funds and programmes), as established and administered by their respective entities. UNOMS also has a Mediation Division, which - as it name clearly indicates - is specialized in providing mediation services for the United Nations Secretariat, funds and programmes. While its headquarters are in New York, the Office has seven regional branches in Bangkok, Entebbe, Geneva, Kinshasa, Nairobi, Santiago and Vienna, each of which is headed by a regional ombudsman; the Ombudsmen for the funds and programmes are based in New York, and the Ombudsperson for UNHCR is in Geneva (where UNHCR's headquarters are located). The United Nations Ombudsman, who is appointed by the Secretary-General, is responsible for the oversight of the entire Office and the coordination among its different pillars.

Although the terms of reference of UNOMS have not yet been finalized (they shall be promulgated by the Secretary-General, following the conclusion of extensive consultations between the Secretariat, the funds and programmes and UNHCR),[11] many of its principles and working methods derive from the constituent instruments of the new system and the Office's practice. UNOMS mainly has a double role of (a) informal dispute resolution, and (b) independent monitoring on cross-cutting issues regarding managerial practices and employment relations. It assists in conflict resolution through "informal and collaborative approaches",[12] which include - but are not limited to - mediation (qualified by the General Assembly as "an important component of an effective and efficient informal system of administration of justice"[13]). The Ombudsman has also received the mandate "to report on broad systemic issues that he or she identifies, as well as those that are brought to his or her attention",[14] in order "to promote greater harmony in the workplace".[15] The Secretary-General has been requested by the General Assembly to consider specific measures that should be taken to address systemic issues reported by the Ombudsman in his or her annual reports.[16]

B. The formal system

The formal system of administration of justice at the United Nations prior to the reform was based on an administrative law model, under which the Secretary-General would make final decisions on employment-related issues following peer review; these decisions could be challenged

11 See A/67/172, paras. 8-10. See also: GA Res. 68/254, para. 24.
12 *Activities of the Office of the United Nations Ombudsman and Mediation Services, Report of the Secretary-General*, A/64/314 (20 August 2009), para. 7.
13 GA res. 61/261, para. 15.
14 GA res. 61/261, para. 18.
15 GA res. 62/228, para. 31. See also: GA res. 64/233 of 22 December 2009, para. 11.
16 GA res. 62/228, para. 32; GA res. 63/253 of 24 December 2008, para. 25.

before a single judicial body for the entire system, the United Nations Administrative Tribunal. As described in Chapter I, very early in the process, following the recommendations of the Redesign Panel, the General Assembly agreed to an overhaul of the system, with the establishment of a two-tiered judicial mechanism (including a first instance and an appellate instance), rendering binding decisions and ordering appropriate remedies.[17] This was a major change, which required, in turn, putting into place an institutional structure to support the formal system. The main bodies that are involved in the current formal system are:

1. the Internal Justice Council;
2. the Office of Administration of Justice;
3. the Management Evaluation Unit in the Department of Management;
4. two new judicial bodies, namely the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;
5. a number of entities appearing for the parties before the tribunals; and
6. other institutions having access to the system under special conditions.

1. The Internal Justice Council

In its report, the Redesign Panel had made a number of recommendations aimed at guaranteeing the independence and transparency of the formal system, which included the establishment of an internal justice council responsible "for monitoring the formal justice system and also for compiling a list of... persons eligible to be appointed to each judicial position".[18] This proposal was taken up by the General Assembly, with the conviction that "the establishment of an internal justice council can help to ensure independence, professionalism and accountability in the system of administration of justice".[19]

It was decided, therefore, that, by 1 March 2008, a five-member Internal Justice Council be established, consisting of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and chaired by a distinguished jurist chosen by consensus by the four other members.[20] The first members of the Council were appointed between March and May 2008 for a term of four years, which was extended twice for short periods. In 2012, delays in the selection of new members led the General Assembly to express its concern, noting that "the lack of a functioning Council jeopardizes the control mechanisms of the formal part of the system of administration of justice".[21] By 2013, however, the Council had been fully reconstituted.

The tasks entrusted to the Council were originally described as follows:

"**a.** Liaise with the Office of Human Resources Management on issues related to the search for suitable candidates for the positions of judges, including by conducting interviews as necessary;

17 GA res. 61/261, para. 19.
18 *Report of the Redesign Panel on the United Nations system of administration of justice*, A/61/205 (28 July 2006), paras. 122-131, particularly para. 127.
19 GA *res.* 62/228, para. 35.
20 *Ibid.*, para. 36.
21 GA res. 67/241, para. 56.

b. Provide its views and recommendations to the General Assembly on two or three candidates for each vacancy in the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, with due regard to geographical distribution;
c. Draft a code of conduct for the judges, for consideration by the General Assembly;
d. Provide its views on the implementation of the system of administration of justice to the General Assembly".[22]

The Council is "assisted, as appropriate, by the Office of Administration of Justice", which provides secretariat support to the body.[23]

The tasks of the Internal Justice Council are, therefore, twofold.

First of all, the Council has a key role to play in the selection of the candidates for vacancies in the newly established tribunals, which includes taking leadership in the selection process and making recommendations to the General Assembly.[24] This vetting mechanism has the advantage of providing "expert and unbiased advice to the General Assembly on the merit of judicial candidates", and ensuring transparency in the selection process.[25] In practice, the Council oversees the publication of vacancy announcements, draws a short list of the candidates based on the review of their resumes, prepares written tests for the short listed applicants, conducts interviews with such applicants, and draws a final list of candidates, on which basis the Assembly will then proceed to the election. Up to 2014, the Council has conducted two recruitment exercises, in the course of which it received some 800 applications and tested around 70 candidates.[26] On the basis of the Council's recommendations, the General Assembly has elected the judges of the Appeals Tribunal, as well as the full-time, half-time and *ad litem* judges of the Dispute Tribunal.

Secondly, the Council has been assigned a number of functions aimed at monitoring the implementation of the new system. Initially, as described above, these functions were limited to drafting a code of conduct for the judges (see section 4(e) below) and providing its views on the implementation of the system.

The Council has provided its views on the implementation of the system in reports submitted to the General Assembly on an annual basis, since 2010.[27] In order to execute

22 GA res. 62/228, para. 37.
23 *Ibid.*, para. 38.
24 See also Art. 4, para. 2, UNDT Statute and Art. 3, para. 2, UNAT Statute, which provide that judges "shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228".
25 In the words of the Council itself in its 2012 report: see *Administration of justice at the United Nations, Report of the Internal Justice Council*, A/67/98 (18 June 2012), para. 8.
26 See A/67/98, para. 2. For a fuller account of the two recruitment exercises, see *Report of the Internal Justice Council*, A/63/489 (16 October 2008) and Add.1 (25 March 2009) and *Report of the Internal Justice Council*, A/66/664 (19 January 2012) and Add.1 (20 March 2012)). The Council has made available to the general public the question asked to candidates in one of the written examinations, which may be found at: http://www.un.org/en/oaj/unjs/pdf/examination-for-judges.pdf.
27 See A/65/304 (16 August 2010), A/66/158 (19 July 2011) and A/67/98 (18 June 2012).

this task, the Council consults, on a regular basis, the stakeholders of the system, including the judges, the Office of Administration of Justice (the Executive Director, the registry teams, OSLA), management and its lawyers (both in the Secretariat and in funds and programmes), staff associations, the Ombudsman and his office, the Ethics Office and staff members. The Council has reported on the functioning of the Tribunals, the Office of Administration of Justice, including OSLA, the relationship between the formal and informal systems, the Management Evaluation Unit, and disciplinary matters. It has occasionally made recommendations, for example, on the need to appoint additional judges, the advisability of holding sessions and meetings of the Tribunals on a regular basis, the status and conditions of service of the judges, ways of ensuring adequate support to the Tribunals, the opportunity of adopting a code of conduct for legal representatives, means to guarantee the independence of the Office of Administration of Justice, the reinforcement of staff legal assistance, the reform of disciplinary procedures, the review of the statutes of the Tribunals, the stipulated qualifications of the judges of the Appeals Tribunal, as well as logistical issues related to the system (such as recording of proceedings, courtrooms, office space, funding, travel, human resources, etc.).

Furthermore, in the course of the years, the General Assembly has bestowed upon the Council additional tasks. In 2010, the Assembly encouraged the Council "to continue to provide its views on the implementation of the system of administration of justice and, if it deems it necessary, on how to enhance its contribution to the system".[28] In 2011, it entrusted the Council with including the views of both the Dispute and Appeals Tribunals in its annual reports.[29] On several occasions, the Assembly has also indicated that the Council should be consulted in the elaboration of proposals to improve the system, or has asked the Council directly to provide its views on specific issues.[30] In other words, while the Council does not constitute a full supreme judicial council as it is known in certain domestic judicial systems, the Assembly has confirmed its conviction that it constitutes a key element to monitor the implementation of the system.[31]

28 GA res. 65/251, para. 52.

29 GA res. 66/237, para. 45.

30 In 2011, the Assembly requested the Secretary-General to submit, in consultation with the Internal Justice Council and other relevant bodies, reports on different options for the representation of staff members before the internal Tribunals and on a possible code of conduct for legal representation (GA res. 66/237, respectively paras. 28 and 46). In 2012, the Assembly invited the Council to specify its recommendations, contained in that year's report, on the stipulated qualifications for the Appeals Tribunal judges and to provide its views on appropriate options against the filing of frivolous applications (GA res. 67/241); it also invited, once again, the Secretary-General to submit reports, in consultation inter alia with the Council, on a code of conduct for legal representatives who are external individuals and not staff members, and the financing for the Office of Staff Legal Assistance (*ibid.*, respectively paras. 44 and 48).

31 In GA res. 68/254 of 27 December 2013, the General Assembly stressed that the Council "can help to ensure independence, professionalism and accountability in the system of administration of justice", including by reporting on the views of the judges of the Tribunals in its reports (para. 39). It should be noted, however, that, in the same resolution, the Assembly requested the Secretary-General to submit for consideration in 2014 a revised proposal for conducting an interim independent assessment of the system of administration of justice, to be carried out in a cost-efficient manner by independent experts, including experts familiar with internal labour dispute mechanisms, without referring to the Council (para. 11).

2. The Office of Administration of Justice

The Redesign Panel had pointed out that, for the system of justice to have institutional independence, "it is essential that it have operational and budgetary autonomy" and, for this purpose, had recommended the establishment of an Office of Administration of Justice (OAJ).[32] The decision to create such an office was one of the first steps accomplished by the General Assembly, already in 2007, and was instrumental to the implementation of the new system.[33] In subsequent years, the Assembly has noted with appreciation "the important role" of the Office "in maintaining the independence of the formal system".[34]

Under its terms of reference, the Office is "an independent office responsible for the overall coordination of the formal system of administration of justice, and for contributing to its functioning in a fair, transparent and efficient manner". It "provides substantive, technical and administrative support to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal through their Registries, assists staff members and their representatives in pursuing claims and appeals through the Office of Staff Legal Assistance, and provides assistance, as appropriate, to the Internal Justice Council".[35]

The Office comprises: the Office of the Executive Director; the Office of Staff Legal Assistance; as well as the Registries of the Appeals and the Dispute Tribunals.

(a) The Executive Director and her Office

As the head of OAJ, the Executive Director is responsible for the management and administration of the Office, and for ensuring efficiency, transparency and accountability in its work. The Executive Director is also responsible for ensuring the provision of assistance to the Internal Justice Council, and advises the Secretary-General on systemic issues relating to the administration of internal justice, including by recommending changes to regulations, rules and other administrative issuances that would improve the functioning of the system. The Executive Director further prepares, in liaison with other offices, the reports of the Secretary-General to the General Assembly on the administration of justice, and represents, as necessary, the Secretary-General at meetings of intergovernmental bodies, international organizations and other entities on such issues. Finally, the Executive Director is responsible for disseminating information regarding the formal system. Without prejudice to the independence of OAJ, she reports to the Secretary-General regarding the work of the Office.[36]

32 A/61/205, para. 124.

33 See GA res. 62/228, paras. 10 and 11. However, in 2009, the General Assembly expressed its regret for the delays in the filling of posts established by resolution 62/228, and requested the Secretary-General to fill, in particular, the post of Executive Director of the Office of Administration of Justice as a matter of priority (GA res. 63/253, para. 6).

34 GA res. 65/251, para. 32.

35 *Organization and terms of reference of the Office of Administration of Justice, Secretary-General's bulletin*, ST/SGB/2010/3 (7 April 2010), section 2.1.

36 ST/SGB/2010/3, section 3.

Under the supervision of the Executive Director, OAJ issues periodic reports on its activities, including statistical data on the work of the Tribunals and the Office of Staff Legal Assistance, and substantive information on the judicial case law. The Executive Director has represented the Secretary-General in most of the meetings of the Fifth and Sixth Committees of the General Assembly on the item "Administration of justice at the United Nations" in the past years. The Office has also engaged in various dissemination activities, including the publication of a handbook on the new system (*A Guide to Resolving Disputes*) distributed to staff in the Organization in all official languages, the launch of a website, and several training sessions with various stakeholders. An important milestone was the implementation, in 2011, of a web-based court case management system (CCMS),[37] which allows staff members to file their submissions to the Tribunals ("eFiling") and to monitor their cases electronically, regardless of their geographical location.

(b) The Principal Registrar and the Registries

The Registries provide substantive, technical and administrative support to the Tribunals.

A particularity of the system is the position of the Principal Registrar: while not foreseen in the statutes of the Tribunals, this position was established by the General Assembly for the purpose of overseeing the activities of the Registries.[38] The Principal Registrar is part of the Office of the Executive Director. Her functions include coordinating the support provided to the judges in the adjudication of cases and the other tasks assigned to the Registries. She also advises the Executive Director on the resources allocated to the Tribunals, and on administrative, human resources and logistical matters related to the Registries.[39]

In addition, the Dispute Tribunal has three Registries, located in Geneva, Nairobi and New York, each headed by its own Registrar, and the Appeals Tribunal has one Registry, located in New York, also headed by a Registrar. Under the authority of the Principal Registrar, each Registrar provides support to the judges in the adjudication of cases, and maintains the Tribunal's registers and case law and jurisprudence databank. The Registrars also manage the resources allocated to their Registry and advise the Principal Registrar on administrative, human resources and logistical matters related to the Registry's operational activities.[40] In order to ensure the proper conduct of their work, the Registrars of the Dispute Tribunal and their staff are continuously in contact and hold regular meetings, by phone or teleconference, to address systemic issues of common interest.

(c) The Office of Staff Legal Assistance

As it name indicates, the Office of Staff Legal Assistance (OSLA) is in charge of the programme of legal assistance to staff members in the internal justice system. The Office is decentralized, and includes units not only in New York, Geneva and Nairobi (where the Dispute Tribunal is located), but also in Addis Ababa and Beirut. It is headed by a Chief who

37 See: http://www.un.org/en/oaj/unjs/efiling.shtml.
38 GA res. 62/228, para. 47.
39 ST/SGB/2010/3, section 5.
40 ST/SGB/2010/3, section 6.

is responsible for ensuring the effective and efficient discharge of the Office's mandate, and advise the Executive Director on matters related to OSLA's operational activities.[41] Despite its significant role and geographical decentralization, the Office remains quite small: in 2012, besides its Chief, it counted with eight lawyers worldwide.[42]

OAJ has established a Trust Fund, as a means to obtain additional financial resources to enhance OSLA's ability to provide legal assistance to staff members in all duty stations. Pledges can be made from Governments, intergovernmental and nongovernmental organizations, United Nations staff associations, private institutions and individuals, and other appropriate entities.[43] The establishment of this Trust Fund was welcomed by the General Assembly.[44] However, the Trust Fund did not receive sufficient resources to assist the Office, and its balance has been described, by OAJ, as "nominal".[45]

OSLA may provide legal assistance to staff members, free of charge, at different stages of the progression of their case through the system of administration of justice. The Office, therefore, may give not only summary legal advice (for example, as to whether it is legally advisable to pursue the matter), but will also offer advice and representation in informal dispute resolution (including, if applicable, in a mediation process), the management evaluation process, and before the Tribunals (both on first instance and on appeals) and other recourse bodies. Legal assistance in judicial proceedings, in other words, constitutes only the tip of the iceberg of OSLA's activities: as an illustration, of 1,103 cases received by the Office in 2012, only 122 concerned representation before the Dispute Tribunal and 32 representation before the Appeals Tribunal.[46] An important aspect of the Office's function is indeed that of providing objective legal advice so as to avoid that non-meritorious claims encumber the formal system.[47] Topics on which legal assistance is provided encompass all possible areas of dispute, including disciplinary matters, appointments and termination, selection and promotion, issues relating to discrimination and harassment, pension and other benefits, etc. In addition to offering individualized legal advice on specific issues, OSLA also participates in various outreach and training sessions, including in field missions.

The scope of OSLA's mandate has raised some debate, particularly with regard to the legal representation of staff members in judicial proceedings.

41 ST/SGB/2010/3, section 7.

42 A/67/265, para. 56. According to this report, in 2012, the staffing of the Office was as follows: in New York, the Chief, two legal officers and two administrative staff; in Addis Ababa, one legal officer; in Beirut, one legal officer; in Nairobi, one legal officer and a second legal officer on general temporary assistance funds from the support account for peacekeeping operations; in Geneva, one legal officer; and a legal officer on loan from UNHCR. OSLA offices away from New York had no administrative staff.

43 See *Terms of reference of the Trust Fund for United Nations Staff Legal Assistance*, at: http://www.un.org/en/oaj/legalassist/pdf/osla_trust_fund_tor.pdf.

44 GA res. 65/251, para. 39.

45 *Fifth activity report of the Office of Administration of Justice*, 1 July to 31 December 2011, para. 57 (at http://www.un.org/en/oaj/unjs/pdf/Fifth_activity_report_OAJ.pdf).

46 *Sixth activity report of the Office of Administration of Justice*, 1 January to 31 December 2012, para. 61 and Chart 5.

47 In GA res. 68/254, para. 18, the General Assembly recognized the importance of OSLA "as a filter in the system of administration of justice" and encouraged the Office "to continue to advise staff on the mertis of their cases, especially when giving summary or preventive legal advice".

OSLA's predecessor in the former system of administration of justice was the so-called Panel of Counsel. In 1956, the Secretary-General established a "panel of staff members... qualified to act as counsel for appellants before the Joint Appeals Board [(JAB)] and applicants before the Administrative Tribunal". It was then provided that, where a counsel serving on the panel agrees to act in a case, the Secretary-General shall authorize and direct such person to "provide the appellants [before the JAB] with appropriate legal assistance" and to "represent the applicant before the Tribunal". This mandate was repeatedly confirmed thereafter and the Panel continued to provide legal assistance, including representation, until the reform of the system.[48]

In its report, the Redesign Panel noted that the Panel of Counsel had "the responsibility to provide legal assistance and representation to United Nations staff members in proceedings within the internal justice system" and recommended the establishment of a professional office of Counsel, staffed by persons with legal qualifications recognized by courts of any Member State. In 2007, the General Assembly agreed that "legal assistance for staff should continue to be provided" and supported "the strengthening of a professional office of staff legal assistance".[49] Later in the same year, stressing that "professional legal assistance is critical for the effective and appropriate utilization of the available mechanism within the system of administration of justice", the Assembly reiterated "its support for the strengthening of professional legal assistance for staff in order for staff to continue to receive legal assistance, and decide[d] to establish the Office of Staff Legal Assistance to succeed to the Panel of Counsel". It also decided, however, to "revert to the issue of the mandate of the Office of Staff Legal Assistance" at its following session.[50]

Since then, the General Assembly has continued to discuss and has further specified OSLA's mandate. In 2008, it decided that "the role of professional legal staff in the Office of Staff Legal Assistance shall be to assist staff members and their volunteer representatives

48 ST/AI/142 of 31 January 1962, which revised these arrangements, stated that the purpose of the system of counsel was "to facilitate... representation as an important element in the United Nations administration of justice". This administrative instruction provided that the panel was "to act as counsel in cases before the Tribunal, the Appeals Board or the Disciplinary Committee". ST/AI/163/Rev.1 of 13 June 1967, which again reviewed such arrangements, provided that, "[t]o facilitate representation of staff by qualified and competent members of the Secretariat, the Secretary-General will from time to time, and in consultation with the Staff Council, designate a panel of counsel who will be available and willing to represent their colleagues before the Administrative Tribunal, the Joint Appeals Board and the Joint Disciplinary Committee". In 1982, information circular ST/IC/82/7, which described the existing provisions concerning the various recourse procedures available to staff members of the Secretariat, indicated that, "although the latest administrative instruction... concerning the Panel refers to assistance only in respect of the Administrative Tribunal and the Joint Advisory Board, and the Joint Disciplinary Committee, in practice members of the Panel may be available to assist staff members in other recourse or administrative proceedings in which such representation is permitted". ST/AI/351 of 25 May 1988, which superseded the previous administrative instruction on the matter, reiterated that "[t]he purpose of the system of counsel... is to facilitate the provision of advice or assistance and, where appropriate, representation of staff members by counsel as an important element in the administration of justice in the United Nations". According to this administrative instruction, the establishment of a panel of counsel was "[t]o facilitate the assistance and, where appropriate, representation of staff by suitably qualified persons, preferably with legal or administrative experience".

49 GA res. 61/261, para. 23.

50 GA res. 62/228, respectively paras. 12, 13 and 16.

in processing claims through the formal system of administration of justice".[51] In 2010 and 2011, while pursuing its debate on OSLA's mandate and functioning, it noted "the important role played by the Office of Staff Legal Assistance in providing legal assistance to staff members in an independent and impartial manner". It also noted "that the Office currently represents staff members in cases before the United Nations Dispute Tribunal in New York, Geneva and Nairobi".[52] In 2011, the Assembly decided that, pending further consideration of this issue, "the role of the Office of Staff Legal Assistance shall continue to be that of assisting staff members and their volunteer representatives in processing claims through the formal system of administration of justice, including representation".[53] OSLA's function of representation is today acknowledged by the Rules of Procedure of the Tribunals,[54] the Staff Rules,[55] as well as the terms of reference of the Office of Administration of Justice quoted above; in addition, OSLA has, in practice, ensured representation of staff members before the Tribunals.[56] OSLA's mandate, however, remains under consideration.[57]

A closely related issue is that of a staff-funded scheme to provide legal advice and support to staff. Already in 2005, the General Assembly had invited staff representatives to explore the possibility of establishing such a staff-funded scheme in the Organization.[58] In 2008, and again in 2010, it further invited the Secretary-General to make proposals in this regard.[59] The Secretary-General identified three possible mandatory models for a staff funding mechanism for OSLA and two possible models for a funding mechanism based on voluntary contributions. The identified mandatory schemes were: (i) a universal mandatory model, by which a fee would be assessed against each staff member; (ii) a mandatory assessment for users of services provided by OSLA; and (iii) a mandatory assessment against dues collected by staff unions and associations.[60]

51 GA res. 63/253, para. 12.

52 GA res. 65/251, para. 36; GA res. 66/237, para. 26.

53 GA res. 66/237, para. 27. At para. 28, the Assembly decided "to revert, at its sixty-seventh session [in 2012], to the issue of the mandate, scope and functioning of the Office of Staff Legal Assistance, and in this regard requests the Secretary-General to submit, after consultation with the Internal Justice Council and other relevant bodies, a comprehensive report proposing different options for the representation of staff members before the internal Tribunals,..., including a detailed proposal for a mandatory staff-funded mechanism".

54 See Art. 12 (Representation), para. 1, UNDT Rules: "A party may present his or her case to the Dispute Tribunal in person, or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction."; and Art. 13 (Representation), para. 1, UNAT Rules: "A party may present his or her case before the Appeals Tribunal in person or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction."

55 See Staff Rule 11.4(d) ("A staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes, or may obtain outside counsel at his or her expense, in the presentation of his or her case before the United Nations Dispute Tribunal") and Staff Rule 11.5(d) ("A staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes, or may obtain outside counsel at his or her expense in the presentation of his or her case before the United Nations Appeals Tribunal").

56 See the *Reports of the Secretary-General on the administration of justice at the United Nations*: A/65/373 (16 September 2010); A/66/275 (8 August 2011).

57 GA res. 67/241, para. 46.

58 GA res. 59/283 of 13 April 2005, para. 26. This request was reiterated in GA res. 61/261, para. 24, and GA res. 63/253, para. 14.

59 GA res. 63/253, para. 14; GA res. 65/251, para. 40.

60 See A/66/275, Annex I. The two possible voluntary mechanisms identified by the Secretary-General were: (i) a system under which a fixed percentage of a staff member's salary would be automatically deducted to support

After reviewing these various options, the General Assembly asked for a comprehensive report including a detailed proposal for a mandatory staff-funded scheme.[61] In his 2012 report on the administration of justice,[62] the Secretary-General examined in more detail the three options for a mandatory staff-funded scheme. The Secretary-General, however, also recommended that the General Assembly consider the question of whether a mandatory staff-funded scheme for OSLA would be consistent with Article 17, paragraph 2, of the Charter of the United Nations,[63] according to which the expenses of the Organization "shall be borne by the Members as apportioned by the General Assembly".

At its latest session in 2013, the Assembly decided that the funding of OLSA "shall be supplemented by a voluntary payroll deduction not exceeding 0.05 per cent of a staff member's monthly net base salary and that this mechanism shall be implemented on an experimental basis from 1 January 2014 to 31 December 2015", requesting the Secretary-General to report on its implementation.[64]

3. The Management Evaluation Unit in the Department of Management

The Redesign Panel had recommended the abolition of the old process of administrative review prior to action in the formal justice system, noting its inefficiency.[65] While supporting this recommendation, the Secretary-General proposed that this mechanism be replaced with "a properly resourced and strengthened management evaluation function, as a first step in the formal justice system". In his view, this evaluation would be "an essential management tool for executive heads to hold managers accountable for their decisions" and would "give management an early opportunity to review a contested decision, to determine whether mistakes have been made or whether irregularities have occurred and to rectify those mistakes or irregularities before a case proceeds to litigation".[66]

The General Assembly followed the Secretary-General's recommendation, emphasizing "the need to have in place a process for management evaluation that is efficient, effective and impartial", and reaffirming "the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted". It therefore decided to establish "an independent Management Evaluation Unit in the Office of the Under-Secretary-General for Management".[67]

Under its terms of reference, this Unit, headed by a Chief who is accountable to the Director of the Office of the Under-Secretary-General for Management, is tasked with conducting an impartial and objective evaluation of administrative decisions contested by

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the services provided by OSLA, but the staff member could elect to opt out of the system; or (ii) a system that would permit staff members to choose the option of contributing a fixed percentage of their salary.

61 GA res. 66/237, para. 28.

62 A/67/265 (7 August 2012), Annex II.

63 See *ibid.*, para. 199 (f) and Annex II, para. 60.

64 GA res. 68/254, para. 33.

65 A/61/205, paras. 87 and 158.

66 *Report of the Redesign Panel on the United Nations system of administration of justice, Note by the Secretary-General*, A/61/758 (23 February 2007), paras. 29-30.

67 GA res. 62/228, paras. 50-52.

staff members of the Secretariat to assess whether the decision was made in accordance with rules and regulations. The Unit also advises the Under-Secretary-General for Management on issues relating to the use of decision-making authority and managerial accountability in relation to the system of administration of justice.[68] In 2008, the mandate of the Management Evaluation Unit was extended, as a consequence of the Assembly's decision that "interns, type II gratis personnel and volunteers (other than United Nations Volunteers) shall have the possibility of requesting an appropriate management evaluation".[69] As for the Funds and Programmes, they carry out the management evaluation function through their own administrative structures.

The process of management evaluation is described in more detail in Chapter IV below.

4. The United Nations Dispute Tribunal and the United Nations Appeals Tribunal

The establishment of a two-tiered judicial system was the centrepiece of the recommendations made by the Redesign Panel to reform the administration of justice at the United Nations.

(a) The challenges of the old system

As already mentioned, under the prior system, the Secretary-General would make final decisions on appeals regarding employment-related issues following peer review. There were several advisory boards and committees for this purpose, the most important of which were the Joint Disciplinary Committees (JDCs) for disciplinary matters and the Joint Appeals Boards (JABs) for appeals against administrative decisions. These bodies were located in New York, Geneva, Vienna and Nairobi, and were composed of staff members appointed by the Secretary-General and elected by the staff. They were advisory in nature, in the sense that their function was limited to making a recommendation to the Secretary-General, who retained discretion on the final binding decision. This decision could be challenged before a single judicial body, the United Nations Administrative Tribunal, which had been established by the General Assembly as early as in 1950.[70] Judgments of the Administrative Tribunal were binding, final and without appeal (although, between 1955 and 1995, recourse against a Tribunal's judgment was possible before the International Court of Justice).[71]

68 *Organization of the Department of Management, Secretary-General's bulletin*, ST/SGB/2010/9 (6 December 2010), section 10.

69 GA res. 63/253, para. 7.

70 See GA res. 351 (IV) of 9 December 1949.

71 See GA res. 957 (X) of 8 November 1955, which added a provision (Article 11) to the UNAdT Statute, foreseeing the possibility of challenging the Tribunal's judgment on the ground that "the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice". In the course of the forty years in which the system was in place, the Court was requested to give an advisory opinion on review of judgments of the Tribunal only on three occasions. Noting that the procedure "has not proved to be a constructive or useful elements in the adjudication of staff disputes within the Organization", the General Assembly abolished it by GA res. 50/54 of 11 December 1995. A similar procedure still exists, however, for the review of judgments of the Administrative Tribunal of the International Labour Organization.

The Redesign Panel had highlighted several problems with this system, including difficulties in recruiting volunteers for the advisory panels, concerns regarding the independence of these panels, delays in the handling of cases, uneven quality of the JDC and JAB reports, and even inconsistency in the jurisprudence of the Administrative Tribunal.[72] Its original proposal was therefore to replace the JDCs and JABs with a new decentralized tribunal of first instance (the United Nations Dispute Tribunal), which would consist of three full-time judges located, respectively, in New York, Geneva and Nairobi, and two half-time judges, located respectively in Santiago and Bangkok. The Administrative Tribunal would remain in place, its jurisdiction being expanded to hear appeals of the first instance tribunal, and would be renamed "United Nations Appeals Tribunal".[73]

(b) The establishment of the Dispute and Appeals Tribunals

The new judicial system finally implemented by the General Assembly is directly inspired from this proposal, with some important differences. The Assembly indeed decided "to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal".[74] The decentralized Dispute Tribunal replaced the existing advisory bodies within the system,[75] and started to operate as of 1 July 2009.[76] The JABs, the JDCs and the disciplinary committees of the funds and programmes were abolished as of the same date;[77] all cases pending before them were transferred to the new Tribunal.[78] The Appeals Tribunal was established as a new body, which also started to operate as of 1 July 2009.[79] The Administrative Tribunal ceased to accept new cases as of 1 July 2009 and was abolished as of 31 December 2009;[80] the cases pending before it were also transferred to the Dispute Tribunal.[81]

The General Assembly adopted, on 24 December 2008, the Statutes of the two Tribunals, which are annexed to resolution 63/253. The Statutes contain the rules concerning the jurisdiction of the Tribunals, the individuals who may file applications or appeals before them, the composition of the Tribunals, the qualifications and election procedures for judges, the locations and functioning of the Tribunals, the adoption and contents of the rules of procedure, the receivability of applications, the conduct of judicial proceedings, the adoption and effects of judgments, as well as procedures for revision, correction, interpretation and execution of judgments.

The main institutional features of the new Tribunals are described hereinafter; the jurisdiction, procedure and case law of the Tribunals are examined in detail in Chapter V below.

72 See A/61/205, paras. 62-73.
73 *Ibid.*, paras. 74-99. This original proposal explains why the new United Nations Appeals Tribunal has the same acronym as the former United Nations Administrative Tribunal, although the General Assembly subsequently decided to abolish the latter and create the appeals tribunal as a new body.
74 GA res. 62/228, para. 39.
75 GA res. 61/261, para. 20.
76 GA res. 63/253, para. 27.
77 *Ibid.*, para. 38.
78 *Ibid.*, para. 44.
79 *Ibid.*, para. 27.
80 *Ibid.*, paras. 42 and 43.
81 *Ibid.*, para. 45.

(c) Composition of the Tribunals

The Dispute Tribunal is composed of three full-time judges and two half-time judges,[82] and the Appeals Tribunal (similarly to the former Administrative Tribunal) is composed of seven judges.[83] A number of important guarantees at the stage of the appointment of judges are provided for in order to ensure the independence, impartiality and efficiency of the Tribunals: these include a procedure of appointment reserved to the General Assembly, with the assistance of the Internal Justice Council, and a set of limitations to the future eligibility of appointed judges to other positions.

In both Tribunals, judges are appointed by the General Assembly on the recommendation of the Internal Justice Council. No two judges within each Tribunal shall be of the same nationality and due regard is to be given to geographical distribution and gender balance.[84] Each judge is appointed for one non-renewable term of seven years, and shall not be eligible for any appointment within the United Nations, except another judicial post, for a period of five years following his/her term of office; he/she shall also not be eligible to serve in the other Tribunal.[85] Judges serve in their personal capacity and enjoy full independence; they may only be removed by the General Assembly in case of misconduct of incapacity.[86]

The General Assembly had initially decided that, in addition to the permanent judges, three *ad litem* judges would be appointed to the Dispute Tribunal for a period of one year.[87] This was a transitional measure aimed at assisting the Dispute Tribunal in the heavy workload of clearing the backlog that it had inherited from the old system. Accordingly, three *ad litem* judges were appointed and assigned each to one of the duty stations of the Tribunal as of 1 July 2009. Since then, the tenure of the three *ad litem* judges has been repeatedly extended for periods of one year or six months.[88] Five years into the system, the Dispute Tribunal therefore continues to work with one additional judge supporting its judicial activity, but on a provisional basis.

The main underlying issue, in this regard, is whether the composition of the Dispute Tribunal should not be strengthened on a permanent basis. Already in 2010, the Internal

82 GA res. 62/228, para. 42. See also Art. 4, para. 1, UNDT Statute.

83 GA res. 62/228, para. 44. See also Art. 3, para.1, UNAT Statute.

84 Art. 4, para. 2, UNDT Statute; Art. 3, para. 2, UNAT Statute.

85 Art. 4, para. 4, UNDT Statute; Art. 3, para. 4, UNAT Statute. As a transitional measure, one full-time judge and one half-time judge initially appointed at the Dispute Tribunal and three of judges initially appointed at the Appeals Tribunal, determined by drawing of lots, were to serve only three years, but could be reappointed to the same Tribunal for a further non-renewable term of seven years. The two judges concerned at the Dispute Tribunal (respectively, Judge Memooda Ebrahim-Carstens and Judge Goolam Hoosen Kader Meeran) and only one of the three judges concerned at the Appeals Tribunal (Judge Jean Courtial) were reappointed for a further seven-year term, respectively on 16 April 2012 (115th plenary meeting of the General Assembly at its 66th session) and on 23 February 2012 (98th plenary meeting of the General Assembly at its 66th session).

86 Art. 4, paras. 8 and 10, UNDT Statute; Art. 3, paras. 8 and 10, UNAT Statute.

87 GA res. 63/253, para. 48.

88 The *ad litem* judges' tenure was extended for one year as of 1 July 2010 (GA decision 64/418 (20 March 2010)), for six months as of 1 July 2011 (GA decision 64/553 (29 March 2010) and GA res. 65/251, para. 31), for an additional year as of 1 January 2012 (GA res. 66/237, para. 42), and again for one year as of 1 January 2013.

Justice Council expressed the view that three additional permanent judges should be appointed once the terms of the *ad litem* judges would come to an end. This opinion, which was shared by the judges of the Dispute Tribunal, was based on the conviction that the current number of judges needs to be maintained to handle the number of cases being filed.[89] The Council reiterated this recommendation in 2011 and 2012, cautioning that a new backlog could otherwise rapidly build up.[90] It also highlighted the undesirability of repeated extension of the terms of *ad litem* judges, to guarantee judicial independence and avoid practical difficulties for the appointees.[91] To date, however, the Assembly has hesitated to make a final decision on the matter.

As of 30 April 2013, the composition of the Appeals Tribunal is the following: Luis María Simón, President (Uruguay); Ines Weinberg de Roca, First Vice-President (Argentina); Mary Faherty, Second Vice-President (Ireland); Sophia Adinyira, Judge (Ghana); Jean Courtial, Judge (France); Richard Lussick, Judge (Samoa); and Rosalyn M. Chapman, Judge (United States of America). As of the same date, the composition of the Dispute Tribunal is: Vinod Boolell, President (Mauritius), in Nairobi; Memooda Ebrahim-Carstens, Judge (Botswana), in New York; Thomas Laker, Judge (Germany), in Geneva; Goolam Hoosen Kader-Meeran, half-time Judge (United Kingdom); Coral Shaw, half-time Judge (New Zealand); Jean-François Cousin, *ad litem* Judge (France), in Geneva; Alessandra Greceanu, *ad litem* Judge (Romania), in New York; Nkemdilim Amelia Izuako, *ad litem* Judge (Nigeria), in Nairobi.

(d) Qualifications of judges

To be eligible for appointment as a judge, a person shall be of high moral character and possess at least 10 years (for the Dispute Tribunal) or 15 years (for the Appeals Tribunal) of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.[92]

These qualifications are stricter than those provided in other international administrative tribunals,[93] in that they require a specific number of years of experience in a judicial position.

89 A/65/304, para. 21.

90 A/66/158, para. 9; A/67/98, para. 22.

91 A/66/158, para. 10; A/67/98, para. 21. The latter concern is illustrated by the practice. While the *ad litem* judges initially appointed for Geneva and Nairobi (respectively, Judges Jean-François Cousin and Nkemdilim Amelia Izuako) have remained in office since 2009, the *ad litem* judge in New York has changed three times (Judge Michael Adams from 1 July 2009 to 30 June 2010, Judge Marilyn Kaman from 1 July 2010 to 30 June 2011, Judge Alessandra Greceanu since June 2012), the position remaining vacant for almost a year between 2011 and 2012.

92 Art. 4, para. 3, UNDT Statute; Art. 3, para. 3, UNAT Statute.

93 As a comparison, Art. 3, para. 1 UNAdT Statute required members to "possess judicial experience in the field of administrative law or its equivalent within their national jurisdiction" without stipulation as to a precise number of years of experience. The origin of these qualifications seems to have come from the combination of two proposals. The Redesign Panel had recommended a specific number of years of professional experience for the judges (10 years for the Dispute Tribunal, 15 years for the Appeals Tribunal), but did not specify that this experience should necessarily be in the judicial field (A/61/205, para. 129). The express requirement for judicial experience was proposed by the Secretary-General, following the consultations between staff and management in the Staff-Management Coordination Committee on the report of the Redesign Panel, inter alia based on the provision of the UNAdT Statute quoted above (see *Administration of justice, Report of the Secretary-General*, A/62/294 (23 August 2007), paras. 66-68).

Observing this particularity in the course of the negotiations of the Statutes, the President of the former Administrative Tribunal observed that, for the Appeals Tribunal in particular, "[t]he requirement of an arbitrary number of years in a particular capacity may adversely affect candidates who, for a variety of reasons, have been unable to acquire the required number of years in a judicial capacity but have extensive professional experience of other kinds, for example as practicing lawyers"; in the experience of that Tribunal, individuals with these different qualifications could make a valuable contribution to the work at an appellate level.[94] The General Assembly, however, maintained its initial proposal in the Statutes, as adopted.

In 2012, however, the Internal Justice Council raised another concern: it noted that the requirement of 15 years of full-time judicial experience for the Appeals Tribunal "means that most candidates apply at the end of their judicial careers, attracted by a part-time retirement job", while active judges would face difficulty to obtain time off to sit at the Appeals Tribunal. The Council further underlined that "there is a real need to infuse some academic excellence into the Appeals Tribunal, but the statutes prevent, for instance, the appointment of professors of law, however learned", or of "lawyers who have served for decades as part-time judges". It therefore proposed an amendment of the Statutes to eliminate this constraint.[95] The matter is still under consideration by the Assembly, which, after having required the Council to specify its recommendations in this regard,[96] has requested the Secretary-General to propose an amendment of the Statute of the Appeals Tribunal on this matter, taking into account the recommendation of the Council.[97]

(e) Code of conduct and mechanism to investigate complaints against judges

On the request of the General Assembly, the Internal Justice Council submitted - first in 2010, and then again in 2011 - a draft code of conduct for judges of the Dispute and Appeals Tribunals. This code was approved by the Assembly in 2011.[98]

The code of conduct identifies a detailed set of values and principles "to establish standards for the conduct of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, to provide guidance to those judges and also to assist the staff and management of the United Nations to better understand and support the work" of the Tribunals within the United Nations. The code invokes the principles regarding the administration of justice, as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights, and is divided in seven sections, relating to: independence; impartiality; integrity; propriety; transparency; fairness in the conduct of proceedings; and competence and diligence.

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94 See *Letter dated 18 July 2008 from the President of the Administrative Tribunal addressed to the President of the General Assembly*, A/623/253 (12 August 2008).

95 A/67/98, para. 35.

96 GA res. 67/241, para. 40.

97 GA Res. 68/254, para. 30.

98 See, respectively, *Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, Report of the Internal Justice Council*, A/65/86 (16 June 2010); *Administration of justice at the United Nations, Report of the Internal Justice Council*, A/66/158 (19 July 2011), Annex; and GA res. 66/106 of 9 December 2011.

When it submitted the code of conduct, however, the Council also noted that no mechanism for dealing with complaints against judges arising out of their conduct had been established, and considered that this matter required urgent attention. The Council's initial proposal was that it would be an appropriate institution to investigate such complaints.[99]

This proposal, however, raised some controversy: the judges of the Dispute Tribunal, in particular, cautioned that the composition of the Council, which includes staff and management representatives, disqualified it for this task, and that the body responsible for selecting and recommending candidates to the General Assembly for appointment as judges should not play a key role in the complaints procedure.[100] After further consideration, the Council revised its position suggesting that the three external members of the Council (i.e., the Chairperson and the distinguished jurists nominated by staff and management, respectively) could form a panel to consider complaints.[101] The General Assembly requested the Secretary-General to submit a report providing proposals and analysis of available options,[102] but finally decided not to entrust the complaints procedure to the Council.

The mechanism in place therefore relies on a unanimous decision of the judges of the relevant Tribunal, based on a report by a panel of experts.[103] More precisely, the mechanism is as follows. Allegations regarding the misconduct or incapacity of a judge of either the Dispute Tribunal or the Appeals Tribunal should be reported to the President of the relevant Tribunal. Upon receipt of such a complaint, after preliminary review, the President will establish a panel of experts to investigate the allegations and report its conclusions and recommendations to the Tribunal. All judges of the Tribunal, with the exception of the judge under investigation, will review the report of the panel. Should there be a unanimous opinion that the complaint of misconduct or incapacity is well-founded and where the matter is of sufficient severity to suggest that the removal of the judge would be warranted, they will so advise the President of the Tribunal, who will report the matter to the General Assembly and request the removal of the judge. In cases where the complaint of misconduct or incapacity is determined to be well-founded but is not sufficient to warrant the judge's removal, the President will be authorized to take corrective action, as appropriate. Such corrective action could include issuing a reprimand or a warning. The President will submit a report to the General Assembly on the disposition of complaints.

(f) Location of the Tribunals

Under its Statute, the Appeals Tribunal shall exercise its function in New York and shall normally hold two ordinary sessions per calendar year; it may decide to hold sessions in

99 *Administration of Justice at the United Nations, Report of the Internal Justice Council*, A/65/304 (16 August 2010), para. 40.

100 *Letter dated 7 October 2011 from the Secretary-General addressed to the President of the General Assembly*, A/66/507 (10 October 2011), Enclosure, para. 28.

101 A/66/158, para. 7.

102 GA res. 66/237, para. 44. The Secretary-General's proposals and analysis were contained in Annex VII of its 2012 annual report on administration of justice (*Administration of Justice at the United Nations, Report of the Secretary-General*, A/67/265 (8 August 2012) and Corr.1 (2 October 2012)).

103 See GA res. 67/241, para. 41. The mechanism is described in Annex VII, section B, of Secretary-General's report A/67/265.

Geneva and Nairobi, as required by its caseload.[104] Judges of the Appeals Tribunal do not sit on a permanent basis, rather meeting in sessions for the purposes of hearing the cases before them; in the course of those sessions, which shall normally be two per calendar year,[105] judges sit in hearings, as required (this, however, happens rarely), deliberate on the cases and render judgments.

The Dispute Tribunal has a very different arrangement. The three full-time judges exercise their functions in New York, Geneva and Nairobi, respectively,[106] on a permanent basis. The practice that has consolidated with regard to the half-time judges is that they serve in any of the three duty stations (usually on full-time assignments of a duration of three months), according to the needs of each duty station. The Dispute Tribunal may also decide to hold session at other duty stations, as required by its caseload,[107] and it has indeed done so in Addis Ababa and Kinshasa.

(g) Organization of work

All judges (full-time, half-time and *ad litem* judges) have the same powers and participate, on an equal basis, in the consideration of questions affecting the administration or operation of the Tribunal which require their attention.[108]

Effective 1 July of each year (i.e., on the anniversary of the entry into operation of the Tribunals), the Dispute Tribunal elects a President from among the full-time judges for a renewable term of one year, and the Appeals Tribunal elects a President, a First Vice-President and a Second Vice-President.[109] The Statutes and Rules of Procedure of both Tribunals entrust certain functions to the Presidents. For example, the Presidents play a special role in supervising the work of the Registries[110] or in the procedure for the recusal of a judge.[111] The Rules of Procedure of the Appeals Tribunal (but not those of the Dispute Tribunal) contain a specific provision on the functions of its President. Under this provision, the President "shall direct the work of the Appeals Tribunal and the Registry, shall represent the Appeals Tribunal in all administrative matters and shall preside at the meetings of the Appeals Tribunal"; if he/she is unable to act, he/she shall designate one of the Vice-Presidents to act as President.[112] The President of the Appeals Tribunal has the function of designating a panel of three judges to hear a case or group of cases on appeal,[113] but also of authorizing the referral of a case at the Dispute Tribunal to a panel of three judges (see below). In addition, as described above (in section 4(e)),

104 Art. 4 UNAT Statute; Art. 4 UNAT Rules.
105 Art. 5, para. 1, UNAT Rules.
106 Art. 5 UNDT Statute; Art. 4 UNDT Rules.
107 Art. 5 UNDT Statute; Art. 4 UNDT Rules.
108 For the *ad litem* judges, this was made clear by the General Assembly in GA res. 63/253, which stresses that "the three *ad litem* judges appointed to the United Nations Dispute Tribunal shall have all the powers conferred on the permanent judges of the Dispute Tribunal" (para. 49).
109 See, respectively: Art. 4, para. 7, UNDT Statute and Art. 1 UNDT Rules; Art. 3, para. 7, UNAT Statute and Art. 1 UNAT Rules.
110 Art. 21, para. 3, UNDT Rules; Art. 21, para. 3 UNAT Rules.
111 Art. 28 UNDT Rules; Art. 23 UNAT Rules.
112 Art. 2 UNAT Rules.
113 Art. 4, para. 1, UNAT Rules.

the Presidents play a role in the mechanism for the consideration of complaints against judges of the Tribunals.

Both Tribunals hold plenary meetings to deal with questions affecting their administration or operation. Under their respective Rules of Procedure, the Dispute Tribunal shall normally hold a plenary meeting once a year for this purpose,[114] and the Appeals Tribunal shall normally hold four plenary meetings a year, at the beginning and at the end of each of its regular sessions.[115] In the practice of the first years, both Tribunals have actually met more often, the Dispute Tribunal holding two plenary meetings and the Appeals Tribunal holding three ordinary sessions per calendar year. Proposals to enshrine this practice through an amendment to the Rules of Procedure,[116] however, were not approved by the General Assembly (see also below). In addition, the Judges of the Dispute Tribunal hold meetings by phone or teleconference on a regular basis (usually, twice a month) to discuss any matters that arise with regard to the administration or operation of the Tribunal.

(h) Panels hearing cases

Similarly to the rules and practice of the former Administrative Tribunal, cases before the Appeals Tribunal are normally reviewed by a panel of three judges and decided by a majority vote. When the President or any two judges sitting on a particular case consider that the case raises a significant question of law, the case may be referred for consideration by the whole Appeals Tribunal (i.e., by seven judges).[117] This mechanism did not raise particular problems in the preparatory works of the new system.

The question of who should hear cases on first instance, on the contrary, caused controversy. The original proposal by the Redesign Panel was that matters be ordinarily determined by a judge sitting alone.[118] The Staff-Management Coordination Committee and the Secretary-General held a different view: in order to reflect the multicultural nature of the Organization, they argued that representation of more than one legal system should be required and that cases at the first level should be reviewed by a panel of three judges.[119] As later specified by the Secretary-General, "having a panel of three judges representing diverse legal traditions and practices, as well as cultural and linguistic backgrounds, would be particularly important in cases involving: (a) a contested administrative decision related to appointment, promotion or termination; (b) an allegation of harassment or discriminatory treatment supported by substantiated evidence; or (c) a situation where the potential exists for substantial financial damages

114 Art. 2 UNDT Rules.

115 Art. 6, para. 1, UNAT Rules.

116 See: *Amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, Report of the Secretary-General*, A/67/349 (3 August 2012).

117 Art. 10, paras. 1 and 2, UNAT Statute. Cf. Art. 8 UNAdT Statute, which required that "the three members of the Tribunal sitting in any particular case" make such determination and decide to refer the case to the whole Tribunal.

118 A/61/205, para. 93. The Redesign Panel envisaged that possibility that the judge be assisted by assessors in disciplinary cases or medical assessors in cases involving medical issues.

119 A/61/758, para. 19.

for the Organization, such as when a single judge reviewing a case considers that the compensation to be ordered by the Dispute Tribunal is expected to be in excess of two years' net base salary".[120] The matter was thoroughly debated in the Sixth Committee and the Ad Hoc Committee on the Administration of Justice at the United Nations, and was one of the main issues which remained open until very late in the negotiations.

The solution enshrined in the Statute of the Dispute Tribunal is the following: cases are normally considered by a single judge; however, the President of the Appeals Tribunal (not the Dispute Tribunal) may, within seven calendar days of a written request by the President of the Dispute Tribunal, authorize the referral of a case to a panel of three judges of the Dispute Tribunal, when necessary, by reason of the particular complexity or importance of the case; cases referred to a panel of three judges are decided by a majority vote.[121] In its first practice direction, the Dispute Tribunal has provided some clarification on the procedure to be followed in these cases, indicating in particular that panel members shall be appointed by the President of the Dispute Tribunal (or by the other full-time judge at the President's duty station, if the concerned case is assigned to the President) and that all panel members shall be physically present during the oral hearing on the merits and subsequent deliberations.[122]

This complex mechanism has caused some practical difficulties. The Internal Justice Council has expressed the view, shared by the judges of both Tribunals, that it is undesirable for the President of the Appeals Tribunal to determine when a case before the Dispute Tribunal should be heard by a full panel. The Council recommended that such decision be entrusted to the President of the Dispute Tribunal and that a party be allowed to indicate in its pleadings whether it desires the appointment of a three-member panel.[123] In addition, given that there is only one full-time judge in each of the three locations of the Dispute Tribunal, the organization of panels poses a logistical challenge: up to now, panels could be organized thanks to the presence of half-time and *ad litem* judges. This remains a fragile mechanism, given the provisional character of the tenure of *ad litem* judges and the limited availability of half-time judges. In any event, it should be noted that only very few cases have been considered by a panel of judges of the Dispute Tribunal, and it is probable that this will always constitute an exceptional mechanism.

(i) Rules of procedure

Both Statutes contain a provision according to which each Tribunal shall establish its own rules of procedure, also indicating some elements that shall necessarily be included therein, such as the organization of work, the presentation of submissions and the procedure to be followed in this respect, oral hearings, publication of judgments, functions of the Registries, evidentiary procedure, etc.

120 *Administration of justice: further information requested by the General Assembly, Report of the Secretary-General*, A/62/748 (14 March 2008) and Corr.1 (8 April 2008), para. 110.

121 Art. 10, para. 9, UNDT Statute.

122 See *Practice Direction No. 1: On three-judge panels* (17 December 2010), at: http://www.un.org/en/oaj/dispute/pdf/practice_direction_no1.pdf.

123 A/65/304, para. 29.

A particularity of the system is that the rules or procedure established by the Tribunals are "subject to approval by the General Assembly":[124] neither the Statute of the former Administrative Tribunal nor those of similar tribunals in other international organizations contain such a requirement. The rules of procedure of both Tribunals were approved by the General Assembly in 2010.[125] Under such rules, the Tribunals in plenary meetings may adopt amendments to the rules: these shall be submitted to the General Assembly for approval, but may operate provisionally until approved.[126]

The procedure for the amendments of the rules of procedure was subject to scrutiny by the General Assembly. In 2011, the Secretary-General recommended that the Assembly encourage the Tribunals to consult with the parties appearing before them when making such amendments.[127] The Internal Justice Council, on its side, recommended a procedure for consultation by posting the proposed amendments on the Tribunals' section of the OAJ website and inviting interested parties to comment.[128] The judges of both Tribunals objected to these recommendations. In a joint letter of their Presidents addressed to the President of the Assembly, they observed that the procedure foreseen in their Statutes and Rules of Procedure did not include any consultation or discussion with interested parties prior to the submission of amendments to the Assembly, and drew attention to a number of practical difficulties that such recommendations would raise. They also indicated that the amendments so far adopted by the Tribunals were made taking into account the views expressed by stakeholders in meetings organized by the Tribunals.[129] After having considered all these recommendations, the General Assembly limited itself to encourage the Tribunals "to continue and expand, as appropriate, their practice of consultation in the process of developing amendments to their rules of procedure".[130]

In practice, both Tribunals have adopted amendments to their rules of procedure, but these have not always been approved by the Assembly. In 2011, the Assembly approved amendments to the rules of procedure of the Appeals Tribunal (Articles 4, 9, 18bis and 19), but decided not to approve an amendment adopted by the Dispute Tribunal (to Article 19, on case management).[131] An additional amendment to Article 9 of the rules of Procedure of the Appeals Tribunal was approved by the Assembly in 2012, but the Assembly did not follow-up on other amendments proposed on the same year.[132]

124 Art. 7 UNDT Statute; Art. 6 UNAT Statute.
125 GA res. 64/119 (16 December 2009).
126 Art. 37 UNDT Rules; Art. 32 UNAT Rules.
127 A/66/275, para. 250.
128 A/66/158, para. 58.
129 *Letter dated 23 September 2011 from the Presidents of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal to the President of the General Assembly*, A/66/399 (3 October 2011).
130 GA res. 66/237, para. 36. This call was reiterated the following year in GA res. 67/241, para. 32.
131 GA res. 66/107 (9 December 2011). For a description of the amendments adopted by the Tribunals and submitted to the Assembly in 2011, see: *Amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, Report of the Secretary-General*, A/66/86 (1 June 2011) and Add.1 (19 July 2011).
132 GA res. 67/241, para. 35. For a description of the amendments adopted by the Tribunals and submitted to the Assembly in 2012, see: *Amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, Report of the Secretary-General*, A/67/349 (3 August 2012).

A more flexible normative mechanism is provided by the so-called "practice directions", which both Tribunals are entitled to issue (without any need for further adoption by the General Assembly) to implement the rules of procedure.[133] To date, the Appeals Tribunal has issued one practice direction (relating to the filing of documents and case management) and the Dispute Tribunal six practice directions (respectively on three-judge panels, legal representation, mediation, filing of applications and replies, filing of motions and responses, and records). These instruments are made publicly available on the websites of the Tribunals.[134]

5. Parties appearing before the Tribunals

Parties in proceedings before the Tribunals are, on the one hand, the staff members and their representatives and, on the other hand, the Secretary-General and his representatives. In addition, staff associations have a role to play in the formal system, and may appear before the Tribunals as friends-of-the-court.

(a) The staff members and their representatives

Individuals who have access to the system

When the General Assembly put the new system in place, in 2008, it decided that "individuals who have access to the current system of administration of justice shall have access to the new system".[135] Accordingly, the Statute of the Dispute Tribunal provides that an application may be filed by:

a. Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
b. Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
c. Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.[136]

Under the Statute of the Appeals Tribunal, an appeal may be filed by the applicant, as well as a person making claims in the name of an incapacitated person or deceased applicant.[137]

The question of a possible extension of the scope of the new system remains under discussion.

The Redesign Panel had recommended that "[a]ll individuals appointed to perform work for the Organization by way of personal services should have full access to the informal

133 See Art. 36, para. 2, UNDT Rules; Art. 31, para. 2, UNAT Rules.
134 See: http://www.un.org/en/oaj/appeals/basicdocs.shtml (for the Appeals Tribunal) and http://www.un.org/en/oaj/dispute/practicedirection.shtml (for the Dispute Tribunal).
135 GA res. 63/253, para. 7.
136 Art. 3, para. 1, UNDT Statute.
137 Art. 2, para. 2, UNAT Statute.

and formal justice system", including any person appointed by the Secretary-General, the General Assembly or any principal organ to a remunerated post in the Organization and any other person performing personal services under contract with the United Nations, such as consultants and locally recruited personnel of peacekeeping operations.[138] The Secretary-General concurred with this view, albeit noting that "a sizeable increase in the number of cases" should then be expected.[139] This category, generally referred to as "non-staff personnel", indeed comprises a considerable number of individuals with different relationships of employment with the Organization, such as United Nations volunteers, consultants, individual contractors, personnel under service contracts, personnel under service agreements and daily paid workers. According to an estimation made by the Secretary-General in 2007, there were more than 60,000 staff members of the Secretariat and of the funds and programmes, while the different types of non-staff personnel would amount to as many as 45,000 additional individuals who could potentially have access to the system.[140]

In 2008, the General Assembly, while launching the new system for staff members, decided to continue to explore ways to ensure that effective remedies be available to all categories of United Nations personnel, with due consideration given to the types of recourse that are the most appropriate to that end.[141]

In 2009, it requested the Secretary-General to explore the respective advantages or disadvantages of several options, namely:

a. the establishment of an expedited special arbitration procedure, conducted under the auspices of local, national or regional arbitration associations, for claims under 25,000 United States dollars submitted by personal service contractors;
b. the establishment of an internal standing body that would make binding decisions on disputes submitted by non-staff personnel, not subject to appeal and using streamlined procedures;
c. the establishment of a simplified procedure for non-staff personnel before the United Nations Dispute Tribunal, which would make binding decisions not subject to appeal and using streamlined procedures; and
d. granting of access to the Dispute Tribunal and the Appeals Tribunal, under their current rules of procedure, to non-staff personnel.[142]

In 2011, following another request by the General Assembly to provide more concrete information,[143] the Secretary-General submitted a proposal for recourse mechanisms for non-staff personnel, including possible means of establishing expedited arbitration procedures for the resolution of disputes between the United Nations and certain categories of non-

138 A/61/205, para. 20.
139 A/61/758, para. 10.
140 See A/62/294, para. 16 and Table 2.
141 See GA res. 63/253, para. 8.
142 GA res. 64/233, para. 9. The Secretary-General examined these options in his report A/65/373, paras. 165-183.
143 GA res. 65/251, para. 55.

staff personnel, i.e. consultants and individual contractors.[144] The General Assembly asked for a proposal for implementing this proposed mechanism for individual contractors and consultants, while requesting more information on access to the system by other categories of non-staff personnel.[145]

In 2012, having received such information,[146] the General Assembly noted "the importance of ensuring that all categories of personnel have access to recourse mechanisms to resolve disputes" and took note of the proposed expedited arbitration procedures for consultants and individual contractors developed by the Secretary-General, deciding to remain seized of the matter.[147] To date, the matter remains unsettled.

Representation

Under the Rules of Procedure of the Tribunals, a party "may present his or her case... in person, or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction"; in addition, "[a] party may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies".[148] In other words, staff members have four options for representation before the Tribunals:

a. Representation by OSLA;
b. Representation by external counsel;
c. Representation by former or current staff; and
d. Self-representation.

Following a request from the General Assembly,[149] the Secretary-General submitted a report, in 2012, examining the respective advantages and disadvantages of each of these modes of representation. According to this report, in 2011, at the Dispute Tribunal, staff members were represented by OSLA in 37% of the cases, by external private counsel in 16% of the cases, by former or current staff members in 4% of the cases, and were self-represented in 43% of the cases. As for the Appeals Tribunal, in the same year, staff members were represented by OSLA in 24% of the cases, by external private counsel in 28% of the cases, by former or current staff members in 5% of the cases, and were self-represented in 43% of the cases.[150]

As noted above, the importance of OSLA's role in representing staff members in the formal system was recognized by the General Assembly, while the question of the mandate and functioning of the Office remains under consideration. In his report, the Secretary-General identified several advantages with this option, noting, for example, that OSLA provides free

144 A/66/275, Annex II.
145 GA res. 66/237, paras. 38 and 39.
146 A/67/265, Annex IV (on the expedited arbitration procedures for consultants and individual contractors) and Annex VI (on access to the system for other categories of non-staff personnel).
147 GA res. 67/241, paras. 50 and 51.
148 Art. 12 UNDT Rules; Art. 13 UNAT Rules.
149 GA res. 66/237, para. 28.
150 A/67/265, Annex II, paras. 5-7.

access to legal assistance from professional lawyers, is an integral part of the accountability architecture of the United Nations, serves as filter in the system (declining representation in cases considered inmeritorious), is committed to the core values of the Organization, and ensures accessibility to justice. On the other hand, the Secretary-General also noted that he is considered liable for the operational decisions of the Office, over which he does not have control, and that the possibility of obtaining free access to the Tribunals could be a factor for some staff members in deciding whether to resolve conflicts in the informal or formal system.[151] OSLA provides legal representation to staff members at all levels of the formal system, namely before the Management Evaluation Unit, the Dispute Tribunal and the Appeals Tribunals. Contrary to the Secretary-General (who, as described below, is represented by different offices on first instance and on appeals), it is often the same OSLA counsel who represents his/her client throughout the entire judicial process.

Staff members are free to opt for representation by external counsel, either paid or *pro bono*. As early as in 2008, the Secretary General observed that "[t]here are many barriers... to staff engaging private lawyers to handle issues relating to their employment at the United Nations", especially for staff members in the field.[152] These disadvantages are further elaborated in the 2012 report.[153] They include, in particular, the unfamiliarity of external counsel with the specificities of the United Nations legal and justice framework, as well as resulting from the costs involved for the staff member and their ability to have access to justice. The Secretary-General does, however, also identify a number of advantages with this option, such as the fact that external counsel could take cases that OSLA has declined, that staff members could have greater flexibility to choose and may have more confidence in external counsel, and that external counsel is subject to the jurisdiction of their national bar associations.[154]

The possibility of representation by former or current staff members has always been available in the system. This option presents a significant advantage, insofar as fellow staff members have personal experience of the particular situation of international civil servants and are familiar with the internal rules of the Organization.[155] It also has, however, some drawbacks, especially for active staff members, who may be hesitant to offer their services (for example, out of concern of their own relationship with the Administration) or unavailable

151 A/67/265, Annex II, paras. 15-16. At the time, the Secretary-General indicated that "[r]ecourse to private lawyers for matters relating to employment at the United Nations is impractical and frequently counterproductive.... Neither formal legal training nor the practice of law in national jurisdictions provides private lawyers with the theoretical or practical experience necessary for them to act as effective advocates for staff within the United Nations system". He considered that, "[a]s a result, private lawyers may either misunderstand the relevant legal principles at issue or attempt to apply national or local legal principles which are not relevant to the United Nations context"; private lawyers, for example, "are inclined to prepare, often at great expense, briefs that are legally immaterial to United Nations proceedings and that do not advance the cause of the staff member retaining them". In this regard, "when an outside attorney represents a staff member, the Panel of Counsel usually spends considerable time briefing that attorney on both procedures and substantive law". The Secretary-General also noted that the fees perceived by former staff members "may be prohibitively high for most staff members".

152 A/62/748, paras. 62-67.

153 A/67/265, paras. 21 and 25.

154 *Ibid.*, paras. 20 and 24.

155 See also A/67/265, para. 28.

for the considerable amount of time required to pursue proceedings (this is especially true in the new judicial system, which is characterized by its formality and the importance of respecting imposed deadlines).[156] At the launch of the new system, the General Assembly commended "the role that volunteers have traditionally played in representing employees in the dispute resolution process", but also noted "that some current and former United Nations staff have been reluctant to represent their fellow staff members in the dispute resolution process because of the burden that such service would place on them"; it therefore requested the Secretary-General "to provide incentives to encourage current and former staff to assist staff members in the dispute resolution process".[157] An additional problem, underlined by the Secretary-General in his 2012 report, is that staff volunteers may lack legal qualifications and might be unable to adequately represent the interests of staff members before the Tribunals, thus resulting in an inequality of legal resources in the system.[158] In this regard, it is important to underline that, in addition to providing direct representation through its staff members, OSLA also assists volunteer representatives in processing claims through the formal system.[159]

An important issue, common to all forms of representation by third parties (not only of staff members, but also of the Secretary-General), is that of the standards of professional conduct of counsel. In its first report, in 2010, the Internal Justice Council expressed the view that "a code of conduct applying to all legal representatives who appear before the Tribunals, whether they represent staff or management, should be adopted without delay, to clarify appropriate standards of conduct and professionalism".[160] On its side, very early into its activity, OSLA voluntarily adopted a code of conduct for its affiliated counsel, which spells out the duties of counsel to their clients and to the law and the Organization.[161] The question is currently under consideration by the General Assembly. In 2012 (and again in 2013), the Assembly stressed "the need to ensure that all individuals acting as legal representatives, whether staff members or external counsel, are subject to the same standards of professional conduct applicable in the United Nations system", and requested the Secretary-General "to prepare a code of conduct for legal representatives who are external individuals and not staff members".[162]

As described above, self-representation is quite frequent in the system of administration of justice at the United Nations. While this option has certain advantages (it is free and the staff member has the possibility of advancing any arguments he/she considers relevant), it also has important drawbacks, particularly when the staff member is not legally trained. In this regard, once again, the formality and complexity of the new system has rendered more important than ever a clear understanding of the applicable rules, both with regard to substance and procedure, and of the best manner to advance legal arguments in a judicial setting. In this 2012 report, the Secretary-General also notes the inequality of resources available to the parties before the Tribunal in the cases of self-representation.[163]

156 *Ibid.*, para. 29.
157 GA res. 63.253, paras. 9-11.
158 A/67/265, para. 29.
159 See GA res. 65/251, para. 38.
160 A/65/304, para. 41.
161 Available at: http://www.un.org/en/oaj/legalassist/pdf/osla_consel_code_of_conduct.pdf.
162 GA res. 67/241, para. 44. See also GA res. 68/254, para. 38.
163 A/67/265, para. 33.

Ensuring that staff members have proper legal representation is a key element for the smooth and efficient functioning of the formal system of administration of justice. The Secretary-General has pointed out that "[c]onsistent with the principle of making the internal justice system more professionalized, access to legal assistance provided by legally qualified full-time staff will help to ensure that both parties operate on an equal footing in the formal justice system".[164] As for the Internal Justice Council, it has emphasized that, given that the system adopts the so-called "adversarial model" (in which "the two sides of a dispute need to be presented before an impartial judge, who adjudicates on the basis of the evidence and arguments presented to the court"), guaranteeing "an equality of arms" before the Tribunal is fundamental for the system to achieve its ultimate goals of justice and accountability.[165] The Council has, therefore, called for OSLA to retain its forensic role. In other words, the overwhelming perception is that availability of effective and adequately-resourced means of legal representation, on an equal basis with the Administration, serves not only the interests of individual staff members, but of the system as a whole.

(b) The Secretary-General and his representatives

Under the Statute of the Dispute Tribunal, applications are filed "against the Secretary-General as the Chief Administrative Officer of the United Nations".[166] This practice was already established in the previous system and concerns claims regarding not only the Secretariat, but also the funds and programmes. In its report, the Redesign Panel had proposed that proceedings in the new system be brought "against the Organization or the relevant fund or programme", which would "conform to the legal reality" and "to the practice in other international organizations", and would also allow the Secretary-General "to be, and to be seen as, the guardian of the integrity of the internal justice system and protector of the rule of law".[167] The General Assembly, however, decided to maintain the prior practice. In any event, however, this should be understood in its proper sense: the Secretary-General is not the respondent in his personal capacity, but only in representation of the Organization, "as the Chief Administrative Officer".

Under the Statute of the Appeals Tribunal, the Secretary-General may also file an appeal against a judgment on first instance.[168]

Of course, the Secretary-General does not appear himself before the Tribunals. Representation of the Secretary-General as the respondent in judicial proceedings is entrusted to a variety of different offices.[169]

With respect to cases filed before the Dispute Tribunal by staff serving in the Secretariat, the International Criminal Tribunal for the former Yugoslavia and the International Criminal

164 A/62/294, para. 25.
165 A/67/98, para. 50.
166 Art. 2, para. 1, UNDT Statute.
167 A/61/205, paras. 122-123.
168 Art. 2, para. 2, UNAT Statute.
169 For a description of the offices representing the Secretary-General in the formal system, their functions and resources, see A/67/265, paras. 92-149.

Tribunal for Rwanda, representation is ensured by the Administrative Law Section in the Office of Human Resources Management (Department of Management). This Section also has other related duties: it handles disciplinary matters referred to the Office of Human Resources Management, and provides advice to managers on matters arising out of the system of administration of justice (e.g., individual complaints, interpretation and application of the Staff Regulations and Rules and administrative issuances, individual disciplinary cases and the investigation process). Cases brought by staff of the United Nations offices administered in Geneva, Nairobi and Vienna, the United Nations Environmental Programme and UN-Habitat are handled by officials at those duty stations. Cases concerning separately administered funds and programmes are handled by legal offices in their own structure, namely: the Legal Support Office for UNDP; the Policy and Administrative Law Section within the Division of Human Resources for UNICEF; the Director of the Division of Human Resources Management, advised by the Legal Affairs Service, for UNHCR; the Legal Practice Group for UNOPS; and the Legal Unit in the Office of the Executive Director for UNFPA.

Representation before the Appeals Tribunal is entrusted to the General Legal Division at the Office of Legal Affairs of the Secretariat, as the central legal service of the Organization. This Division handles not only the appeals concerning the Secretariat worldwide, but also appeals concerning the funds, programmes and other offices.

In 2011, the Advisory Committee on Administrative and Budgetary Questions expressed the view that "the Secretary-General should consider having one office, the Office of Legal Affairs, be responsible for representation at both Tribunals, which should lead to more coherent representation and efficient use of resources".[170] Taking note of this opinion, the General Assembly requested the Secretary-General "to explore all possible ways to bring about more coherent representation and efficient use of resources, taking into account the specificities of representation of the Secretary-General at the Tribunals".[171]

In his report on this matter, the Secretary-General observed that "[t]he focus of the proceedings in the administration of justice system differs between the Dispute Tribunal and the Appeals Tribunal". He explained that he had sought to develop expertise specific to representation before each of the Tribunals: the lawyers that represent the Secretary-General before the Dispute Tribunal have developed proficiency in the collection and review of documents and the recording of witness statements, as well as skills in presenting documentary evidence and in examining and cross-examining witnesses at oral hearings (emphasis is put, in other words, on establishing the facts); the lawyers that represent the Secretary-General on appeals have developed proficiency in the review of Dispute Tribunal judgments for potential errors, legal research, preparation of definitive legal submissions and oral argument at an appellate level (emphasis is put on the law).[172] In his view, the restructuring

170 *Administration of justice at the United Nations and activities of the Office of the United Nations Ombudsman and Mediation Services, Seventh report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium* 2012-2013, A/66/7/Add.6 (25 October 2011).

171 GA res. 66/237, para. 23.

172 A/67/265, paras. 171-172.

proposed by the Advisory Committee would not provide operational advantages or cost-savings.[173] The Assembly did not follow up on this matter in 2012.

(c) The staff associations

Under its Statute, the Dispute Tribunal "shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association".[174] The Rules of Procedure of the Dispute Tribunal provide, accordingly, that "[a] staff association may submit a signed application to file a friend-of-the-court brief", describing the procedure to be followed in this regard.[175] Although the Statute of the Appeals Tribunal does not explicitly refer to staff associations, its Rules of Procedure also foresee that the latter may submit an application to file a friend-of-the-court brief.[176] While important, insofar as they recognize that staff associations may have a role to play in the formal system of administration of justice, such provisions are the remnants of a more ambitious proposal in the preparatory works.

Noting that staff members are sometimes reluctant to enter the formal justice system for fear of reprisals, the Redesign Panel had originally recommended "to give staff associations an independent right to bring action to enforce the Staff Rules and Regulations"; in its view, this kind of "class or representative action" was in line with the jurisprudence of the Administrative Tribunal of the International Labour Organization and would promote efficiency in the judicial process.[177] In his comments to the report of the Redesign Panel, the Secretary-General supported this recommendation, proposing that staff associations recognized under staff regulation 8.1 (b) be allowed to bring applications: (a) to enforce the rights of the staff association, as recognized under the Staff Regulations and Rules; (b) to file an application in its own name on behalf of a group of named staff members who are entitled to file and who are affected by the same administrative decision arising out of the same facts; (c) to support an application by one or more individuals who are entitled to file an application against the same administrative decision by means of the submission of a friend-of-the-court brief or by intervention.[178]

A provision corresponding to the Secretary-General's proposal had initially been included in the draft statute of the Dispute Tribunal, and was discussed at length by the Sixth Committee and the Ad Hoc Committee on the Administration of Justice at the United Nations.[179] However,

173 *Ibid.*, paras. 173-175.

174 Art. 2, para. 3, UNDT Statute.

175 Art. 24 UNDT Rules.

176 Art. 17 UNAT Rules. Art. 6, para. 2 (g), UNAT Statute provides that the rules of procedure should include provisions concerning the filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunals (but does not explicitly mention staff associations).

177 A/61/205, para. 82 and 160.

178 A/61/758, para. 26.

179 The issue was still under discussion at the end of the negotiations on the draft statutes at the Ad Hoc Committee, as shown by the Coordinator's summary of the preliminary observations made in the informal consultations and the intersessional informal consultations contained in the report submitted to the Sixth Committee in 2008 (see *Report of the Ad Hoc Committee on the Administration of Justice at the United Nations*, General Assembly, Official Records, Sixty-third session, Supplement No. 55, A/63/55/Add.1, Annex I, pp. 4-5). A revised proposal (foreseen the possibility for the Dispute Tribunal to hear and pass judgment on an application filed by a staff association to enforce the rights of staff associations, as recognized under the

when it adopted the Statutes of the Tribunals, the General Assembly set this proposal aside (with the exception of friend-of-the-court briefs, as described above), and decided "to revert to the issue of the possibility of staff associations filing applications before the Dispute Tribunal at its sixty-fifth session", in 2011.[180] The question continued to be debated at the second session of the Ad Hoc Committee, in 2010.[181] The Assembly, however, did not follow up with this issue, which is therefore to be considered either abandoned or open to future consideration.

6. Other institutions

A number of institutions have access to the formal system of administration of justice under special conditions. This situation follows a practice that already existed under the former Administrative Tribunal.[182]

Under their respective Statutes, the Dispute and Appeals Tribunals may also have jurisdiction "to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service". The exercise of such jurisdiction, however, is subject to a special agreement concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Tribunals, consonant with their Statutes.[183]

On this basis, OAJ has negotiated and concluded agreements with the following entities for their participation in the new system: the International Civil Aviation Organization; the International Maritime Organization; the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); the International Seabed Authority; the International Tribunal for the Law of the Sea; and the International Court of Justice.[184] All these entities have opted to accept the competence of the Appeals Tribunal, preserving their own internal

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Staff Regulations and Rules) continued to be on the table in the draft transmitted by the Sixth Committee to the Fifth Committee, after its consideration of all the legal aspects of the draft statutes (see *Letter dated 27 October 2008 from the President of the General Assembly to the Chairman of the Fifth Committee*, A/C.5/63/9 (27 October 2008), Annex, Enclosure 1, Article 2, para. 3).

180 GA res. 63/253, para. 15.

181 See *Report of the Ad Hoc Committee on the Administration of Justice at the United Nations*, Second session (20-24 April 2009), General Assembly, Official Records, Sixty-fourth Session, Supplement No. 55, A/64/55, paras. 11 and 17, and Annex, paras. 1 and 12.

182 See Art. 14 UNAdT Statute.

183 Art. 2, para. 5, UNDT Statute; Art. 2, para. 10, UNAT Statute. Such a special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgments of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of its own staff members. It shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing of the expenses of the Tribunal, as well as other provisions required for the Tribunal to carry out its functions. In the case of the Appeals Tribunal, such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. In such cases remands, if any, shall be to the first instance process of the agency, organization or entity.

184 See the Activity Reports of the Office of Administration of Justice at: http://www.un.org/en/oaj/unjs/resource.shtml.

process on first instance. It is worth mentioning, in particular, the case of UNRWA, which established its own Dispute Tribunal, having its seat in Amman (Jordan), with a statute and rules of procedure that mirror those of the United Nations Dispute Tribunal.[185]

In addition, under its Statute, the Appeals Tribunal is competent "to hear and pass judgment on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund". These appeals may be submitted by any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases, subject to certain conditions, any person who has acceded to such staff member's rights upon his or her death, or any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund.[186]

185 See: Statute and Rules of Procedure of the UNRWA Dispute Tribunal (respectively, Area Staff Regulations 11.3 and 11.4, Cod./A/59/Rev.25/Amend.120 (1 June 2010)). Information about the UNRWA Dispute Tribunal is available at: www.unrwa.org.

186 Art. 2, para. 9, UNAT Statute.

Chapter III
Informal Conflict Resolution

Helmut Buss *

A. The opportunity of informal conflict resolution

Most people believe that conflict is bad, should be avoided or causes nothing but headaches. Some people claim that conflict creates great opportunities and is needed to develop a creative and innovative work environment.

Whenever a dispute arises, the parties have three options: (a) avoidance and doing nothing; (b) taking legal action; or (c) trying to identify an informal solution.

Badly managed conflict in the workplace, often due to a widespread avoidance culture, results in substantial financial, human and credibility costs to an organization. Well-managed conflict, ideally rooted in a conflict management culture that is based on informal and collaborative tools for resolution, has the potential to drive greater performance and creativity and help to produce innovation.

People do not always say what they think or understand why they do what they do. Moreover, many difficulties with making headway on problems arise from poorly managed, unresolved conflicts and internal contradictions in values, beliefs and habits. An organization's exposure to those conflicts and their management provide the basis for identifying solutions.

The respective roles of an ombudsman and a mediator include assisting visitors[1] to increase their ability to clarify their needs, interests or values and to improve their ability to reflect, understanding what matters most to them in resolving the problems and challenges they are facing, and thus help them to manage conflicts. The informality of the process make

* The views expressed in this Chapter are solely those of the author and do not necessarily reflect those of the United Nations.

1 Ombudsman practice refers to the individuals assisted as "visitors" instead of "clients" as a reference to clients connotes an advisory relationship instead of the neutral one provided by an ombudsman.

an ombudsman and mediator easily approachable and provides an environment in which people are more likely to come forward with their problems and concerns, which is essential to open the door to problem-solving.

In its resolutions 61/261[2] and 62/228,[3] the General Assembly recognized that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasized that all possible use should be made of the informal system in order to avoid unnecessary litigation. This concept is reflected in Staff Rule 11.1 (a), which reads: "A staff member who considers that his or her contract of employment or terms of appointment have been violated is encouraged to attempt to have the matter resolved informally".

The biggest value in informal resolution mechanisms is that the process remains in the hands of the parties and it offers self-determination, retention of choice and decision-making power. This is in contrast to the formal procedure, where a process is set into motion that is out of the parties' hands and in which a judge will take a decision over which the parties do not have control and which may produce results neither of the parties had hoped for.

Informal conflict resolution channels are meant to supplement but not replace the formal ones. They are voluntary and remain open throughout a formal process. The parties to a conflict can thus pause at any time in the formal process to attempt an informal resolution. If that proves to be impossible, the case can re-enter the formal process. In some cases, this process can repeat itself and parties come again back to the mediation table to attempt a resolution.

Conflicts have great potential to escalate over time.[4] Research and experience show that the potential for informal conflict resolution diminishes over time: in some intractable cases there is a moment where informal conflict resolution becomes impossible and visitors of the office resort to formal procedures.

Ombudsmen and mediators are not the only ones who have a role to play in informal conflict resolution. Conflict management is in fact everybody's responsibility and many stakeholders assist colleagues as part of their assigned responsibilities in addressing conflicts and problems on a daily basis. Particular mention should be made in this context of the respective managers, human resources departments, staff associations, ethics offices, legal departments, investigation departments, management evaluation units, staff counsellors, medical services, peer support volunteers or respectful workplace advisors. All these stakeholders can be instrumental in informal conflict resolution, often in close collaboration with the United Nations Ombudsman Office and Mediation Services (UNOMS). The Staff Regulations and Rules make reference to instances where conflict resolution must be processed through the respective offices of UNOMS.[5]

2 GA res. 61/261, para. 11.
3 GA res. 62/228, para. 22.
4 See Glasl's Nine-Stage Model of Conflict Escalation, in Friedrich Glasl, *Confronting Conflict* (Hawthorn Press 1999), at 83.
5 See Staff Rules 11.1 (a), 11.2 (c) and 11.4 (c).

B. The Ombudsman

1. Name and mandate

While there are examples of positions with responsibilities similar to those of an ombudsman in ancient societies, the concept of the ombudsman arose in Scandinavia in the eighteenth and nineteenth centuries. The role of this classical ombudsman was to give citizens a means to have government action reviewed by an independent and neutral body, not part of the government and thus a "true outsider". The ombudsman institution has evolved over time, establishing ombudsman functions in other structures, including organizations, companies and universities. An organizational ombudsman is embedded in the respective organization covered and is often referred to as "inside outsider".

However, the standards of practice[6] of confidentiality, neutrality and impartiality, independence and informality attributed to the function provide the organizational ombudsman with a high degree of autonomy and a unique understanding of the whole organization. The ombudsman can thus offer a helpful first stepping stone in a safe space for visitors, both supervisors and supervisees, to orient themselves and consider next steps.

Visitors to an ombudsman office report that they feel safe because nothing will be decided for them, power over decision-making will not be taken away from them, their voices will be heard and vital information they wish to be known can get where it needs to go without attribution and exposure. The operating principles make the ombudsman function different from any other in an organization. Adherence to these principles reinforces the integrity of the position, the trust and credibility of its function and makes it possible to provide an organization with a different, reliable perspective.

To attain the goal to give considerably more prominence to the process of informal conflict resolution,[7] the three existing ombudsman offices were placed under the umbrella of a new office (UNOMS)[8] in such a way that they could preserve their independence and responsibilities for specific bodies and organizations of the United Nations, while also harnessing synergies and achieving a higher degree of coordination. In this connection, in paragraph 25 of its resolution 62/228, the General Assembly called on UNOMS "to strengthen the ongoing efforts for coordination and harmonization of standards, operating guidelines, reporting categories and databases". In order to discharge this mandate satisfactorily, UNOMS is subdivided into the following three pillars:

i. The Office of the United Nations Ombudsman in New York, with responsibility for staff of the United Nations Secretariat, including peacekeeping missions and the regional economic commissions. The new mediation service created as part of the reform

6 The standards of practice, i.e., confidentiality, neutrality and impartiality, independence and informality are spelled out for the Office of the United Nations Ombudsman in ST/SGB/2002/12 (15 October 2002). Similar standards are included in the terms of reference issued by the executive heads of UNDP, UNFPA, UNICEF and UNOPS for the Office of the Ombudsman for the United Nations Funds and Programmes. The terms of reference of UNOMS are in the process of being finalized for adoption by the General Assembly.

7 See footnotes 1 and 2 above.

8 See: http://www.un.org/en/ombudsman/ index.shtml.

process, together with the new regional ombudsmen in Bangkok, Geneva, Nairobi, Santiago and Vienna and the ombudsmen attached to the peacekeeping missions in Entebbe and Kinshasa all report to this Office;

ii. The Office of the Ombudsman for United Nations Funds and Programmes,[9] likewise based in New York; and

iii. The Office of the Ombudsman for the Office of the United Nations High Commissioner for Refugees (UNHCR), based in Geneva.

The standards of practice are posted on the websites of the respective offices and in brochures and other materials. An ombudsman should also mention the standards of practice and their relevance to any visitor contacting the office.

In addition to addressing individual cases, an ombudsman is mandated to identify and highlight systemic issues by tracking root causes of conflict and proposing changes in behaviour, structure, policies, procedures or practices to minimize those causes in the future and to create a more harmonious work environment.[10]

2. Who has access to ombudsman services?

The administration of justice system in the United Nations is accessible to all staff members, including former staff members and retirees. Questions arise about the coverage of non-staff personnel, namely individual contract holders or service contractors. While access to the formal system is clearly regulated as being limited to staff members, non-staff personnel can access the informal system in some United Nations organizations. In many situations, non-staff personnel and staff members work so closely next to each other, that the resolution of conflicts generally requires interaction between the two and the ability of an ombudsman to work with both groups. There is, however, concern that access of non-staff personnel to the informal system might be interpreted as conveying "quasi-staff member status" to persons who are subject to commercial contracts and in many cases have functions distinct from those of core staff members. Conflict resolution considerations are thus in conflict with legal considerations relating to the nature of contracts of non-staff personnel. At present, the United Nations Secretariat does not formally include non-staff personnel in the scope of the United Nations Ombudsman. The Office of the Ombudsman for United Nations Funds and Programmes and that of UNHCR, however, have always included non-staff personnel in their constituencies, since typical cases brought to their attention rarely involve only non-staff personnel.

3. How and when to request ombudsman services

Staff Rule 11.1(a) stipulates that a staff member "who consider[s] that his or her contract of employment or terms of appointment have been violated is encouraged to have the matter resolved informally" and should in that case "approach the Office of the Ombudsman without delay...".

9 This Office covers UNDP, UNICEF, UNFPA, UNOPS and UN-Women.

10 See in more detail para. 10 below.

Ombudsman services can be accessed online via a secure contact form, or via telephone or e-mail.[11] Upon receipt of a contact request, the office attempts to acknowledge receipt within 24 hours and to contact the visitor within 48 hours. The communication with the visitor will happen face-to-face, via the telephone or online communication tools.

Experience has shown that an early contact with ombudsman services has yielded good results. Such early contacts allow visitors to be better informed about available options and to feel more comfortable in pursuing the matter. While an ombudsman assists in generating options for action, it is always the visitor who assumes responsibility for follow up and who decides what action to take.

4. What can be handled by an ombudsman?

An ombudsman may, at his or her discretion, decline to consider conflicts that can be remedied only by actions affecting the staff at large or all members of a category of staff, or that the ombudsman considers have not been brought to his or her attention in a timely manner, or that appear to be frivolous.[12] An ombudsman does not normally deal with cases where a formal investigation is in process. If a visitor raises issues unrelated to such an investigation, an ombudsman can deal with those. There have also been situations where an ombudsman, upon request of the visitor, raised issues unrelated to the substance but in relation to the process of the investigation, such as long delays in processing an investigation. Taking into account that ombudsman services are made available with the understanding that those who use the services of such an office agree to abide by the principles upon which it was established, in particular confidentiality, an ombudsman may refuse to deal with a case where confidentiality is not respected by the visitor. In both oral and written communications with an ombudsman, visitors should therefore respect the confidential nature of the communications.

5. Guiding principles

(a) Confidentiality

All those working in UNOMS maintain strict confidentiality and do not disclose information about individual cases or visits from employees. They cannot be compelled by any United Nations organ or official to do so, including testifying in a legal procedure. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm. Whether this risk exists is a determination to be made by an ombudsman on a case-by-case basis.[13]

Since the principle of confidentiality is the bedrock on which an ombudsman carries out the work, an ombudsman will always uphold that principle. For example, an ombudsman would not divulge confidential information in a tribunal proceeding even if pressed by third parties, including a former visitor whose case is before the Tribunal, management or members of the Tribunal itself. To share confidential information in such a situation

11 See further information at: http://www.un.org/en/ombudsman/contact.shtml.
12 ST/SGB/2002/12 (15 October 2002), section 3.9.
13 *Ibid.*, section 3.3.

would seriously erode the trust of those who might wish to use ombudsman services in the future.

The understanding of confidentiality in the ombudsman practice is different from the professional practice of ethics officers, who protect privacy as much as possible, but who must investigate, make judgments, take decisions, keep records and testify when necessary.

Since the workplace is often perceived as full of rumour and gossip, an ombudsman is often asked whether it is realistic to guarantee confidentiality. Strict adherence to the principle of confidentiality makes the function of the ombudsman unique as no other function in an organization can claim full confidentiality, with the possible exception of the medical service. The credibility of an ombudsman therefore depends on adherence to that principle. What happens, then, to confidentiality if a visitor reports misconduct or events that could result in a high risk for the organization to an ombudsman rather than through the appropriate formal channels? Ombudsman practice has shown that most of those situations can be addressed without breaching confidentiality and exposing the individual who reported the information. In some cases, building on a conversation with an ombudsman in clarifying rules, regulations, structures and policies, the visitor may feel empowered to report to the designated office. Alternatively, there are other ways for an ombudsman to surface the information without compromising confidentiality, including by taking a generic approach to the problem that could allow for a routine audit to identify the issue and take appropriate action, without exposing visitors who contacted the ombudsman.

The United Nations Tribunals endorsed the confidentiality of communication with an ombudsman as absolute. That being said, the Dispute Tribunal can request information on the dates and extent of an informal resolution process, including mediation, and has held in Applicant UNDT/2013/004, that

> "The Tribunal is mindful that, notwithstanding the above provision in the Statute, Article 15(7) of the Rules of Procedure imposes an absolute prohibition on the mention of any mediation efforts in documents or written pleadings submitted to the Dispute Tribunal or in any oral arguments made before the Tribunal. However, due to the nature of receivability matters, the Tribunal must determine the dates and extent of the involvement of the Mediation Division in the Applicant's case."

(b) Neutrality and impartiality

As an "internal outsider", an organizational ombudsman is a designated neutral, appointed and employed by the respective organization. Neutrality involves freedom from favouritism and bias. In exercising this standard, an ombudsman must refrain from acting as an advocate for one party. As a result, an ombudsman does not determine who is right or wrong, does not take sides and is neither part of management nor an extended arm of staff associations.

Neutrality does not mean being passive. In keeping with the standards of practice, an ombudsman is expected to draw conclusions, point out concerns or make recommendations.

Impartiality is referred to as ensuring fairness of the process. An ombudsman serves as an advocate for justice and fair, equitably administered processes, not on behalf of any

individual within the organization, taking into account the rights and obligations between the organization and the employees, and the context of the situation.

A clear boundary is defined between an ombudsman and the organization, in part by activities the ombudsman does not undertake, as further developed below.[14]

(c) Independence

UNOMS maintains independence from other organizational entities, organs or officials and has direct access to the Secretary-General, the executive heads of the funds and programmes services and UNHCR, and senior management throughout the Organization as needed; access to information relevant to cases, except medical records; and access to individuals in the Organization for advice, information or opinion on a particular matter. An ombudsman is not part of any formal line or staff structure, does not report to line managers and should therefore not be subject to performance reports. The recruitment of ombudsmen is subject to a multi-stage written and oral selection process and involves consultation with representatives of staff. Thereafter, the Secretary-General and the executive heads of the funds and programmes and UNHCR appoint their respective ombudsmen. An ombudsman can be terminated only for specific causes consistent with United Nations Staff Regulations and Rules. To avoid any appearance of political or administrative bias, an ombudsman can be subject to restrictions on reappointment and future employment after the end of the mandate, including time-bound or unlimited ineligibility for future employment with the organizations covered. Independence puts an ombudsman in a unique position to speak up and address issues that others cannot or do not want to address for a variety of reasons.

(d) Informality

Informality includes not keeping records for the United Nations or any other party; not conducting formal investigations or accepting legal notice on behalf of the United Nations; not having decision-making powers; and not making determinative findings or judgements.

The principle of informality allows for a low-key access point for conflict management, including easy and quick access to potential options for solutions, without barriers such as timelines or other receivability considerations. This is particularly helpful for people who would otherwise be reluctant to come forward owing to their fears, uncertainties or shyness to discuss their concerns. Informality also allows for flexibility in adapting interventions to the needs and interests of the visitors and the unique context and circumstances of each case rather than following fixed procedures.

The four principles of ombudsman practice are interdependent and essential to one another: one does not work without the other. By way of example, an ombudsman could not be confidential without being an informal practitioner since formal decision makers must be openly accountable and must keep records.

14 See section 8 below.

6. Privilege

Visitors contacting an ombudsman rely on the confidential nature of the office. Finding a confidential, safe place motivates visitors to contact an ombudsman and come forward with their concerns. If there were a risk that elements of that contact could be disclosed at a later stage, visitors may be discouraged to contact the office.

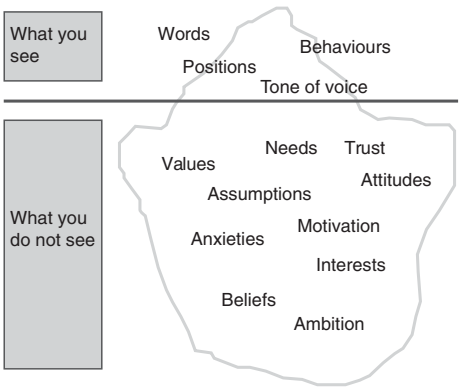
In the United Nations, an ombudsman cannot be compelled to testify about concerns brought to his or her attention.[15] The United Nations administration of justice system grants that privilege, at least as it relates to all documents prepared and oral statements made during any informal conflict resolution process or mediation.

7. What does an ombudsman do?

(a) Listens to concerns and analyses the situation

An important part of an ombudsman's role is to listen to visitors' concerns. In today's work-environment, there are few opportunities for co-workers to talk openly and in full confidence about challenges they are facing. Supervisors take less and less time to sit down with their colleagues and to listen to their concerns. Other people, such as human resources colleagues or peers, may not be contacted owing to confidentiality concerns or concerns about their neutrality. Many colleagues have a feeling of not being heard or are afraid of retaliation. An ombudsman takes the time to carefully and actively listen to visitors' concerns. It is not unusual that this can take several hours. In this process, the ombudsman is attempting to get a better understanding of underlying issues, namely the needs and interests of the visitor. The image of an iceberg often serves to illustrate this process. While communication is generally largely influenced by "what you see", "visible" perceived behaviour and positions, the key to finding solutions to problems, including badly managed conflict, lies in the values, anxieties, needs and interests under the surface in the "invisible" part of the iceberg, in "what you do not see" (see Figure 1 below).

Figure 1.



15 ST/SGB/2002/12 (15 October 2002), section 3.5.

Careful listening and questioning help to surface those elements and will eventually help to identify options for solutions. Feedback from visitors shows that the ways in which an ombudsman listens to them are of great value in helping them to clarify what is important to them. For example, a visitor whose frustrations appear at first to be limited to non-promotion may end up realizing that the real issue is the need to move to another functional area or even another job in another organization.

(b) Guides in identifying possible options to resolve the issue

The listening process provides the basis for assembling the elements that serve to construct options to resolve the issues, including new options the visitors had not yet identified. An ombudsman's role is to guide and assist in building such options and widening the visitors' views in this regard, building curiosity to change perspectives and thereby identifying options that were initially not seen or not perceived as viable. In this whole process, it is not an ombudsman's role to tell the visitor what to do, but to help people help themselves by assisting them to analyze the available information and to cultivate reflection, helping them to think through scenarios or helping to draft written communication. It is for the visitors to take the driver's seat, to make up their own minds on how to proceed once the options are explored and to assume ownership over the options to pursue. While one can hear at times the "the ombudsman said" argument, the correct reflection of the options-generation process should read: "building on the dialogue with the ombudsman, I am opting for such and such next step". An ombudsman's bird's eye view of the organization and the fact that an ombudsman is not subject to line management supervision helps to offer options for solutions across all organizational boundaries.

(c) Conducts informal fact-finding

Informal fact-finding refers to establishing the elements relevant in a specific case, building on communication with the visitor and, in keeping with confidentiality principles, following up communication with other stakeholders, such as human resources and other relevant stakeholders, depending on authorization given by the visitor.

(d) Assists in pursuing a resolution

In reflecting on possible solutions, visitors often seek an ombudsman's assistance in contacting other parties, including human resources representatives, supervisors or peer colleagues. Such contacts, sometimes also referred to as shuttle diplomacy, are pursued only if the visitor agrees. The objective is to enable the visitor to make such contacts directly. However, where that is not possible, an ombudsman assists in making such contacts.

(e) Facilitates communication

Among the biggest challenges in the workplace is open and respectful communication, including the provision of candid feedback. It is not unusual that colleagues find it impossible to communicate and are unable to rebuild communication, with often dramatic implications for work productivity and well-being. An ombudsman serves as a neutral third party to rebuild communication by bringing the parties to the table and developing concrete steps

for the parties to agree to rebuild space for constructive communication. In this context, an ombudsman can offer shuttle diplomacy, facilitation of dialogue or formal mediation and thus help employees and managers to reconnect and to think through proposals that may resolve a problem.

(f) Empowers through counselling or coaching

An ombudsman endeavours to equip visitors with the tools to confidently address their understanding of conflict dynamics, the challenges they are facing, underlying problems, their interests and needs and skills required or steps to take to arrive at a successful resolution. Sometimes, an ombudsman takes the initial steps in this regard and follow-up support is provided by managers, internal peer support services or outside professionals. The dialogue with an ombudsman provides a safe space for reflection, supports a non-punitive dialogue and provides an opportunity for pro-active self-management, mindfulness, and professional and human growth.

(g) Suggests appropriate referrals

Building on the conversation with the visitor, an ombudsman assists in finding an appropriate next step, which can consist in referral to the informal mechanisms such as mediation or formal channels. In this context, an ombudsman can assist in putting the employee in contact with key persons who have the knowledge and leverage to deal with the employee in the appropriate way.

If there is a situation that can best be addressed by another structure (including offices of human resources, investigation, ethics or OSLA), an ombudsman can provide background information on the roles and responsibilities of those structures, explain, in maintaining full confidentiality, experience from comparable cases and assist in providing contact details, thus providing a bridge to other resolution mechanisms. In turn, visitors who have been referred by other such structures may contact an ombudsman.

8. What does an ombudsman not do?

(a) Does not contact another party or share data without the visitor's consent

An ombudsman does not provide any information on a specific case to anyone outside of the office of the ombudsman. Contacts with another party are thus subject to prior approval by the visitor.

(b) Does not make or change managerial decisions

An ombudsman is not part of management and does not replace managerial responsibility. As a result, an ombudsman aims at assisting management in assuming its responsibility. In conflict situations, the preferred outcome is always to assist management in addressing the situation by itself. Similar to the way in which an ombudsman tries to equip all visitors to address their challenges themselves, an ombudsman also attempts to assist management to take management decisions for which management assumes ownership and responsibility.

(c) Does not advocate for any party but for fair process

An ombudsman never represents parties, nor advocates for one party's views. An ombudsman's role is to advocate for fairness, justice and respect. In this context, rules and regulations are not the only reference point. The objective is to find solutions that are in the interest of the organization, it being understood that those interests encompass those of all employees, including supervisors and supervisees.

(d) Does not conduct nor participate in formal investigations

An ombudsman in the United Nations system does not have a mandate to conduct or participate in formal investigations. In practice, an ombudsman does not get involved in cases that are under formal investigation, namely cases where a disciplinary process has been initiated. If visitors under investigation wish to raise issues unrelated to that investigation, an ombudsman can get involved. By way of example, ombudsmen have addressed with the various administrations complaints about perceived excessively lengthy investigation procedures.

(e) Does not keep any records and does not appear in any formal proceedings

An ombudsman does not keep records, with the exception of aggregated data for reporting and analysis purposes in a confidential database. If notes are taken to keep track of a case while a resolution is pending, they are destroyed after a case has been closed. The confidential nature of the ombudsman intervention is backed by the exclusion before the United Nations Dispute and Appeals Tribunals of all documents prepared for and oral statements made during any informal conflict resolution process or mediation.[16] As a result, the ombudsmen and staff of the various offices of the ombudsmen do not serve as witness. An ombudsman does not participate in any formal process within or outside the organization.

(f) Does not accept notice for the Organization

UNOMS does not accept notice for the Organization. This is important for visitors to understand. It is not uncommon for an ombudsman to receive or be copied on communications reporting allegations of misconduct, often in cases where visitors expect follow-up action or just want someone in the organization to know, but for a variety of reasons decided not to report the issue through the formal reporting channels provided, such as the respective investigation sections. An ombudsman will not act upon such notification nor will an obligation to report misconduct or related timelines be satisfied by notifying UNOMS.

(g) Does not provide legal advice

Colleagues often ask an ombudsman for advice, including legal advice. While UNOMS does assist visitors in recognizing the Organization's norms and values and visitors' obligations, rights and options, it cannot provide any authoritative legal assessment and frequently refers visitors to OSLA to receive such advice.

16 Article 15, UNAT Statute, and Article 15, para. 7, UNDT Statute.

9. Issues brought to the attention of UNOMS

The great majority of cases brought to the attention of UNOMS over recent years fall within two categories: (a) job- and career-related issues and (b) evaluative relationships. Underlying themes in all those cases have been the absence of (a) open and respectful communication including a feedback culture, (b) transparency and (c) effective staff participation as per United Nations Staff Regulations and Rules.[17]

(a) Job- and career-related issues

Colleagues working side by side doing similar work with different remuneration, entitlements and contractual status; limited opportunities or structures to engage in a dialogue with the Administration on career planning; lack of transparency in recruitment or promotion processes; limited use of the organization's flexible working hours arrangements are all reasons that have led to problems and conflict in the workplace.

An ombudsman has a range of opportunities to assist with these challenges, both with regard to the individual visitor's situation and related systemic problems in the Organization. On job- and career- related issues, an ombudsman can assist in bringing transparency to recruitment processes by seeking clarification regarding a specific recruitment process, including underscoring the importance of systematic and meaningful feedback for unsuccessful candidates. Experience has shown that an ombudsman can provide a platform to reflect with the visitor on opportunities for career-path changes and on opportunities both within and outside the organization. Also, an ombudsman can highlight to senior management in an organization the paramount importance of effective career-management and talent-management policies and structures. In some of the organizations covered, the administration understands the link between uncertainties created by the absence of pro-active talent management and unhappy staff, leading to low morale, lack of productivity, reduced productivity and staff turnover. In such cases, an effort may be made to build capacity to provide for dialogue between staff and the administration and review related organizational practice and policies.

(b) Evaluative relationships

Evaluative relationship issues brought to UNOMS include primarily issues related to (a) respectful communication, (b) performance management and feedback and (c) interpersonal differences.

An ombudsman provides a safe place for managers and staff alike to share experience confidentially and to obtain coaching on options on how to deal with the situation. UNOMS has mediated in many cases where conflicts arose from differences between supervisees and supervisors over performance appraisals, providing both parties the opportunity to express their own comments and arguments in the presence of a neutral third person. In the course of discussion, new points and issues are often discovered that parties had not previously raised but which proved relevant in seeking a solution. As a result, agreement was reached through mediation and, in some cases, the comments and even the scores of the performance appraisals were modified.

17 See Staff Regulation 8.1 (a).

In cases of bullying, harassment and other forms of abusive behaviour, the question arises whether these situations can be adequately addressed through informal mechanisms. Apart from cases of serious misconduct, such as sexual harassment, that have to be investigated, there is no clear-cut answer and every case must be reviewed on its own merits. UNOMS offers itself as a tool to assist supervisors and supervisees who are dealing with personalities in the workplace who are perceived as difficult: for example, an ombudsman can coach managers who are perceived as abrasive so that they become aware of their behaviour and adopt a more appropriate behaviour. In doing so, an ombudsman draws from experience and instances where solutions have been found to deal successfully with harassers and bullies in the workplace. Coaching is also increasingly offered by the administration to address such situations by using professional external coaches.

10. Surfacing issues and early warning system

In addition to dealing with individual cases, an ombudsman is mandated to address systemic issues, which might be root causes for problems surfacing through individual cases or brought to the attention of UNOMS.[18]

A systemic issue is characterized by the existence of the issue independent of the individuals involved. The conflict stems from issues that are more deeply rooted or from existing gaps in the organization, such as those found in its policies, procedures, practices and structures, all of which influence organizational culture.[19]

The identification of systemic issues is informed by the cases and issues brought forward by visitors; issues identified during interactions with the parties involved in conflicts; ongoing dialogue with stakeholders; and direct observations.[20]

An ombudsman is thus in a privileged position to have a bird's eye view of the mix of challenges the organization is facing. Organizations frequently resort to an ombudsman to assist them in analysing and suggesting ways to work together on problems before they become unmanageable. An ombudsman communicates those issues to employees and management in multiple ways, including through annual reports[21] and regular meetings with various stakeholders, including senior management and staff associations.

Recommendations in annual reports address the need for dialogue and reflect practical steps that organizations can take to address some of the root causes of conflict.

18 GA res. 61/261, para. 18.

19 *Activities of the Office of the United Nations Ombudsman and Mediation Services*, Report of the Secretary-General, A/68/158, para. 59.

20 *Ibid.*, para. 60.

21 The Secretary-General issues a joint report for the entities covered by UNOMS (ref. GA res. 63/253, para. 23). For the annual reports of UNOMS, see: https://www.un.org/en/ombudsman/reports.shtml. In addition to the joint report, the Office of the Ombudsman for the United Nations Funds and Programmes and the Office of the Ombudsman for the Office of the United Nations High Commissioner for Refugees issue their respective annual reports. For annual reports of the Office of the Ombudsman for United Nations Funds and Programmes, see: https://www.un.org/en/ombudsman/jointombudsperson/reports.shtml. Annual reports of the Office of the Ombudsman for UNHCR are available on the UNHCR intranet.

Examples of systemic issues raised by UNOMS include performance management, career management, management of complaints that do not reach the threshold of misconduct, occupational health management, change management, handling of supervisors who are perceived to be abrasive and the need for a systems approach to conflict management.

As indicated in the various ombudsman annual reports, these interventions contribute to follow-up action, including review of existing policies, issuance of new policies or changes in processes or structures. Examples include the enactment of rebuttal mechanisms in performance management, promotion of mediation in cases of bad management that do not reach the threshold of misconduct, introduction of periodic conflict management stakeholder meetings, development of new human resources policies and strengthening of feedback mechanisms.

11. Protection against retaliation

No person who brings a matter to the attention of an ombudsman or provides information to an ombudsman shall be subjected to reprisals because of such action.[22] Despite this clear note, UNOMS continues to receive and follows up on allegations of cases of retaliations against colleagues who have contacted an ombudsman. Contacting an ombudsman is not a protected activity under the Whistleblower Protection Policy.[23] The inclusion of contacting an ombudsman as a protected activity might strengthen the protection of concerned individuals. Apart from addressing instances of retaliation, UNOMS is trying to raise awareness of management of the usefulness of involving an ombudsman as a neutral party in an attempt to work together to find solutions versus the potential of conflict escalation, potentially disruptive investigations or loss of reputation and productivity.

Managers increasingly see the opportunity of informal conflict resolution and encourage their staff to seek neutral third-party assistance early on and to engage constructively with UNOMS. UNOMS is equally requested by the administration to assist in addressing problems and conflict situations. There is opportunity for the administration and senior leadership to clarify that retaliation against a staff member seeking assistance, including from UNOMS, will not be tolerated.[24]

12. Misperceptions

Among the misperceptions of the role of an ombudsman is a belief that an ombudsman should be contacted only as a last resort, when a situation has escalated to a level that cannot be addressed by management. The level to which the conflict has escalated should not be the determining criterion in deciding when to contact an ombudsman. Anyone should feel free to contact an ombudsman at any time. Experience shows that addressing badly managed conflicts early provides the best potential for a successful resolution. A conversation with an

22 ST/SGB/2002/12 (15 October 2002), section 4.2.

23 ST/SGB/2005/21 (15 December 2005), section 2. UNHCR's policy on protection of individuals against retaliation (Whistleblower policy) is outlined in IOM/FOM No. 43/45 of 15 September 2008 and includes contacts with the UNHCR Ombudsman Office as a protected activity (see section 2.2 of the IOM/FOM).

24 *Activities of the Office of the United Nations Ombudsman and Mediation Services, Report of the Secretary-General*, A/68/158, para. 74.

ombudsman in person, by phone or by online communication at an early stage can provide the visitor with a better understanding of conflict dynamics and options for resolution. In many cases, such a conversation has assisted visitors to feel confident in addressing the situation themselves without further involvement of an ombudsman. Visitors have valued the opportunity to talk to a neutral party in confidence.

"Ombudsmen cannot do anything" or "ombudsmen have no teeth" are comments that are circulated by some about the potential usefulness of contacting an ombudsman. While the role and mandate have indeed limits of engagement for UNOMS, the range of action and possible intervention is wide and has proven to provide the kind of support numerous visitors have considered as critical in solving their respective problems. Direct access to the Secretary-General and the respective Chief Executive Officers of the funds and programmes and UNHCR, wide ranging access to information, neutrality and the independence of UNOMS, offer a unique opportunity for UNOMS to be instrumental in solving individual cases and addressing systemic issues. It is in the hands of an ombudsman whether that space is fully explored.

C. Mediation

1. What is mediation?

The members of the United Nations workforce regularly use a range of mediation techniques such as active listening, facilitation of dialogue or maintaining respect for others as part of their daily work in dealing with conflict and building a productive and harmonious work environment. These techniques are not thought of as formal mediation nor do people feel that they are engaged in a formal mediation process. Nevertheless, these approaches to conflict resolution are a very valuable part of the United Nations work ethic. The information on mediation provided below is meant to address formal mediation services provided by UNOMS.

While there is often a basic understanding of mediation, very few people who have not been directly involved in mediation or experienced mediation in some way grasp the full breadth of its capacity and potential. It is therefore important to make that potential more understood to allow for informed decision-making to promote the use of mediation when appropriate.

In its resolution 61/261, the General Assembly affirmed "mediation as an important component of an effective and efficient informal system of administration of justice that should be available to any party to the conflict at any time before a matter proceeds to final judgement".[25]

The standards of operation for mediators correspond largely to those applicable for an ombudsman, namely confidentiality, neutrality and impartiality, informality and voluntariness.

Confidentiality of the mediation process is the cornerstone of all those standards. The guarantee of confidentiality of matters discussed in mediation provides the unique space

25 GA res. 61/261, para. 15.

of trust and confidence that has proven to be the door to honest dialogue, consensus-building and successful conflict resolution. Any disclosure of matters relating to mediation risks eroding the value of mediation.[26]

In the same way that an ombudsman cannot be an advocate for either party in a dispute, a mediator remains neutral, does not take sides and does not control the outcome of mediation. The outcome will always remain in the hands of the parties themselves.

Mediation is:[27]

a. A voluntary process that takes place only with the consent of all of the parties involved;

b. An informal process in which a trained neutral person, known as a mediator, assists the parties to work towards a resolution of a dispute with the parties themselves remaining in control of the final decision;

c. A process in which any statement made or document prepared during the mediation proceedings or in a private discussion with the mediator(s) remains privileged and confidential. The mediator(s), persons working in UNOMS and the parties to a mediation cannot be required to testify in the United Nations formal justice system about what happened during mediation;

d. A process that is "without prejudice"; this means that if the matter is not resolved during the mediation process, the parties can still go forward with formal proceedings so long as they meet the applicable timelines. Discussions held, positions put forward and documents produced for the purpose of mediation cannot be used against a party in Tribunal proceedings.[28]

2. Disputes eligible for mediation

Work-related disputes are eligible for consideration for mediation proceedings. A work-related dispute or difference is any formal or informal dispute or issue arising out of an existing, prospective or past employment relationship between and among the United Nations and its workforce. A work-related dispute may be either written or oral in nature.

Mediation is applicable for diverse issues, including interpersonal and evaluative relationships, contractual status and disciplinary matters.[29]

All requests for mediation will be reviewed by the respective service providing mediation to ensure that mediation is an appropriate method for resolving the dispute. Among the criteria reviewed is the parties' willingness to engage in a goodwill effort to find a solution both parties can accept. The level to which a conflict has escalated or the period a conflict has remained unresolved are both elements that can lead to the conclusion that mediation is not the appropriate tool for resolving the dispute.[30]

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26 *Activities of the Office of the United Nations Ombudsman and Mediation Services, Report of the Secretary-General*, A/68/158, paras. 29 and 30.

27 Information provided in the sub-chapter on mediation is partly based on mediation-related information provided on the UNOMS website at: http://www.un.org/en/ombudsman/medservices.html.

28 See also sections B.5 and 6 above.

29 *Activities of the Office of the United Nations Ombudsman and Mediation Services, Report of the Secretary-General*, A/68/158, para. 28.

30 See also section D.2 below.

In accordance with Article 8 of the Statute of the United Nations Dispute Tribunal and Staff Rule 11.1(d), a staff member may not file an application with the Dispute Tribunal if the dispute arises from a contested decision that has already been resolved by an agreement reached through mediation.

3. What does a mediator do?

A mediator is impartial and independent and does not have any personal interest in the potential outcome. A mediator's role is to create a confidential and safe environment that encourages all the parties to participate in a problem-solving process. A mediator is not a judge and does not determine the outcome of the dispute. A mediator uses skills to allow parties to be heard in a respectful, non-judgmental way and assists them in reaching their own solutions.

(a) The Mediation Service

The Mediation Service was established by the General Assembly as part of UNOMS to strengthen the United Nations internal justice system and to assist staff members[31] of the United Nations Secretariat, funds and programmes and UNHCR in the informal resolution of work-related disputes.

(b) Mediation through an ombudsman

There are significant similarities between the role of a mediator and that of an ombudsman. With the necessary training, mediation services can also be provided by an ombudsman acting in a mediator capacity. Mediation can thus become one of the tools an ombudsman might use within the much broader role described, provided the parties to mediation are in agreement.

4. Effective referral to mediation: who, when and why?

(a) Who can request mediation?

Mediation is available to all staff members and non-staff personnel[32] of the United Nations Secretariat, funds and programmes and UNHCR. Mediation can involve individuals, groups and multiple parties.

Mediation may be requested by one of the parties to the dispute or all of the parties to the dispute or a case may be referred for mediation by the Dispute Tribunal or offices such as the Management Evaluation Unit or OSLA. As a result of the voluntary nature of the process, the agreement of all parties to a dispute is required for mediation to proceed.

A party to mediation who is not a staff member is not covered under the formal administration of justice provisions and therefore cannot file an application to the Dispute Tribunal to enforce a Mediation Settlement Agreement. However, that person may request further mediation.

31 See also paras. B.5 and 6 above on non-staff personnel.
32 *Ibid.*

(b) When to request mediation?

In accordance with Staff Rule 11.1(b), a staff member or the Secretary-General or his designated representative may request initiation of mediation proceedings at any time. Mediation may be requested before or even while the matter is pending before the United Nations Dispute Tribunal. In accordance with Staff Rule 11.1(c), the conduct of mediation proceedings may result in an extension of the timelines applicable to a management evaluation.

In the case of a matter currently pending before the Dispute Tribunal, both the judge and the parties on their own initiative can propose mediation.[33] The case will be suspended by the Tribunal in conformity with Article 15, paragraph 4, of the Rules of Procedure of the Dispute Tribunal while the matter is proceeding in the mediation process.[34] In those cases, the timeframe for completion of mediation proceedings normally will not exceed three months. However, in exceptional circumstances the mediator can notify the management evaluation units or the Registrar of the Dispute Tribunal that mediation proceedings will require an additional period of time.[35]

(c) Benefits of mediation

Mediation is an opportunity for the parties to work together with the assistance of a neutral third party to develop their own resolution of the dispute, allowing for an enabling and empowering process. Mediation provides a safe place where the parties are able to discuss positions and underlying interests and needs openly and have an opportunity to see the perspective of the other party and understand the impact of their actions on each other.[36] The parties remain responsible for designing their own solution and have complete control over the final agreement. The mediator does not make a binding decision for the parties but seeks to assist the parties in reaching a mutually agreeable resolution of the dispute.

The mediation process may save time and money and reduce the amount of stressful workplace conflict. In mediation, the parties can usually resolve their disputes more effectively and conveniently than through litigation. The confidentiality of the process provides the parties with opportunities to share their interests, needs or frustrations openly without fear of exposure, which has often proven to be critical to open the path to creative problem-solving.

Parties are sometimes looking for "their day in court", as an opportunity to explain in person the impact a certain decision or action may have had on them. The mediation process provides for good, possibly better opportunities than the "day in court" for the parties to speak and make themselves heard and understood, without the restrictions of rules of procedure in the formal process.

Mediation is not a legal process and therefore does not generally require the presence of legal counsel. However, a party may bring a representative, a colleague or legal counsel if, after a discussion with the mediator, a party believes it will be helpful to do so.

33 See Art. 15, paras. 2 and 3, UNDT Rules.
34 This matter is further examined in Chapter V.
35 See Art. 15, para. 5, UNDT Rules.
36 See 2012 *Annual Report of the Office of the Ombudsman for United Nations Funds and Programmes* (UNDP/ UNFPA/ UNICEF/ UNOPS/ UN Women), Chapter III.

Mediation is voluntary and without prejudice to pursuing a claim in the formal procedure. A party can thus at any moment withdraw from mediation and engage in the formal procedure.

If an application has been filed in the formal justice system with the Dispute Tribunal, the parties may at any time, and on their own initiative, choose to try mediation or they may agree with a proposal of a judge of the Tribunal to refer the case to mediation. If so, the Tribunal proceedings will be temporarily suspended while the mediation proceedings are taking place.

5. The mediation process

The mediation process describes the steps that lead from an agreement to mediate to arriving at a mediated settlement and its implementation. This process usually includes: (a) a preparatory phase leading to an agreement to mediate; (b) an opening phase both in private and joint meetings with the parties; (c) an exploratory phase to allow for the identification and review of options based on needs and interests of the parties; and (d) a settlement phase providing for the drafting and conclusion of a settlement agreement and its implementation.

Mediation can be conducted face-to-face either in one physical location or via a web-based virtual space or via telephone. The global character of United Nations operations and cost considerations make it sometimes difficult or impossible to organize face-to-face mediation in one physical location. Experience and research has shown that virtual face-to-face communication or telecommunication do not necessarily take away from the potential of a mediation process.

(a) Preparatory phase

The preparatory phase is an opportunity for the parties to understand the mediation process and its potential, including the role of the mediator and conditions of engagement.

The parties who agree to engage in mediation sign an agreement to mediate before the mediation starts. Such an agreement serves as an acknowledgement of some ground rules underpinning the mediation process, including the confidentiality of the process and the commitment of the parties to engage in the process in a respectful manner and in good faith in their attempt to find a mutually agreeable solution. The agreement also reminds the parties of the voluntariness of the process and the option to withdraw from the process at any time.

In this phase, the parties agree on logistical arrangements, including the location, date and participants in the mediation process. Issues that are important to clarify include the need for decision-making power of the parties, namely of the person(s) representing the administration who should either have delegated authority on what they can agree to or be able to communicate with their management in such a way that it supports the timely processing of a mediation agreement. The preparatory phase usually includes a series of private meetings the mediator has with the respective parties.

(b) Opening phase

The opening phase includes the reinforcing of the rules of engagement under the agreement to mediate, opening statements by the parties, understanding of the needs

and interests of the parties and the identification of topics to be further discussed. Each phase of the process allows for private sessions by each party alone or with the mediator. The opening phase provides space for parties to voice their frustrations and feelings and is thus an important step of the mediation process. In this initial stage, there still tends to be a focus on the past.

(c) Exploratory phase

The exploratory phase is more forward-looking, with the aim of generating options for solutions that build on the needs and interests of the parties. Experience has shown that the mediation process holds the potential to go beyond mere compromise, identifying more options than those that the parties initially see and combining interests so that they create more joint value in such a way that true win-win solutions are possible.

(d) Settlement phase

The settlement phase provides the space for the parties to identify the elements that have to be reflected in the settlement agreement and test possible scenarios for implementation to ensure that the settlement agreement provides for true closure of a case.

6. Mediation settlement agreement

The mediation process does not commit the parties to anything prior to the signing of a mediation settlement agreement.

(a) Content

The settlement agreement lays out the details of what the parties have agreed. It is important to formulate the agreement in such a way that it fully reflects what has been agreed in a way that is implementable and does not leave room for interpretation. It is to no one's advantage to have an agreement that re-opens a conflict through a lack of clarity arising from the terms of its implementation.

(b) Enforceability

In accordance with Staff Rule 11.1(d), an application shall not be receivable by the Dispute Tribunal if the dispute arising from a contested decision has been resolved by an agreement reached through mediation. However, a staff member may submit an application directly with the Dispute Tribunal to enforce the implementation of an agreement reached through mediation within ninety calendar days after the deadline for implementation specified in the mediation agreement or, when the mediation agreement is silent on the matter, within ninety days after the thirtieth day from the date on which the agreement was signed.[37]

37 See also Chapter V.

D. Success factors of informal conflict resolution

Informal conflict resolution cannot provide a solution for every case. There are situations that might require a judgement to clarify the interpretation of certain rules and regulations and their application. In other cases, problems have been allowed to fester over years and have escalated to such a point that informal conflict resolution is no longer possible.

A number of factors have been identified that have shown to be instrumental for successful informal conflict and problem resolution:

1. Corporate support

The potential for informal conflict resolution is imbedded in organizational culture. Corporate support encouraging informal conflict resolution and a mediation culture significantly increases the readiness of management and staff at large to engage in informal conflict resolution processes.

2. Early engagement

The longer a conflict remains unaddressed, the more difficult it becomes to resolve it informally. A widespread avoidance culture in the workplace and large diversity in cultural approaches to conflict management in a globally operating organization pose challenges to early engagement in conflict situations. An ombudsman provides a safe place to address some of those challenges to empower colleagues to feel comfortable to address conflict early and thus contribute to higher potential for an early resolution.

3. Collaborative practice

Fight or flight reactions are common in conflict situations. Collaborative practice provides a more promising alternative. Collaborative practice invites active listening, separation of the problem from the person and the identification of underlying interests and needs.

4. Power balance

Work environments tend to be prone to huge power imbalances, including strong hierarchies. Informal conflict resolution, including mediation, has limited to no potential in situations where there are significant power imbalances between the parties. A skilled mediator should be in a position to address those imbalances successfully.

5. Appreciative inquiry and self-awareness

Informal conflict resolution tools, particularly mediation, are underpinned by the readiness of the parties to take a step back and to reflect on their positions and behaviours, and an attempt to see the other party's needs and interests through active listening.

Chapter IV
The Formal System (I): Management Evaluation

Christian Rohde *

A. The context

1. The right to administrative review

The right to review of administrative decisions is a cornerstone of domestic administrative law and such right has been widely introduced in international organizations, in particular for their staff.[1] It is not new; already the League of Nations, which was created in 1919, provided for a mechanism of internal boards to settle disputes between staff members and the Secretary-General of the Organization, and a judicial mechanism was considered.[2]

When the management evaluation process was introduced with the new UN system of internal justice[3] on 1 July 2009, a somewhat unfamiliar element was inserted into the schedule of providing justice in response to grievances resulting from administrative decisions; disciplinary decisions are not subject to the process.[4] The process is the first step in the formal part of the review of a decision, and a condition for a staff member having standing to file a case before the UNDT with regard to the administrative decision. The selection of

* *The views expressed in this Chapter are those of the author and do not necessarily represent the views of the United Nations, or of the authors of the other Chapters. The views expressed in the other Chapters are the views of the authors of those Chapters and do not represent the views of the United Nations or other authors. The author wishes to express its appreciation for the research for, and review of text parts by Ms. Ganima Vieira, Mr. David Koller and Ms. Giulia Ferrari.*

1 Benedict Kingsbury/Richard B. Stewart, 'Legitimacy and Accountability in Global Regulatory Governance', UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), p. 203.

2 Stephen M. Schwebel, 'Foreword', in: Olufemi Elias (ed.), *The Development and Effectiveness of International Administrative Law* (2012).

3 For a review see Phyllis Hwang, 'Reform of the Administration of Justice System of the United Nations', *The Law and Practice of International Courts and Tribunals 8* (2009), pp. 181 to 224.

4 See Staff Rule 11.2 (b).

the term "management evaluation" by the General Assembly for the process could appear to put an emphasis on a management approach and on an independent review, and not on legal issues, even though formally, it is clearly a legal remedy and a necessary element of the internal justice process.[5]

In the previous internal justice system of the UN Secretariat, staff members could request that their complaints against an administrative decision of the Organization be reviewed by the Administrative Law Unit (ALU) in what was called administrative review. This office was located in the Office of Human Resources Management (OHRM), and dealt with an overwhelming number of review requests with no statutory deadlines. As a result, the reviews and issuing a final decision often took months or in some cases much longer, which was an undesirable situation for an ongoing conflict between a staff member and a decision-maker over a decision.[6] An important contributing factor was also that it may have been difficult for the ALU to obtain timely comments from decision-makers regarding the rationale for their decisions.

Staff members could also file a request for review with the Joint Appeals Board (JAB) against an administrative decision, which was the entry into formal litigation. According to former staff rule 111.1[7] JAB's were composed of a chairperson appointed by the Secretary-General from among a list presented by the joint staff/management machinery, a member appointed by the Secretary-General, and a member elected by ballot by staff being under the JAB's jurisdiction.

2. The new process and lessons from the former process

The new management evaluation process emphasizes particular issues:

- Acceleration: The Organization is required by Staff Rule 11.2 (d) to respond to a management evaluation request (MER) within 45 or 30 days, depending on whether a request was filed by a staff member stationed in the field or in headquarters
- Independence: Whether administrative decisions were taken in line with the internal laws is assessed by a unit located in the office of the Under-Secretary-General for Management, the Management Evaluation Unit (MEU). As per the system, the MEU makes its recommendations responding to MER's with independence from line management or policy-makers,[8] but is required to take into account all relevant material
- Professionalization: The prior JAB was a panel composed of staff members nominated and worked as a peer review making recommendations. The management evaluation process also results in recommendations, but relies on legal officers reviewing the requests

5 On the process, from a managerial perspective, see Eduardo Missoni/Daniele Alesani, *Management in International Organizations and NGO's* (2013), pp. 354 *et seq.*, from a legal perspective Bruno Simma (ed.), *Commentary on the UN Charter*, 3rd. ed. (2013), commentary on Article 101 by Wolfgang Stöckl, pp. 2066 to 2068.

6 *Report of the Redesign Panel of the United Nations system of administration of justice*, A/61/205, 28 July 2006.

7 For example ST/SGB/Staff Rules/1/Rev.3, from 1 March 1997.

8 *Report of the Advisory Committee on Administrative and Budgetary Questions*, A/63/545, para. 23, and GA res. 63/253 of 17 March 2009, para. 34.

- Reconsideration: The process requires a staff member to take the step to file a clear grievance, and the Organization to reconsider its prior decision against this grievance on the basis of the internal laws of the Organization within a short time-frame. This constitutes a significant opportunity for the Organization to better explain its decision or correct any errors.

Other International organizations may provide different in-organization reviews of administrative decisions prior to judicial review. Examples are the Organization for Economic Cooperation and Development (OECD), which provides for a peer review of complaints by a panel composed of Joint Advisory Board and Staff Association members, and the Secretary-General, or the World Bank Group, which also relies on a peer review by the Managing Director, based on joint recommendations of the Vice President for human resources and the World Bank Group Staff Association. The Organization for the Prohibition of Chemical Weapons' (OPCW) internal justice system features an Appeals Council composed of staff members appointed by the Director-General and elected by staff members.

A peer review of a request was done in the previous system by the Joint Appeals Boards in principal duty stations, as a prerequisite for filing a case before the former UN Administrative Tribunal. The JAB's were composed of members appointed by the Secretary-General and by the Staff Union, and a chair appointed by the Secretary-General. The JAB's benefitted from a Secretariat supporting them, including legal officers providing advice to them. The JAB's were criticized by some as not being independent because they included a majority of members appointed by the Secretary-General.

The JAB's were plagued by an overwhelming amount of cases and managers not always providing explanations for their decisions,[9] and as a result their reports were sometimes delivered over a year or even over two years after a case was filed. Where a staff member took her/his case to the former UN Administrative Tribunal, a case from beginning to end might well have taken over five years. Given that both the staff member and the Organization should have a strong interest in speedy resolution of disputes, this was an unacceptable time-span and it can be safely assumed that the hidden costs of such conflicts were high for the Organization. In fact, the former system has been called discretionary, lacking transparency, and slow.[10]

The framework of the management evaluation process is determined by Staff Rule 11.2[11] and by ST/SGB/2010/9 on the Organization of the Department of Management:

9 Maritza Struyvenberg, 'The New United Nations System of Administration of Justice', in Olufemi Elias (ed.), *The Development and Effectiveness of International Administrative Law* (2012), p. 246.

10 Louise Otis/Eric H. Reiter, 'The Reform of the United Nations Administration of Justice System: The United Nations Appeals Tribunal After One Year', *The Law and Practice of International Courts and Tribunals* 10 (2011), p. 428. Among other complaints, this has also been raised before the European Court of Human Rights in the filing *Perez v. Germany* lodged on 20 March 2008.

11 ST/SGB/2013/3: (a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision. (b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or

"Section 10
Management Evaluation Unit

10.1 The Management Evaluation Unit is headed by a Chief, who is accountable to the Director of the Office of the Under-Secretary-General for Management.

10.2 The core functions of the Unit are as follows:

a. Conducting an impartial and objective evaluation of administrative decisions contested by staff members of the Secretariat to assess whether the decision was made in accordance with rules and regulations;
b. Making recommendations to the Under-Secretary-General for Management on the outcome of the management evaluations and proposing appropriate remedies in case of improper decision made by the Administration;
c. Communicating the decision of the Under-Secretary-General for Management on the outcome of the management evaluation to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York;
d. Proposing means of informally resolving disputes between staff members and the Administration; making recommendations to the Under-Secretary-General for Management on extending the deadlines for filing requests for management evaluation by staff members or for extending the deadlines for completing a management evaluation pending efforts for informal resolution by the Office of the Ombudsman;
e. Conducting a timely review of an application to suspend the implementation of a contested administrative decision until the management evaluation has been completed in cases involving separation from service; making a recommendation to the Under-Secretary-General on the outcome of such review; and communicating the decision of the Under-Secretary-General on the outcome of the review to the staff member;
f. Monitoring the use of decision-making authority and making recommendations to the Under-Secretary-General for Management to address any discerned trends; and
g. Assisting the Under-Secretary-General for Management to strengthen managerial accountability by ensuring managers' compliance with their responsibilities in the internal justice system."

non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation. (c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General. (d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

Section 10 provides further detail for the role of the MEU. It is notable that the section provides for the possibility to extend a deadline for filing a management evaluation request complementing staff rule 11.2(c), i.e. in the case of informal resolution with the assistance of a representative of the Ombudsman's office, and that the MEU is competent to make recommendations on suspensions of action requests involving separation from service only, i.e. termination, or the non-renewal of a contract which is about to expire.

3. Relevance of management evaluations for other parties

There are a number of parties or agencies which have a potential interest in the management evaluation outcomes: the staff members filing requests as they receive an outcome, the USG/DM who has delegated authority from the Secretary-General to respond to requests for management evaluation. The Administrative Law Section in OHRM and the Office of Legal Affairs may take an interest in the outcome of evaluation requests because they are responsible for representing the Secretary-General at a later stage, in case a staff member is not satisfied with the outcome of a management evaluation and decides to file an application with the UNDT (Office of Human Resources Management, OHRM),[12] or later to appeal an unfavourable UNDT judgment before the UNAT (Office of Legal Affairs, OLA).

The UNDT and also the UNAT may be interested entities in the process. While the UNDT and UNAT procedures are entirely separate from the management evaluation, staff members are legally required to request management evaluation of an administrative decision before they can proceed to the UNDT; unless they challenge a final disciplinary decision; in that case they may proceed directly to the UNDT seeking review. A staff member challenging an administrative decision before the UNDT will be required to show that she/he submitted a management evaluation request first, and must submit the management evaluation letter to the UNDT. As a result, the UNDT will be made aware of the position of the Organization on the issue as stipulated in the management evaluation letter; usually before it receives the submissions of the Secretary-General through ALS, which would take the management evaluation into account, but which are further submissions.

Further important interested parties in the process are the General Assembly and the Member States represented therein. They require the internal justice system to be efficient and conflict resolution-oriented. The Staff Unions of the UN system may also be interested as they may take an interest in issues involved in management evaluation requests, or sometimes even present them through individual requests as staff members.[13]

12 ALS responds to cases filed by Secretariat staff members for which the UNDT New York branch is competent. ALS will also respond to cases pending before the UNDT branches in Geneva and Nairobi if the decision which is being challenged was taken by an entity which is represented by ALS. The UN offices in Geneva and Nairobi will respond to cases before the UNDT emanating from their own area of responsibility.

13 In 2013 the then President of the United Nations Staff Union (UNSU) filed a request for management evaluation contesting, inter alia, the decision to revise Secretary-General's Bulletin ST/SGB/2011/6 on Staff-Management Committee (SMC). Pending management evaluation of that decision, the President of the UNSU also filed a request for suspension of action of the contested decision before the UNDT. The UNDT eventually dismissed the application (*Tavora-Jainchill*, Order No. 180 (NY/2013)); the request for management evaluation was deemed not receivable.

4. Competence of the Management Evaluation Unit in terms of entities

The MEU is responsible for requests made in relation to administrative decisions taken by decision-makers in the UN Secretariat. The Secretariat comprises of approximately 45.000 staff members, and this includes staff members at Headquarters including its departments, Offices away from Headquarters (Geneva, Nairobi, and Vienna), the five Regional Commissions, bodies of the internal justice system, the two UN international criminal Tribunals, the offices of Special Advisers and Envoys, UNODC, UNCTAD and ITC, UN-Habitat and UNEP.

As elements of the formal justice system introduced in 2009 the UNDT and UNAT are also responsible for staff serving in the separately administered Funds and Programmes (such as UNDP, UNICEF, UNFPA, UNHCR and UNOPS). However, the management evaluation function for the Funds and Programmes is not carried out by the MEU; as the Funds and Programmes have their own procedures of management evaluation operating independently from the Secretariat. The competence to review requests for management evaluation is typically assigned to internal legal offices with specifically assigned staff. The final decision is generally taken by the Deputy Executive head of the Organization.

Specialized Agencies (such as FAO, IAEA, UNESCO, WHO), on the contrary, have established their own internal mechanisms for review of administrative decisions which may significantly differ from the management evaluation process. Within such systems, often the ultimate decision is taken by the Organization's Director-General based upon the recommendation provided by an Appeal Committee or Board (see, for example, FAO, WFP, UNESCO and IAEA). An Appeals Committee is typically composed in equal number by members nominated by the Director-General as well as members elected by the staff as a whole, and an independent Chairman. In the case of WHO instead, the ultimate decision is taken directly by the Board of Appeals. Some internal mechanisms also provide for an internal appeal of the first decision on the administrative review. This is the case of UNESCO where staff members can submit an appeal against a Director-General's decision to the Secretary of the Appeals Board, and the ICJ, a principal organ of the UN, where a "Conciliation Committee" is mandated to review the decisions taken by the Registrar, while appeals against the Committee's review outcomes can be challenged before the UNAT directly.

In addition, while the UNDT and the UNAT have the competence to review appeals against final decisions taken by the Funds and Programmes, Specialized Agencies refer to the ILO Administrative Tribunal (ILOAT) for appeals against such decisions, except for issues related to the UN Joint Pension Fund regarding which the UNDT and UNAT have exclusive competence.

B. Management evaluation as a first step in a formal dispute process

If a staff member submits a management evaluation she/he has decided to take a matter to formal dispute settlement. It can be assumed that for most staff members this is not a step they

take lightly, as it opens the door to a protracted dispute. Such dispute is likely to create a more substantial record, will create a significant amount of work for them, and may have a potential to complicate the situation and cooperation with parties interested in the dispute, in particular the decision-maker or, frequently, the staff members' supervisor, team members, and others.

Nevertheless, there are a number of staff members who chose to initiate a formal dispute resolution process with their Organization; in total 933 out of roughly 45.000 staff members in 2013, some of them filing multiple claims. Initiating such a dispute has also important advantages for a staff member. The grievance is brought on record, and the staff member has the opportunity to receive a review of the matter from an independent institution, such as the UNDT, or the MEU, which operates independently[14] from decision makers whose decisions are subject to management evaluation, and from the Administration's legal advisers, including those that represent the Administration before the Tribunals, that is the Office of Legal Affairs and the Administrative Law Section.[15] The MEU submits recommendations to the Under-Secretary-General for Management, who is the final decision-maker upon these recommendations, with delegated authority from the Secretary-General.

C. Receivability

As per Staff Rule 11.2 (a) the subject of an MER can only be an "administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a)", and an MER can only be submitted by a "staff member".

However, the legal framework of the management evaluation process goes beyond a narrow definition of "staff member", i.e. a person who is an international civil servant, makes a written declaration of loyalty to the Organization,[16] and receives a letter of appointment.[17]

1. Who is entitled to file a management evaluation request?

The widening of the scope of persons who are entitled to file a management evaluation

14 See the *Report of the Secretary-General on the Administration of Justice*, A/62/294, para. 86.

15 GA res. 63/253 of 17 March 2009, Resolution on the Administration of Justice at the United Nations: "34. Also recalls para. 23 of the report of the Advisory Committee on Administrative and Budgetary Questions, and requests the Secretary-General to further clarify the role of the Department of Management of the Secretariat in the evaluation process, in order to ensure the appropriate independence of the Management Evaluation Unit, and to report thereon to the General Assembly at its sixty-fifth session;"; A/65/373, *Report of the Secretary-General on the Administration of Justice at the United Nations*, 149. The Unit operates independently from decision makers whose decisions are subject to management evaluation, and from the Administration's legal advisers, including those that represent the Administration before the Tribunals, that is the Office of Legal Affairs and the Administrative Law Section. The Under-Secretary-General for Management has the delegated authority to indicate the Secretary-General's endorsement of the Unit's recommendations and, in practice; the recommendations of the Unit are routinely endorsed and implemented. The overriding interest of the Under-Secretary-General for Management is to ensure that cases are fairly and impartially reviewed so that the cases involving managerial error do not needlessly proceed to the Dispute Tribunal."

16 Staff Regulation 1.1 (a) and (b).

17 Article 101 UN Charter, Staff Regulation 4.1, Staff Rule 4.1.

A brief overview of the internal justice systems in ten different UN organizations.

	First formal step	Informal option
UN Secretariat	Request for a management evaluation to the MEU	Available through the Office of the Ombudsman and Mediation Services
UNDP	Request for a management evaluation to the Administrative Law Practice Group of the Legal Support Office	Available through the Administrative Law Practice Group. It provides guidance to the managers and can seek the intervention of the Ombudsman for Funds and Programmes
UNICEF	Request for a management evaluation to the Policy and Administrative Law Section within the Division of Human Resources	Ombudsman for Funds and Programmes
UNFPA	Request for a management evaluation to the Legal Unit established within the Office of the Executive Director	Ombudsman for Funds and Programmes
FAO	Appeal to the Director-General who is advised by the Appeals Committe	
WFP	The FAO Appeals Committee currently reviews appeals from staff members of FAO and WFP.	
UNESCO	Appeal to the Director-General through the Director of the Bureau of Human Resources Management. The Director-General is advised by the Appeals Board. The Director-General's ruling can be appealed addressing a formal compliant to the Secretary of the Appeals Board.	
IAEA	Request a review to the Director-General. The Joint Appeals Board provides reccomendations to the Director-General.	
WHO	Appeal to the Board of Appeal (for staff members assigned at the headquarters) or at a regional Board of Appeals (for staff members assigned to a region)	
ICJ	Letter to the Registrar requesting a review of the administrative decision. The Registrar's reply can be appealed by lodging a complaint to the Conciliation Committee. In the event of a successful conciliation, the agreement of the parties is reported in a Minute.	None

Ultimate decision	Application to an internal court	Request for review	Cases per annum (2012)
Under-Secretary-General for Management	UNDT and UNAT		837
Assistant Administrator and Director of the Bureau of Management	UNDT and UNAT		17
Chief, Policy and Administrative Law Section, Division of Human Resources	UNDT and UNAT		60
	UNDT and UNAT		18
Director-General	ILO Administrative Tribunal (UNDT/AT for issues related to the UN Joint Staff Pension Fund)		
Director-General	UNDT and UNAT		
taken by Director-General (communicated by the Director of the Bureau of Human Resources Management)	ILO Administrative Tribunal		
Director General/ Joint Appeals Board	ILO Administrative Tribunal		21
Director-General (for s/m assigned at the headquarters)/Regional Director (for s/m assigned to a region). Staff members have the right to appeal to the Board of Appeal at headquarters against the decision of a Regional Director.	ILO Administrative Tribunal		
Registrar/Conciliation Committee	United Nations Appeals Tribunal		

request is based on several documents of the General Assembly.[18] As a result, the following groups of persons may be entitled to file an MER:

- Active staff members
- Retired staff members[19]
- Prospective staff members (only in extremely limited circumstances, such as for withdrawals of an offer of appointment)[20]
- Volunteers (not UN Volunteers)
- Interns (management evaluation is the final step; there is no recourse to UNDT/UNAT)[21]
- Gratis Personnel.

The vast majority of requests are received from active staff members; very few requests are received from retirees and interns.

2. Only administrative decisions can be challenged

Staff Rule 11.2 makes it clear that only "administrative decisions" can be challenged in a management evaluation procedure. However, while the term is widely used in the internal laws of the Organization, it is not defined anywhere. The scope of what constitutes an administrative decision is rather important, as it defines how broad or narrow the rights of staff members in challenging decisions of the Organization are. The UNDT and the former UN Administrative Tribunal have defined the term in various decisions. The former UN Administrative Tribunal has been relied upon by the UNDT[22].

The Judgment of the UN Administrative Tribunal *Andronov*[23] was embraced by the UNAT and UNDT in several judgements.[24] The definition provided by the former UNAdT in *Andronov* is as follows:

"An 'administrative decision' is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative

18 General Assembly Resolution on the Administration of Justice at the United Nations GA res. 63/253 (para. 7). See also General Assembly Resolutions: GA res. 67/241; GA res. 66/237; GA res. 64/233; and the *Reports of the Secretary-General on the Administration of justice at the United Nations:* UN Doc. 67/265 and UN Doc. 66/275.

19 This has been explicitly confirmed in *Gehr* 2013-UNAT-293.

20 See *Gabaldon* 2010-UNAT-120.

21 See *Basenko* UNDT/2010/145, *Basenko* 2013-UNAT-316, *Di Giacomo* UNDT/2011/168, *Di Giacomo* 2011-UNAT-269.

22 For an overview see Tamara Shockley, "The Evolution of a New International System of Justice in the United Nations: The First Sessions of the United Nations Appeals Tribunal", *San Diego International Law Journal* 13 (2012), pp. 32 *et seq.*

23 *Judgement* No. 1157 (2003).

24 *Tabari* 2010-UNAT-030, *Schook* 2010-UNAT-013, *Elasoud* UNDT/2010/111, *Larkin* UNDT/2011/028 and *Gehr* UNDT/2011/178).

decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences."

This definition seems to identify four elements of an administrative decision, a unilateral act, a decision, in an individual case, and having direct legal consequences for the individual. In its Judgment *Planas*[25] the UNDT noted the *Andronov* definition and further confirmed:

"In light of the foregoing, the Tribunal deems that an administrative decision can only be considered as such if - inter alia - it has direct legal consequences (effects) on an individual's rights and obligations."

This definition has been upheld by the UNAT.[26] In this regard UNAT also addressed the issue of what constituted an appealable decision before the UNDT. UNAT held:

"[W]hether or not the UNDT may review a decision...will depend on the following question: Does the contested administrative decision affect the staff member's rights directly and does it fall under the jurisdiction of the UNDT?"[27]

The Tribunals have thus provided significant definition to what an administrative decision in legal terms is. However, the application of the four elements can be imagined to sometimes still be the subject of dispute between a staff member and the responding Organization as there may be no clarity of definition for every occasion, and an assessment of the organizational act, or inaction, for that matter, will depend on a broader view of the issue. This is evidenced by the UNDT Judgment in the case *Teferra*:

"What is or is not an administrative decision must be decided on a case by case basis and taking into account the specific context of the surrounding circumstances when such decisions were taken."[28]

Most administrative acts would be straightforward in that they concern a termination or non-renewal of contract, the refusal of an entitlement or benefit, or a non-selection for a post. But there are administrative acts the nature of which is not quite clear-cut. Staff members may chose in their management evaluation requests to challenge every single act or omission by the Organization in a procedure to investigate misconduct under ST/SGB/2008/5 and take consequential action or not. There are also a number of staff members who have challenged every act or omission of the Organization in relation to the performance evaluation process,[29] and the staff selection process.[30] However, only a limited number of acts of the Organization under these rules can be argued to be an administrative decision.

It may be the object of dispute whether notifying a candidate in a selection procedure that she or he has not been short-listed or has failed the first step of a multi-step testing process,

25 UNDT/2009/086.
26 *Planas* 2010-UNAT-049.
27 *Nwuke* 2010-UNAT-099.
28 UNDT/2009/090.
29 ST/AI/2010/5 and Corr. 1.
30 ST/AI/2003/3 and Amend. 1.

before the selection procedure is completed, constitutes an administrative decision which can be challenged by a management evaluation or a filing to the UNDT. In an Order on a request for suspension of action, in this case about proceeding with the selection procedure, the UNDT held that: "17. In the present case, the selection process for the Applicant ended when, based on the assessment of her written test, she was not selected for the interview. This decision cannot be considered preparatory since it is final and apply individually to the Applicant, who was not deemed suitable to proceeding to the next step in the selection process, namely the interview. 18. Accordingly, the Tribunal finds that the application is receivable." ["apply" in the original Order][31]

There are also a number of acts by UN entities which may appear to be administrative in nature; yet, staff members may not be able to challenge them in the formal system of justice.

With regard to whether the MEU can review administrative acts by Offices having an independent status, the following considerations are relevant. The Office of Internal Oversight, the Ethics Office and the Office of the Ombudsman all have a particular status in the Organization, in that their mandate provides them with independence. The oversight and control of the Secretary-General would not extend as far as their substantive work is considered.

In fact, their substantive work such as investigations and audits (OIOS), making recommendations on ethical issues and complaints in particular (Ethics Office), and informally settling and mediating conflicts of staff members with the Organization (Ombudsman) would entirely lose value if the offices would lack independence; the purposes and credibility of these accountability/control mechanisms, or this mechanism of balancing disputes, respectively, would vanish. However, these offices must naturally respect the internal laws of the Organization on the terms of reference of their own staff members, and thus any requests of staff for management evaluation concerning these terms would be reviewed by the formal internal justice process including the MEU, if otherwise receivable.

This also applies to the Office of Staff Legal Assistance, although there have been some challenges to this. Staff members have argued that OSLA is formally integrated in the UN administration and not distinct from the Secretary-General,[32] and that therefore decisions by OSLA to refuse advising/representing a staff member can be challenged before the UNDT. This has been rejected by the UNDT, which recognized that OSLA acted in the "legitimate exercise of the discretionary authority vested in OSLA." The UNDT has also ruled that this legitimate authority has limits.[33]

Staff Rule 11.2 (b) determines that staff members do not require to request management evaluation, but can proceed directly to the UNDT if they wish to challenge "an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process". Thus far, the record indicates that the Secretary-General has not

31 *Baldini* UNDT Order No. 103 (NY/2013, UNDT/2013/025).
32 *Worsley* UNDT/2011/024, p. 4, para. 19.
33 *Larkin* UNDT/2011/028, p. 9, para. 28.

taken the step to determine in a legal instrument, such as in an Administrative Instruction (ST/AI), what he considers to be technical bodies.

It has been argued that the Advisory Board on Compensation Claims (ABCC), which makes recommendations to the Secretary-General for decisions upon claims of staff members for compensation for illness or injury, and with regard to disability, is such a body, and that decisions upon the ABCC's recommendations[34] do not require a management evaluation request before they can be challenged before the UNDT. However, the ABCC is a Board composed of staff members (6; 3 appointed by the Administration, 3 appointed upon recommendation by staff). It relies principally upon factual and medical reports, the latter of which are technical in nature. Nevertheless, the ABCC follows certain procedural steps when making recommendations to the Secretary-General and the decision on a claim is ultimately taken by the Administration, not medical practitioners. This could lead to the conclusion that the ABCC is not a technical body, and the decisions which are based upon its recommendations can be reviewed in the management evaluation process.

Another body the nature of which has been an issue is the so-called rebuttal panel. Such panels play an important role in challenges to performance evaluations as they take the final decision on challenges of staff members to the performance ratings and comments they receive from their first and second reporting officers. Such panels play an essential role in resolving disputes and their decisions are final by law.[35] However, as unlikely as it may be, even decisions that are final by the internal laws of the Organization are sometimes challenged. It then becomes a question whether such decisions can be challenged in the formal justice system.

In the judgment *Gehr*, the UNDT determined that:

"24. The Tribunal finds that a rebuttal panel should be considered as a technical body under staff rule 11.2(b), since it reviews and issues decisions relating to performance appraisals, which are technical in nature. The Tribunal does not share the view that a request for management evaluation is a prerequisite before filing an application with respect to decisions relating to the process of reviewing performance appraisals (see *Kamanou* UNDT/2012/059, *Gomes da Conceicao* UNDT/2012/190)."[36] The UNDT further analyzed the rebuttal panel tasking and process to support its view, and found that the rebuttal process essentially serves as a management evaluation.

34 Annex D to the Staff Rules, 'Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations', "Article 16. *Advisory Board on Compensation Claims*, (a) An Advisory Board on Compensation Claims shall be established to make recommendations to the Secretary-General concerning claims for compensation under these rules; (b) The Advisory Board may be consulted by the Secretary-General on any matter connected with the implementation and administration of these rules; (c) The Advisory Board may decide on such procedures as it may consider necessary for the purpose of discharging its responsibilities under the provisions of this article; (d) The Board shall consist of: (i) Three representatives of the Administration appointed by the Secretary-General; (ii) Three representatives of the staff appointed by the Secretary-General on the recommendation of the Staff Committee; who should have the necessary expertise in administrative and personnel matters."

35 ST/AI/2010/5, Section 15.7.

36 *Gehr* UNDT/2013/135.

The Secretary-General has made no such determination so far in any publicly available document, but has also not taken the step to appeal the Judgment as of the date of this writing. An argument can be made that rebuttal panels are not technical bodies in the sense of Staff rule 11.2 (b). Rebuttal panels are locally appointed bodies which review challenges by staff members of their performance evaluation documents.[37] The review goes into the details of the performance evaluation and the panels are required to follow a number of procedural steps in order to deliver their decision. They do not deliver recommendations, but decisions which constitute the conclusion of the performance evaluation and go into a staff member's file.

The staff members who are appointed to rebuttal panels are not human resources professionals or other specifically technically qualified staff, but usually just staff members. Every staff member can serve as a rebuttal panel member, meaning that no particular technical qualifications are required. Moreover, the rebuttal panels follow the internal laws of the Organization, and the application of these laws can generally be the subject of a management evaluation request in order to establish the final position of the Organization prior to an application to the UNDT.

Staff members may also take the step to challenge their performance evaluation with a management evaluation request in case their evaluation is not even open to challenge in the rebuttal process, namely when they receive a satisfactory or better rating,[38] but disagree with some of the ratings and/or comments in the evaluation. It is questionable whether such evaluations are open to challenge, however, it cannot be excluded that such evaluations were made based on procedural errors or are otherwise manifestly unreasonable.

Management evaluation requests against decisions of the Central Examinations Board (CEB)[39] also come to the MEU, and thus the CEB is not considered to be a technical body in the sense of Staff rule 11.2.[40]

3. Deadlines

The deadline for filing a management evaluation request is met if a staff member sends a request within 60 days from the day on which a staff member received notification of the administrative decision to be contested, Staff Rule 11.2 (c) This definition seems straightforward, but as ever so often in a justice system, deadlines are sometimes contentious.

The element of 60 days is clear. Day 1 is the day *after* the notification was received, and the deadline ends at midnight on day 60. The question as to what constitutes a "notification" of an administrative decision is a more intricate question. Moreover, there are situations when staff members may make efforts to receive an administrative decision such as a promotion or an entitlement, but an administration fails to take a decision.

37 Section 15.4 of ST/AI/2010/5: "The rebuttal panel shall prepare, within 14 days after the review of the case, a brief report setting forth the reasons why the original rating should or should not be maintained."
38 ST/AI/2010/5, Section 15.1.
39 Staff Rule 4.16 (b) (ii).
40 *Jitsamuray* UNDT/2011/206.

The term "notification" is not specified in the Staff Rule; therefore it has to be understood in a wider sense and not in a narrow sense as a written notification of a decision by e-mail, memorandum or other correspondence which is on record and the receipt of which is acknowledged by the staff member in the same form or other form. In a wider definition of the term, "notification" would mean that the staff member receives notice of an administrative decision in a manner which is sufficiently specific and clear. This can happen in many different ways.

For an administration it may be advisable to notify staff members of administrative decisions in writing and keep a record of the notification. In this way, there should be no evidentiary problems. In most cases, staff members will be notified in this way, however, staff members can also become aware inadvertently and/or indirectly of administrative decisions concerning them, i.e. through other actions of an administration. This may happen in selection cases, in which staff members learn of the selection of a colleague for a position before they receive written notification from the relevant administration that they were not selected, but possibly rostered. In such situations, one could reasonably assume that a staff member has received "notification" only in cases where it is clear that the staff member has received reliable information; a rumour or vague hearsay would not be sufficient.

Moreover, the UNAT has reaffirmed in the case *Manco* that: "19. This Tribunal reaffirms that unless the decision is notified in writing to the staff member, the limit of sixty calendar days for requesting management evaluation of that decision does not start. 20. Without receiving a notification of a decision in writing, it is not possible to determine when the period of sixty calendar days for appealing the decision under Staff Rule 11.2(c) starts. Therefore, a written decision is necessary if the time limits are to be correctly, and strictly, calculated. Where the Administration chooses not to provide a written decision, it cannot lightly argue receivability, *ratione temporis*."[41]

In this particular case UNAT did not rely on wording from the staff rules, which do not require written notification, for its decision. The ruling appears to be based upon an argument that the beginning of the deadline cannot be verified without a written notification.

4. Extending the deadlines

Staff members are entitled to request an extension of the 60-day deadline, but this can exclusively be based on pending efforts for informal resolution of the dispute conducted by the office of the UN Ombudsman, Staff Rule 11.2 (c), and the deadline can be extended by the Secretary-General. This rule could be the subject of argument, as it does not specify what actually constitutes "pending efforts" of dispute resolution, and how the Secretary-General extends a deadline.

It appears though that "pending efforts" must consist of more than an e-mail from a staff member to the Ombudsman's office requesting assistance with no notification to the Secretary-General, and no decision on an extension, otherwise the deadline

41 *Manco* 2013-UNAT-342, referring to *Bernadel* 2011-UNAT-180, and to *Schook* 2010-UNAT-013.

would be self-extended. The position has been advocated that a suspension requires a decision from the Secretary-General in the form of a communication from the USG/DM or the MEU, and such a decision could only be positive if the staff member, the decision-maker and the Ombudsman agree that they will begin informal settlement. Otherwise, there would only be a pending request, and not an effort. This approach has however been challenged by at least one staff member and there is at least one UNDT decision which lays the bar for "pending efforts" and whether a decision by the Secretary-General is required, lower.[42]

The jurisprudence of the UNDT has further confirmed that there is a more general competence of the Secretary-General to extend the deadline for staff to file a management evaluation request. In a judgment on receivability, the UNDT stated:

"16. Given that the MEU is the entity in the Secretariat charged with handling the process of management evaluation under sec. 10 of ST/SGB/2010/9, there would be no reason to believe that the MEU would not possess delegated authority to extend a deadline for filing a request for management evaluation and properly to act on behalf of the Under-Secretary-General for Management and the Respondent. Under the law of agency, the MEU would have to have the apparent, or ostensible, authority to deal with issues regarding the handling of management evaluation requests on behalf of the Respondent, including the grant of exceptions to sec. 10.2(d) and thereby extend the time limit to situations other than those where a case is pending before the Ombudsman."[43]

From the jurisprudence of the UNDT and UNAT there seem to be only a minimal number of instances in which it could be argued that this authority was applied; in the reverse, it appears that the MEU might only take the step to extend the 60 day-deadline if if the circumstances are exceptional.

D. Recommendations of the Unit[44]

The Secretary-General shall respond to management evaluation requests within 45 or 30 days, depending on where a staff members requesting management evaluation is stationed.[45] These deadlines seem a challenge to meet given that the MEU would have to receive information from a decision-maker and possibly several departments like OHRM or others on the background of a decision, would further have to conduct legal research, and draft a recommendation for the USG/DM. In comparison to the former system of internal justice, the response time of the Organization has been reduced substantially.

42 *Wu* UNDT/2012/074. In this judgment the UNDT ruled that the deadline to file a MER was effectively extended for the purpose of Staff Rule 11.2 (c) even in the absence of any communication in this respect from the USG/DM or the MEU. The fact that the Ombudsman was effectively seized with the matter for a specific time-frame was considered sufficient to extend the deadline.

43 *Simmons* UNDT/2013/015, Judgment on receivability.

44 Maritza Struyvenberg, 'The New United Nations System of Administration of Justice', in Olufemi Elias (ed.), *The Development and Effectiveness of International Administrative Law* (2012), p 246.

45 Staff Rule 11.2 (d).

Arguably, a timely response is a critical element of justice and of leadership for the Organization. The question has been asked how an Organization can provide leadership when it is unable to respond comprehensively to a challenge to an administrative decision within a reasonable time frame. If no such response is provided, neither the staff member nor the decision-maker may receive any guidance on what the final position is and may remain in a dispute situation, which is - or should be - undesirable for the staff member, the decision-maker and the Organization.

1. Options for recommendations and the applicable law

Essentially, the USG/DM has five options when taking a final decision on a management evaluation request; hence, the MEU will recommend one of these options or a combination thereof. Only in case the USG/DM is the actual decision-maker of the original decision or was involved in a process concerning the decision, it could be considered that the final decision on the management evaluation might better be taken by another top-level manager in the Secretariat, in order to provide a review by a reviewer other than the decision-maker, even though this is not prescribed in the internal law.

When making recommendations, the MEU relies principally on the internal laws of the United Nations.[46] These laws consist of the:

- Charter of the United Nations, in particular Article 101,[47]
- General Assembly resolutions concerning human resources issues,
- Staff regulations (adopted by the General Assembly as a resolution),
- Staff rules (adopted by the General Assembly as a resolution),
- Secretary-General's Bulletins (ST/SGB's),
- Administrative Instructions (ST/AI's), and
- Information Circulars (ST/IC's).

The order in which these legal sources are listed is by and large in their hierarchical order.[48] The MEU also consults manuals and handbooks of the UN and its organizations in order to support the identification and interpretation of the internal laws. Such documents are issued by the administration and are aides in facilitating good and lawful administration (for example the "Manual for the Hiring Manager") and understanding of the rules (for example "Instructional Manual for the Applicant on the Staff selection System).

It is being argued that there are "general principles of international civil service law",[49]

46 Jean-Pierre Cot/Alain Pellet, *La Charte des Nations Unies*, 3rd ed. (2005), commentary on Article 101, pp. 2105 *et seq*. See also Tamara Shockley, "The Evolution of a New International System of Justice in the United Nations: The First Sessions of the United Nations Appeals Tribunal", *San Diego International Law Journal* 13 (2012), pp. 17 *et seq*.

47 Bruno Simma (ed.), *Commentary on the UN Charter*, 3rd ed. (2013), pp. 2054 *et seq*., commentary on Article 101 by Wolfgang Stöckl.

48 Bruno Simma (ed.), *Commentary on the UN Charter*, 3rd ed. (2013), pp. 2060 - 2066, commentary on Article 101 by Wolfgang Stöckl.

49 Renuka Dhinakaran, "Law of the International Civil Service: A Venture into Legal Theory", *International Organizations Law Review* 9 (2011), pp. 141 *et seq*., pp. 172 - 174; Bruno Simma (ed.), *Commentary on the*

which affect the internal laws of international organizations as the United Nations. However, these principles are not codified or clearly defined. As the internal law of the United Nations is an element of public international law it is arguable that, in line with Article 38 para. 1 (c) of the ICJ Statute, such principles exist and are relevant.[50] It is apparent though, that the internal laws of the United Nations are comprehensively codified and to a large extent regulated in great detail; therefore the scope of the application of general principles of law would not be too large. Nevertheless, there are key principles, such as equal pay for equal work,[51] which may apply under particular circumstances. In the 68th session in December 2013, the 5th Committee of the General Assembly included the following text in its resolution on Administration of justice at the United Nations: "26. *Also reaffirms* that recourse to general principles of law and the Charter by the Tribunals is to take place within the context of and consistent with their statutes and the relevant General Assembly resolutions, regulations, rules and administrative issuances;...".[52]

The judgments of the UNDT and UNAT are clearly relevant for the MEU in identifying the applicable laws in detail. The MEU regularly refers to such judgments in management evaluations.

There is an argument being made that human rights in general should apply to the internal laws of the United Nations as a superior source of law, or at least be guiding in the interpretation of the laws. No provision in the codified law exists to stipulate such assumption, yet in UNDT and UNAT applications applicants do sometimes rely on human rights.[53] While there is no explicit application, it would seem inappropriate to completely ignore human rights instruments such as the Universal Declaration of Human Rights, a General Assembly resolution,[54] and other important human rights documents when analyzing and interpreting the internal laws of the United Nations. It has to be kept in mind though that the internal laws of the United Nations are well-crafted and reflect the legal standards as enshrined in human rights documents.

2. Upholding the administrative decision

Management evaluations upholding administrative decisions are communicated to staff members by a letter from the USG/DM setting out the request, the factual background, the comments of the decision - maker upon the request, what the rules say, further, results of

UN Charter, 3rd ed. (2013), p. 2066, commentary on Article 101 by Wolfgang Stöckl, Mary Ellen O'Connell, 'The Natural Superiority of Courts', in Ulrich Fastenrath, *et al.*, *From Bilateralism to Community Interest*, Essays in honour of Judge Bruno Simma (2011), p. 1043.

50 Bruno Simma (ed.), *Commentary on the UN Charter*, 3rd ed. (2013), p. 2066, commentary on Article 101 by Wolfgang Stöckl.

51 In particular in *Chen* UNAT-2011-107, p. 5, para. 18 *et seq.* UNAT is "puzzled that the Administration seems to contend that these documents [the Universal declaration of Human Rights] do not apply, at least where funding is concerned. To follow the Administration's logic, classification of posts is subject solely to management's discretion, even to the extent that internationally acknowledged human rights may be violated."

52 GA res. 68/254 of 27 December 2013, para. 26.

53 *Basenko* UNAT-2011-139, p. 3 para. 7; *Muthuswami et al.* UNAT-2010-034, p. 4 para. 13.

54 General Assembly Resolution 217 A (III), proclaimed in Paris on 10 December 1948.

legal research and a conclusion. It can be deemed to be an objective to provide evaluations which are formulated plainly and clearly, in an appropriate tone, avoiding overly legal terminology, as evaluations are in response to staff members exercising their rights, and provide the Organization an opportunity for review.

Given the fact that management evaluation requests may be complex and rich in facts, it can be assumed that some evaluations may comprise of a substantial number of pages in terms of length. A management evaluation upholding a decision represents the final position or the Organization in the first step of the process. In case a staff member decides to file an application with the UNDT against the initial administrative decision (upheld by the management evaluation) the Secretary-General will be required to make further submissions on the case to the UNDT in response to the application.

3. Reversing or partially reversing the administrative decision

The MEU may recommend reversing or partially reversing one or more administrative decisions challenged in one request in case it is found that one or more of the decisions may have violated a staff member's rights or is otherwise problematic. In such a situation a staff member might also receive a written decision from the Under-Secretary-General for Management setting out the actual request, the facts of the matter, what the relevant legal considerations are, and what the outcome is. Partial reversals are also possible and do occur.[55]

Technically speaking such decision should satisfy a staff member. However, it can be expected, in case the staff member's requests are not entirely met, that the staff member may nevertheless chose to file an application before the UNDT requesting a further or even full review of the initial administrative decision. Moreover, it would be conceivable that in case any form of compensation is granted in such a management evaluation letter, the staff member may not be satisfied with the compensation provided, and seek to have the compensation increased by the UNDT.

4. Deeming a request moot

A management evaluation request would be moot in case the administrative decision the staff member is seeking reversal, or the administrative decision he or she is seeking, respectively, and in particularly the remedy, has already been achieved as the staff member requests.[56] For example, if a staff member is challenging the non-renewal of her/his contract, and by the time the evaluation is due the Administration at her/his Organization has already decided to extend the contract, the MEU could deem the evaluation request moot and so inform the staff member.[57]

However, deeming a request moot is a decision which may not be accepted by a staff member, and she/he may choose to file an application with the UNDT challenging the initial decision with the added argument that in her/his view the decision challenged/remedy

55 *Manco* UNDT/2012/104, paras. 9 and 37.
56 *Gehr* UNDT/2011/211, para. 37, *Mirkovic* UNDT/2012/030, para. 30.
57 *Osman* UNDT/2010/158, paras. 15 and 25.

sought has not become moot.[58] The UNDT may choose to disagree with the evaluation and decide in favour of the applicant.

5. Identifying a settlement

In considering the facts and law in relation to a management evaluation request, the MEU may take the view that it is appropriate to identify and recommend a settlement. Such settlement it seems would be a viable option if there is a finding that an administrative decision may have violated a staff member's rights or is otherwise problematic or if a staff member may be fully or partially entitled to what she/he claims. It seems also conceivable that the MEU may consider that an administrative decision was in its view taken in accordance with the law, however, the facts of the request may reasonably allow for a perception by others, for example the UNDT, that this was not the case.

In legal practice settlements are usually short or more detailed agreements signed by both sides or signed by one side and accepted by the other side in the form of a different document. A settlement may include a number of items. Staff members may seek non-monetary or monetary remedies or both at the same time. This could include items in some of the key areas of challenges to administrative decisions as per a review of UNDT and UNAT jurisprudence, such as non-selection for positions, the termination or non-renewal of contract, the lack of payment of adequate salary for a function carried out temporarily, entitlements and benefits, or other items. A settlement may also, according to what staff members have sought before the UNDT, include moral damages, damages for physical harm experienced, for delay, lost wages, or for other items.

In return for a settlement, it would usually be expected that the party which has made a legal challenge drops that challenge and any and all claims arising from the challenged matter irreversibly, in the case of the management evaluation process, an administrative decision.

6. Referring a request to the Ombudsperson's office

From the rules it appears that there is no obstacle for the MEU to suggest to a staff member to attempt informal resolution of a request with the help of an Ombudsperson. The MEU does not seem to be able to refer a request itself, it would be the staff member or/and the Administration who would have to take this step. The available documents do not provide information on the nature of requests which might be suitable for suggesting informal resolution. Nevertheless, it can be assumed that certain disputes and parties may appear to be more fitting for such resolution, and others, in which either clearly differing legal views exist or the parties simply are not interested in informal resolution, may be deemed to be less suitable. It can be assumed though that staff members and decision-makers are aware of the options for dispute resolution they have and are likely to make conscious decisions on which way they choose.

58 *Bajnoci* UNDT/2012/028, paras. 15 and 27.

7. Timeliness of management evaluations and receipt

According to staff rule 11.2 (d) the MEU delivers management evaluations within 30 or 45 days from filing, depending on whether the staff member is stationed in New York or not. These deadlines vary greatly from the administrative review system prior to 1 July 2009, which had less effective deadlines.

The new deadlines therefore seem to be a radical change in facilitating making progress in the resolution of conflict. For the MEU to deliver a recommendation it can be assumed that it needs to review the management evaluation request, conduct legal research and drafting, obtain comments from one or possibly more than one decision-maker, and provide the Under-Secretary-General for Management with time to consider its recommendation. Taking into account that realistically 30 days include only a maximum of 21 working days, and 45 days include around 32 working days, the timelines appear to be tight. Nevertheless, they carry enormous advantages for disputes both from the view of the staff member and the Organization and its decision-makers: Both the staff member and the decision-maker will know the final decision of the Organization within a relatively short time and both staff members and the decision-makers will be able to work on the basis of the outcome.

The number of management evaluation requests (184 in 2009, 427 in 2010, 952 in 2011, 837 in 2012 and 933 in 2013[59]) is a factor likely making it difficult to deliver all recommendations on time. It may also be difficult for the MEU to establish the facts of a request in case staff members are unable to provide the MEU with a coherent and comprehensive fact summary, or communicate with the staff member and decision-maker. Settlement discussions may take much longer than the prescribed deadlines and it may also occur that the decision-making upon a recommendation of the MEU takes longer that what would be an average time, as can be easily assumed to be built in the 30- and 45 day deadlines.

For some time it was unclear and disputed what would be the legal consequence, if any, of the MEU not delivering an evaluation on time. In the Order *Granfar*,[60] the Tribunal considered that the fact that the applicant had received a belated response to her request for management evaluation could not justify the granting of a motion for extension of time to file an application. However, in *Abu-Hawaila* UNDT/2010/102,[61] the Tribunal incidentally considered that "the time limit to file an application would start to run anew if the Administration were to respond to a request for a management evaluation after the expiry of the relevant response period for the management evaluation" (emphasis in the original). Further, in *Vangelova* UNDT/2010/179[62] and *O'Hanlon* UNDT/2012/031, the Tribunal held:

"23. Although [article 8.1 of the Tribunal's Statute] require staff members to file their application with the Tribunal within 90 days of the expiry of the response period of 45 days for the management evaluation if no response to the request was provided, when the management evaluation is received after the deadline of 45 days but before the expiry of the

59 UN Doc. 68/346, para. 33.
60 Order No. 80 (NY/2012).
61 As affirmed in *Abu-Hawaila* 2011-UNAT-118.
62 As affirmed in *Vangelova* 2011-UNAT-172.

next deadline of 90 days, the receipt of the management evaluation in this case will result in setting a new deadline of 90 days for challenging it before the Tribunal.

According to article 8.1(d)(i)a of the Tribunal's Statute, applications have to be filed within 90 calendar days of "the applicant's receipt of the response by management."

The Applicant received on 17 February 2011 the response to her request for management evaluation. While this response was not given within the 45-day limit, it was nonetheless provided. Therefore, article 8.1(d)(i)b of the Statute, which deals only with the situation where "no response to the request was provided", cannot be used as a basis for rejecting the application as untimely. 30. It follows that the 90-day deadline to file an application started to count on 18 February 2011 (see article 34(a) of the Tribunal's Rules of Procedure). The application was filed on 6 May 2011, that is, 78 days from the receipt of the late response to the request for management evaluation, and it is therefore receivable with regard to deadlines."

The matter has now been resolved in June 2013 in the UNAT Judgment *Neault* which states:

"33.... the purpose of management evaluation 'is to afford the Administration the opportunity to correct any errors in the administrative decision so that judicial review is... not necessary".

34. With this goal in mind, it is both reasonable and practical for Article 8(1) of the Statute to provide for two different dates from which the limitations period commences to run. After all, the MEU response might partially or fully resolve the staff member's concerns and give the staff member a reason to reconsider the filing of an application challenging the administrative decision. When the management evaluation is received after the deadline of 45 calendar days but before the expiration of 90 days for seeking judicial review, the receipt of the management evaluation may result in setting a new deadline for seeking judicial review before the UNDT. This affords the staff member an opportunity to fully consider the MEU response in deciding whether to proceed before the UNDT. Nevertheless, the staff member must be aware of the deadline for filing an application before the UNDT and make sure that he or she does not miss that deadline when waiting for the MEU response." (Emphasis added)

In in its Judgment on Receivability in the case *A-Ali and others*, the UNDT opined in relation to complying with the 90-day filing deadline where the applicants argued they had not received the management evaluation, neither within nor outside then 30 day time limit:

"28. Staff rule 11.2, as applicable in these cases, states that the outcome of the request for management evaluation shall be communicated in writing to the staff member within the period of 30 days (45 days for staff members away from the United Nations Headquarters in New York). [...]
29. The Applicants legal representatives submit that they did not receive the 9 April 2013 email from the MEU and the decision was not communicated to them. [...] 30. The Tribunal considers that, following the communication from Mr. Saffir on 9 April 2013 and the 11 April 2013 exchange of emails between the MEU and the Applicants legal representatives, they

were put on notice that a decision had been made and that the clock began ticking for calculation of the 90 calendar days' time limit for filings claims with the Tribunal. [...]

34. As much as the Tribunal sympathizes with all the Applicants in relation to their concerns about job security, it must recall that the Dispute and Appeals Tribunals have in several judgments ruled clearly and unequivocally that respect for the applicable time limits is of the utmost importance and that the time limits have to be strictly enforced."

E. Requests for suspension of action

Staff members may request a suspension of action through the management evaluation process if they file a management evaluation request at the same time, see Staff rule 11.3 (b) (ii). However, the management evaluation process only deals with suspension requests which relate to separation from service, and only allow suspension until the time the evaluation has been completed and the staff member has been notified of the outcome. Other types of decisions are not subject to suspension of action in this process; their suspension can only be requested from the UNDT.

The criteria for suspension are that the decision has not been implemented, that it appears to be *prima facie* unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage to the staff member's rights. From an analysis of the text it appears that these are cumulative criteria which must all be fulfilled at the same time.

The rule further states that a staff member may proceed to the UNDT with a request for suspension of action once the Secretary-General rejects the request ("the staff member may then submit", Emphasis added), however, the UNDT will in practice consider requests without a rejection from the Secretary-General.[63]

F. The culture of the Organization and lessons learned

It appears logical that the Organization may be in a position to learn significant lessons from management evaluations. There are legal lessons learned, but more importantly there are lessons for the management of the Organization, for how the organization handles risk, in which areas managers may make mistakes, what are the reasons for this, and if and how they learn from them. In the reverse, the Organization will also receive information on areas in which managerial decision-making works well and management evaluation requests are mostly rejected.

1. Dispute and work culture

Staff members of the Organization have been accused to have a culture of litigation. The numbers may not support this conclusion. For 45.000 staff members of the Secretariat, who probably each receive 3 administrative decisions per year, a number of 952 management evaluation requests in 2011, 837 in 2012, and 933 in 2013, does not seem extremely litigious,

63 Article 2.2 of the UNDT Statute, UN Doc. 63/253 of 17 March 2009, *Rafii* UNDT/2012/127.

especially because judging by the statistics well under a third of all management evaluation requests are later taken to the UNDT by staff members following a decision that their requests were unfounded, moot, or not receivable.

Moreover, in an organization with such a significant amount of staff members there will likely always be a number of complaints every year which come as a result of the making of many decisions combined with a dynamic and sometimes stressful working environment. Nevertheless, it appears desirable that more conflicts may be resolved in other ways than in the formal system of justice.

2. The Organization's ability to review its own decisions

The ability of managers to review their decisions requires objectivity, provides an opportunity to build trust, and it may appear also to require a degree of courage as there is a risk that a decision needs to be modified or reversed. Generally, it may be considered quintessential for the confidence of staff in their Organization that staff members can rely on managers being able to review their decisions fairly, or in the case of the Secretariat at least in the management evaluation process to provide a review and making appropriate recommendations to the Under-Secretary-General for Management. Correcting errors may "naturally" not be in the interest of managers generally and may create the appearance of a lack of professionalism, whereas it can also be argued that being able to review decisions and correcting errors can be seen as a useful skill in order to avoid further errors. Managers may simply be reluctant to acknowledge error, and they may also not be rewarded for doing so; in fact, there could be a risk they may face negative consequences.[64]

3. Lessons learned for the Organization

Encouraged by the General Assembly,[65] the Under-Secretary-General for Management issues Lessons Learned Guides prepared by the MEU in consultation with other offices in the Organization and the Ombudsperson's office. The objective of preparing and distributing the Guides is to promote guidance received from the UNDT and UNAT judgments on legal issues among managers in the Organization. The Guides summarize essential jurisprudence in accessible language enabling managers to apply lessons learned, and how to avoid mistakes, in practice.

The Guides essentially promote good management by following the internal laws of the Organization as specifically interpreted by the UNDT and UNAT. They attempt to close the gap from the UNDT/UNAT's judgments, which are highly relevant but are difficult to review for managers in their entirety, and the managerial practice on the ground at field locations, main duty stations, and headquarters. The Guides take account of the fact that all managers are required to follow the internal laws and will not be able to seek advice on every aspect of their functions involving the management of staff members.

64 A discussion of relevant issues in Katsuhiko Shimizu/ Michael A. Hitt, 'Strategic Flexibility: Organizational Preparedness to Reverse Ineffective Strategic Decisions', *Academy of Management Executive* 8 (2004), pp. 44 *et seq*.

65 See GA res. 67/241 on the Administration of Justice at the United Nations (para. 36).

By the end of 2013, the Under-Secretary-General for Management has issued three Lessons Learned Guides, (1) on the Non-renewal and Termination of Appointments, (2) on the Staff Selection System, and (3) on Disciplinary Matters. When considering the jurisprudence of the UNDT and UNAT it appears that there may be several other potential areas for lessons learned, such as the cross-cutting issue of Performance Management or the retrenchment of departments, missions and offices. It should be kept in mind that the Organization's Office of Human Resources Management provides significant guidance to managers in its rules, policies and in available manuals and practical guides. In this sense, the Lessons Learned Guides complement the already existing guidance.

G. Accountability of managers and decision-makers

In one of its operative paragraphs, Judgment UNDT/2014/020 reads:

"Accountability of United Nations' Managers

154. It has often been stressed that those managers and agents of the Administration, who in the course of carrying out their official duties and responsibilities to the Organizations, prefer not to be guided by the Charter and applicable rules and standards, but by their personal whims to subvert the outcomes of the Organization's processes ought to be called to account. The Tribunal accordingly refers Mr. [...] to the Administrator of the [...] for the purpose of considering what action should be taken in respect of his unwarranted public humiliation of the Applicant [in the UNDT's case] [...]; and for his lack of integrity in the process leading up to his unilateral non-renewal of the Applicant's secondment and his replacement."[66]

At the time of this writing this judgment is not final, and the relevant Organization may choose to appeal the judgment and/or the accountability reference before the UNAT. Nevertheless, the judgment provides clear guidance on some elements of accountability of managers as seen by the Court. In this particular case, the Court refers first to not following the guidance of the UN Charter and rules and standards. Second, the Court refers to a subversion of the Organization's processes, an objective element, and the "personal whims" of the referred person, a subjective element. The Court also makes reference to a lack of integrity of the manager. Integrity is a core professional value of the UN, and the performance evaluation of staff members takes the performance in terms of integrity into account.

Regardless of whether the findings of the UNDT will become final or eventually may be reversed by the UNAT, and regardless of the particular circumstances of the case, this provides some useful basic information, even though the Judgment remains silent on what kind of action, if any, the Administrator would take upon the Court's recommendation. It appears to be clear though that the authority to take action in terms of accountability lies exclusively with the Administrator, not the Court.[67]

66 *Munir* UNDT/2014/020, para. 154 *et seq*. For a short overview see Tamara Shockley, "The United Nations Judicial Tribunals as Tools for Managerial Accountability", *Journal of International Organizations Studies* (2011), pp. 8 *et seq*.

67 Benedict Kingsbury/Richard B. Stewart, "Legitimacy and Accountability in Global Regulatory Governance",

1. The framework

The General Assembly places great emphasis on holding managers accountable for poor decisions leading to the loss of money for the Organization.[68] The United Nations also has in place a well-developed overall accountability framework, which provides a broad tool for holding the Organization and its elements accountable to Member States and for oversight purposes.[69] This framework is in particular for the areas of performance reporting, the implementation of recommendations of oversight bodies, personal and institutional accountability, the selection and appointment of senior managers, the reform of the performance appraisal system, delegation of authority, implementation of the results-based framework, the results-based management information system, and enterprise risk management and the internal control framework.[70] The Second progress report on the accountability system in the United Nations Secretariat[71] takes matters further and includes, with reference to General Assembly Resolution A/66/257, "• Holding staff accountable for mismanagement and improper decisions" as a key accountability issue.[72]

Nevertheless, accountability is a term which was not always defined in every aspect. It has been called "a rhetorical slogan in the globalization debates", a term that "does not exist in the abstract",[73] and a "buzzword", which is referenced in numerous UN documents.[74] It has further been said that wide agreement on the importance of the concept in international administrative law masks disagreement on what accountability means,[75] and that applies particularly in practical day-to-day terms, when managerial/administrative decisions have to be taken in regard to it.

UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), p. 209.

68 See General Assembly Resolutions on the Administration of Justice at the United Nations*:* GA res. 68/254; GA res. 67/241; GA res. 66/237; GA res. 65/251; GA res. 64/233.

69 Report of the Secretary-General, *Towards an accountability system in the United Nations Secretariat*, A/64/640: "Accountability represents the obligation of the Organization and its staff members to be answerable for delivering specific results that have been determined through a clear and transparent assignment of responsibility, subject to the availability of resources and the constraints posed by external factors. Accountability includes achievements of objectives and results in response to mandates, fair and accurate reporting on performance results, stewardship of funds, and all aspects of performance in accordance with regulations, rules and standards, including a clearly defined system of rewards and sanctions."

70 *Ibid*., p. 2. In this context, the report of the Joint Inspection Unit on *Accountability Frameworks in the United Nations System* of 2011 is also relevant, https://www.unjiu.org/en/reports-notes/JIU%20Products/JIU_REP_2011_5.pdf.

71 UN Doc. 67/714.

72 UN Doc. 67/714, para. 2.

73 Benedict Kingsbury/Richard B. Stewart, 'Legitimacy and Accountability in Global Regulatory Governance', UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), p. 206.

74 Antigoni Axenidou, 'An account of accountability', UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), p. 221.

75 Jonathan Koppel, 'Pathologies of Accountability: ICANN and the Challenge of Multiple Accountability Disorder', *Public Administration Review* 65 (2005), p. 94.

Several accountability definitions exist; one refers to "the acknowledgment and assumption of responsibility for actions, decisions, and policies within the scope of the employment position. It encompasses the obligation to report, explain and be answerable and responsible for resulting consequences."[76] In his report *Towards an accountability system in the United Nations Secretariat* of 29 January 2010 the Secretary-General proposed the following definition: "Accountability represents the obligation of the Organization and its staff members to be answerable for delivering specific results that have been determined through a clear and transparent assignment of responsibility, subject to the availability of resources and the constraints posed by external factors. Accountability includes achievements of objectives and results in response to mandates, fair and accurate reporting on performance results, stewardship of funds, and all aspects of performance in accordance with regulations, rules and standards, including a clearly defined system of rewards and sanctions."[77]

In 2010 the General Assembly established the following definition varying slightly from the above definition proposed by the Secretary-General in his report: "Accountability is the obligation of the Secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception. Accountability includes achieving objectives and high-quality results in a timely and cost-effective manner, in fully implementing and delivering on all mandates to the Secretariat approved by the United Nations intergovernmental bodies and other subsidiary organs established by them in compliance with all resolutions, regulations, rules and ethical standards; truthful, objective, accurate and timely reporting on performance results; responsible stewardship of funds and resources; all aspects of performance, including a clearly defined system of rewards and sanctions; and with due recognition to the important role of the oversight bodies and in full compliance with accepted recommendations."[78]

This definition is now valid for the Secretariat. The definition refers to what is expected from staff members being decision-makers, but it does not state what the consequences of non-compliance are. The definition appears to be comprehensive and including many aspects of professional obligations.

2. Steps towards the individualization of accountability

From the above one can draw the conclusion that for the purposes of the internal justice system of the UN, accountability may be in need of some more shape, in particular in terms of the question of who is accountable to whom for which actions or inaction, on what legal basis, and within which procedural framework.

76 Antigoni Axenidou, 'An account of accountability', UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), p. 222, with reference to Ruth W. Grant/Robert O. Keohane, 'Accountability and Abuses of Power in World Politics', *American Political Science Review* 99 (2005), p. 1.

77 UN Doc. 64/640, *Summary*.

78 GA res. 64/259 of 5 May 2010, para. 8.

In spite of the apparent focus on the accountability of staff members being managers for their managerial decision-making, for taking poor decisions or exposing the Organization to risk, the accountability of individuals as such is not defined in every aspect, neither in the internal laws of the UN system, nor in international administrative law.[79] There is also the issue of an organization in which, in spite of clear rules and processes, decisions can not necessarily be individualized in terms of the decision-maker; several individuals may be involved in or have influence on the taking of a decision. It could also play a role whether a decision-maker applied what could be called due diligence before making a decision; were the rules consulted, were all relevant aspects taken into account, was advice from relevant departments or a higher-level supervisor sought before a decision was taken.

The UN's Financial Regulations also contain a reference to accountability, in Rule 101.2: All United Nations staff are obliged to comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those regulations and Rules. Any staff member who contravenes the Financial regulations and Rules or corresponding administrative instructions may be held personally accountable and financially liable for his or her actions." However, this reference is limited to the Financial Rules and Regulations. This is also referenced in the ST/AI/2004/3 on the financial responsibility of staff members for gross negligence where gross negligence is defined, for the ST/AI, as "negligence of a very high degree involving an extreme and wilful or reckless failure to act as a reasonable person in applying or failing to apply the regulations and rules of the Organization.", Section 1.3.

3. Accountability tools

The third progress report of the Secretary-General on the accountability system in the United Nations Secretariat makes reference to accountability in the context of how managerial decisions perform in management evaluation reviews, in particular in the case of the limited number of decisions which are being reversed or otherwise modified.[80] As per the report, one key accountability tool is the acknowledgment of responsibility for a decision and taking ownership of the consequences. Another key tool is the learning effect for the relevant decision-maker(s), his/her department, supervisors, and the Organization at large.

It has been argued that accountability could also be oriented towards laying blame,[81] towards "naming and shaming" or could even include a punitive aspect. The General Assembly has highlighted its attention to the accountability of individuals where violations of the Organization's rules and procedures have led to financial loss.[82]

79 Benedict Kingsbury/Richard B. Stewart, 'Administrative Tribunals of International Organizations from the Perspective of the Emerging Global Administrative Law', in: Olufemi Elias (ed.), *The Development and Effectiveness of International Administrative Law* (2012), pp. 69 *et seq.*

80 UN Doc. 68/697, *Third progress report on the accountability system in the United Nations Secretariat*, paras. 62 to 67.

81 Antigini Axenidou, 'An Account of Accountability', UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), p. 223.

82 GA res. 68/254 of 27 December 2013 para. 42.

A number of options could be considered for individual accountability of decision makers in the above sense; however, it is clear in legal terms that whatever measures are being considered, they must be in line with the internal laws of the United Nations. Thus, in the case responsibility for a decision is established and there are otherwise no factors which would make the taking of accountability measures other than acknowledgement and learning inappropriate, accountability could express itself in the performance evaluation of a decision-maker or could be otherwise added to the record of the staff member. It can, in extreme cases, also be imagined that disciplinary measures would be appropriate, again, under the legally required procedures and conditions.

The Secretary-General's report A/68/346 outlines a number of possible accountability measures:

"156. The Secretary-General may take concrete measures to realize accountability as a result of management evaluation requests and judgements of the Dispute and Appeals Tribunals, including:

h. To modify or change the impugned decision where it has been determined that the manager has improperly exercised his or her delegated authority when making that decision, thereby withdrawing the decision-making authority of the manager for that particular decision;
i. To speak to the manager concerning the contested decision, explaining why the decision was improper and discussing lessons learned;
j. To refer a case for investigation, where it has been determined that the improper exercise of delegated authority by the manager might rise to the level of possible misconduct;
k. To place a note on the official status file of the manager at issue taking note of the improper decision, subject to the provisions of administrative instruction ST/AI/292 on the filing of adverse material in personnel records;
l. To introduce specific performance evaluation objectives for the manager, where it has been determined that the contested decision was taken as a result of poor management;
m. To require a manager to attend training in the light of the taking of an improper decision;
n. To decide that the performance of a manager specifically be assessed in view of the poor administrative decision that was reversed."

From the report it is clear that accountability in the sense of the report comprises of various possible measures, a critical one being acceptance of responsibility and learning.

4. Accountability effects

It is clear from the available literature and documents that accountability is recognized as an important tool in public organizations, and especially in the United Nations. It is part of the framework and culture of the Organization, and a critical factor in maintaining trust and exercising appropriate internal governance. However, it has been argued that enforcing accountability also carries risks, which need to be considered in finding an appropriate approach.

Holding managers accountable in the absence of clear delegation of tasks and advance communication of the consequences of failure could create a number of problems. It appears also that holding managers personally accountable may result in a shift in the decision-making culture in that more controls and approvals would be sought,[83] before decisions are being taken. And lastly, it is important to note that managerial decision-making implies assessing and sometimes taking risks in order to achieve results.

83 Instructive in this regard Antigoni Axenidou, 'An Account of Accountability', UNAdT Conference on *International Administrative Tribunals in a Changing World*, organized under the auspices of the Executive Office of the Secretary-General (2008), pp. 222 *et seq*.

Chapter V
The formal system (II): Judicial review

Thomas Laker *

The restructured judicial review process is a key part of the new system of administration of justice. Pursuant to the Statutes of the Tribunals, their judgments are binding upon the parties.[1] In other words, whatever the final outcome of such judicial review is, it has to be accepted by both parties. The unsuccessful applicant has to live with the result, as well as the Administration which may have to implement the orders contained in a judgment in favour of the applicant.

A. Applicants, issues, and remedies: Jurisdiction of the Tribunals

Due to the far-reaching binding effects of judgments, the Statutes limit the type of disputes that may be settled by the Tribunals. On several occasions, the General Assembly has emphasized that the Tribunals shall not have any powers beyond those conferred under their respective statutes.[2] Consequently, the jurisdiction of the Tribunals has been limited with respect to potential applicants (*ratione personae*) and the issues that may be submitted for judicial settlement (*ratione materiae*).

1. Who may apply?

Article 3, paragraph 1, of the Statute of the Dispute Tribunal provides that an application may be filed only by the following categories of individuals:

- a staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

* *The views expressed in this Chapter are solely those of the author and do not necessarily reflect those of the United Nations.*

1 See Art. 11, para. 3, UNDT Statute, and Art. 10, para. 5, UNAT Statute.
2 See, e.g., GA res. 67/241 para. 5.

- a former staff member; or
- any person making claims in the name of an incapacitated or deceased staff member.

(a)... of the United Nations?

Contrary to what the wording seems to promise, not all staff members within the United Nations common system have access to the new system of administration of justice. Many organizations have recognized the jurisdiction of the ILOAT[3] or entertain their own system of judicial review.[4] Long-lasting efforts to harmonize the various systems of administration of justice have not been fully successful.[5]

For easy reference, a list of entities which are under the jurisdiction of the United Nations Dispute and Appeals Tribunals can be found in Annex VIII of this volume. Some entities have decided to accept only the jurisdiction of the United Nations Appeals Tribunal: a list of these entities can be also found under Annex VIII of this volume.

(b)... a staff member?

As a second limitation, not all individuals working for the entities referred to above have access to the Tribunals. Applicants must have, have had or act for someone who has or has had the formal status of "staff member". Staff members are international civil servants with a number of specific basic rights and obligations. They are appointed by the Secretary-General and shall receive a letter of appointment (see staff regulations 1.1, 1.2 and 4.1).

Therefore, in general, only those individuals who have received a letter of appointment and are formally staff members may have access to the Tribunals. In *Gabaldon* 2011-UNAT-120, the Appeals Tribunal made an important exception to this general principle, stating:

> "28.... Having undertaken, even still imperfectly, to conclude a contract for the recruitment of a person as a staff member, the Organization should be regarded as intending for this person to benefit from the protection of the laws of the United Nations and, thus, from its system of administration of justice and, for this purpose only, the person in question should be regarded as a staff member.
>
> 29. Finding otherwise would mean denying the right to an effective remedy before a tribunal in respect of acts of the Organization that may ignore rights arising from a contract, as stated above, which was concluded for the appointment of a staff member.
>
> 30. However, in accordance with the aforementioned provisions of the UNDT Statute, this opportunity must be understood in a restrictive sense. Access to the new system of administration of justice for persons who formally are not staff members must

3 Among those organizations are, e.g., the World Health Organization, the World Trade Organization, the World Intellectual Property Organization.

4 Examples are the World Bank Administrative Tribunal or the UNRWA Dispute Tribunal.

5 Regarding previous efforts to harmonize ILOAT and the former United Nations Administrative Tribunal, see Phyllis Hwang, 'Reform of the Administration of Justice System of the United Nations', *The Law and Practice of International Courts and Tribunals 8* (2009), pp. 181 to 224, at 191-195.

be limited to persons who are legitimately entitled to similar rights to those of staff members. This may be the case where a person has begun to exercise his or her functions based on acceptance of the offer of employment. Having expressly treated this person as a staff member, the Organization must be regarded as having extended to him or her, the protection of its administration of justice system. This may also be the case where the contracting party proves that he or she has fulfilled all the conditions of the offer and that his or her acceptance is unconditional, i.e. no issue of importance remains to be discussed between the parties."

In addition, the Appeals Tribunal held in *Iskandar* 2011-UNAT-116 that staff members from an Organization which recognizes the jurisdiction of the ILOAT who are loaned to an entity under the Tribunals' jurisdiction may have access to the administration of justice system within the United Nations, if this is the only way to grant them an effective remedy and to avoid a denial of justice.

Nevertheless, a significant number of people working for the United Nations do not have access to the Tribunals. These include United Nations volunteers, interns[6] or daily paid workers. In addition, the enormous number of consultants and individual contractors working for the Organization are excluded from the system. For the latter, on a request by the General Assembly, the Secretary-General has made a proposal for implementing a mechanism for external expedited arbitration procedures.[7] The General Assembly has taken note of this proposal and decided to remain seized of the matter.[8]

2. What kind of issues may be decided?

Article 2, paragraph 1, of the Statute of the Dispute Tribunal provides that the Tribunal is competent to "hear and pass judgment" on applications filed by individuals

a. to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment;
b. to appeal a disciplinary measure; or
c. to enforce the implementation of an agreement reached through mediation within the informal system.

In the first three years of the new system, around 13% of the Dispute Tribunal's cases dealt with disciplinary matters and 87% of the applications were related to other administrative decisions. No application regarding the implementation of an amicable agreement has yet been filed and this category will therefore not be discussed here.

(a) Administrative decisions alleged to be in non-compliance with the terms of appointment or the contract of appointment

The crucial question as to the receivability of many applications is whether what is contested constitutes an "administrative decision". Indeed, there is no simple and widely accepted

6 See *Basenko* 2011-UNAT-139 and *Di Giacomo* 2012-UNAT-249.
7 A/67/265, Appendix IV, where the total number of this category of individual was estimated to be in excess of 80,000 (see *ibid.*, para. 44).
8 See GA res. 67/241 para. 51.

definition of what is an administrative decision. Often, e.g. in *Hamad* 2012-UNAT-269 and in *Al Surki et al.* 2013-UNAT-304, the Appeals Tribunal has made reference to the case law of the former United Nations Administrative Tribunal, which, in its Judgment No. 1157 *Andronov*, defined an "administrative decision" as "a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order". However, in other cases, e.g. *Andati-Amwayi* 2010-UNAT-058, the Appeals Tribunal has adopted an open approach, stating that "[w]hat constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision".

It is important to note that an administrative decision is not necessarily written, and that "not taking a decision is also a decision" (see *Tabari* 2010-UNAT-030). Of course, such "implied" decisions are also open to appeal.

The contested administrative decision must be related to the applicant's specific rights as a staff member. Therefore, the Tribunals do not have competence to review administrative decisions having no possible link to the applicant's individual rights deriving from his/her terms of appointment or contract of employment.

(b) Disciplinary measures

Disciplinary measures are listed in Chapter X of the Staff Rules. They include a wide range of measures, from a simple written censure to dismissal. In this context, Chapter X also provides for administrative measures, like a reprimand or the recovery of monies owed to the Organization. Due to the impact and urgency of such issues, the concerned staff member can (and must) directly submit an application before the Dispute Tribunal, without going through the management evaluation process.[9]

3. What remedies may be obtained?

Article 10, paragraph 5, of the Statute of the Dispute Tribunal lists all the possible remedies that may be ordered in a judgment. They are as follows:

- rescission of the contested administrative decision or specific performance; and/or
- monetary compensation.

It is important to note that the Tribunal may choose to award only one of these remedies or a combination of both, depending on the application and its own discretion. Since it is for the applicant to request appropriate remedies, the Tribunal cannot order a remedy which has not been requested by the applicant (this principle is generally known as "*ne ultra petitur*"). On the other hand, the only remedies that may be obtained from the Tribunal are those specified in Article 10, paragraph 5, of the Statute. Therefore, other informal remedies, such as written excuses, may not be part of a judgment's orders. Of course, informal remedies are not excluded from an agreement reached by the parties to settle their dispute within the informal part of the system of administration of justice.

9 Staff Rule 11.2 (b).

(a) Rescission/specific performance

If the Tribunal has found that the contested administrative decision does not comply with the applicant's terms of appointment or contract of employment, it is normal that such an unlawful decision be rescinded. Rescission leads to the restitution of the applicant's situation as it was before the unlawful decision was rendered (*status quo ante*). In disciplinary cases, rescission of the disciplinary measure implies that the applicant shall be treated as if this (unlawful) measure had never been taken.

Specific performance can be ordered as a kind of active counterpart of rescission. For example, the Tribunal can order that certain parts of the applicant's personal file be deleted.

The effects of rescission or specific performance can be very serious and may affect other staff members. For example, the rescission of a decision made in the context of a staff selection process may have an impact on the situation of the (wrongfully) selected person. Pursuant to Article 10, paragraph 5(a), of its Statute, in cases of appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the Administration may elect to pay as an alternative to the rescission of the contested decision or specific performance. This provision is an exception to the general rule that an unlawful administrative decision cannot stand. Therefore, the Dispute Tribunal has held in *Rockcliffe* UNDT/2012/121, that

> "art. 10.5(a) should not be interpreted too broadly as if it was meant to cover all decisions somehow related to appointment, promotion, and termination matters. The Tribunal finds that the clause should be interpreted as applying primarily to decisions not to appoint or promote a staff member or to terminate her or his appointment. The likely rationale for including this clause in the Statute is, inter alia, to avoid affecting third-party rights and to avoid imposing reinstatement or continued employment where the relationship between the parties has irretrievably broken down."

To the author's knowledge, in nearly all such cases, the Administration has chosen to pay the compensation instead of rescinding the administrative decision.

(b) Compensation

In many cases, the applicant is mostly interested in financial compensation. Article 10, paragraph 5(b), of the Statute of the Dispute Tribunal provides that any such compensation shall normally not exceed two years' net base salary of the applicant; in exceptional cases, the Tribunal may order the payment of a higher compensation and shall provide the reasons for that decision.

The Appeals Tribunal has clarified, in *Mmata* 2010-UNAT-092, that the cap comprises "the total of all compensation ordered under subparagraphs (a), (b), or both, to the equivalent of two years' net base salary of the applicant, unless higher compensation is warranted and reasons are given to explain what makes the case exceptional". In the same decision, with respect to the need to justify a higher compensation, it also held:

"Article 10(5)(b) of the UNDT Statute does not require a formulaic articulation of

> aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation. The findings of fact made by the UNDT... point to evidence of blatant harassment and an accumulation of aggravating factors that support an increased award. Blatant harassment and an accumulation of aggravating factors in administrative and investigative conduct in the course of wrongful dismissal cases are consistent with the principles of law applied in the former Administrative Tribunal to justify increased compensation."

The Tribunals have emphasized that calculation of compensation is not an exact science and that there may be different approaches in calculating compensation. Some major aspects of the calculation of compensation will be dealt with in section C.5 below.

B. Handling the matter: Proceedings before the Tribunals

The statutes of the Tribunals comprise a variety of applications, which may be submitted for different purposes. Among these, the "application on the merits" (or "full application") and the "application for suspension of action" are the most important ones. Therefore, the presentation of the proceedings before the Tribunals will focus on these two types of application, whereas others will only be discussed briefly.

1. Application on the merits

Normally, a staff member who wants to contest an administrative decision will file an application before the Dispute Tribunal. A lot of information is available in order to help staff navigate through the requirements.

As a first step, the potential applicant may want to seek legal advice and/or representation. Such advice can be given free of charge by the Office of Staff Legal Assistance (OSLA) with representatives at Addis Ababa, Beirut, Geneva, Nairobi and New York.[10] General information about OSLA services is available at http://www.un.org/en/oaj/legalassist/. The potential applicant may also be represented before the Tribunals by external counsel or another staff member (or former staff member); he/she may also choose to be self-represented in the proceedings. It should be noted that all actions and omissions of counsel reflect the persons they represent. If, for example, counsel files an application too late, the application will be time barred and must be considered so with respect to the applicant [11].

Normally, potential applicants are expected to use the "eFiling portal" for filing their application. The Dispute Tribunal provides all necessary information on how to apply on its own website at http://www.un.org/en/oaj/dispute/. Some important basics will be presented below, followed by a detailed description of the proceedings.

10 For further information on OSLA, see Chapter II above.
11 See *McCluskey* 2013-UNAT-384.

(a) When, where and what to file

Applications must be filed within strict time-limits. Article 8, paragraph 1(d), of the Statute of the Dispute Tribunal sets the relevant deadlines:

- In cases where management evaluation is required, the application shall be filed:
  - within 90 calendar days of the receipt of the response[12] by management; or
  - if no response was provided, within 90 calendar days of the expiry of the relevant response period (which is 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices);[13]
- In cases where no management evaluation is required, the application shall be filed within 90 calendar days of the receipt of the administrative decision at stake.[14]

The established case law of the Tribunals is that time-limits for contesting administrative decisions are well known and must be adhered to strictly.[15] Only in exceptional cases can the Tribunal decide in writing, upon written request by the applicant, to suspend or waive deadlines for a limited period of time (Article 8, paragraph 3, of the Statute of the Dispute Tribunal). According to the Appeals Tribunal, "a delay can generally be excused only because of circumstances beyond an applicant's control", and "ignorance of law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Rules" (*Diagne et al*. 2010-UNAT-067). However, whenever the Administration provides "explicit legal instructions on the filing of an appeal" which prove to be wrong, an applicant is entitled to rely upon this advice.[16]

As the Dispute Tribunal has three Registries (in Geneva, Nairobi and New York), applications are distributed among them. The main criterion for the distribution of cases between the three Registries is the duty station of the staff member at the time of the contested administrative decision. In general, staff members or former staff members should file their application as follows: Europe and part of western Asia in Geneva; Africa and part of the Middle East in Nairobi; and the rest of the world in New York.[17]

Article 8 of the Rules of Procedure of the Dispute Tribunal prescribes the information that the application must include, e.g., the date and location of the contested administrative decision, supporting documents, actions and remedy sought. The full list of required information can easily be found on the website of the Dispute Tribunal.

Most importantly, the applicant has to indicate clearly the administrative decision that is

12 The Appeals Tribunal has specified that the timeline starts to run once the addressee receives the response by email, regardless of the date he/she actually reads it (*Czaran* 2013-UNAT-373).

13 If the decision of the management evaluation unit is received after these deadlines but before the expiry of the next deadline of 90 days, the receipt of this decision results in setting a new deadline of 90 days; see *Neault* 2013-UNAT-345.

14 For precise calculation of time limits, see Art. 34 UNDT Rules.

15 See *Mezoui* 2010-UNAT-043 and *Czaran* UNDT/2012/133.

16 See *Faraj* 2013-UNAT-331.

17 For further information, see the UNDT website.

submitted to the Tribunal for judicial review. If the application does not include any indication on such administrative decision, the application will fail.[18] Also, it is for the applicant to make a clear statement regarding the remedies sought.

As a general guideline, it is not recommended to wait until the last minute before filing the application. Even if the potential applicant is not - yet - in possession of each and every document or information that is considered to be important, it is safer to comply with the deadlines mentioned above than to submit a motion for extension of time. The same applies to possible doubts regarding the "right" Registry to which the application should be filed. When a Registry of the Tribunal receives an application that is considered to be "geographically misguided", it will take the initiative of redirecting it to the competent Registry. In such cases, the date of the first reception is considered to be the relevant one.

(b) Proceedings before the Dispute Tribunal

Once the application has been submitted to the Dispute Tribunal, the Registry will check whether it meets the formal requirements mentioned above. In case of incompleteness, the applicant will be requested to amend the application. After completion, the application will be transmitted to "the respondent". Although formally speaking the respondent before the Tribunal is always "the Secretary-General", in practice the application is transmitted to the administrative entity that rendered the contested decision. The respondent will be requested to file a reply to the application within 30 days (Article 10 of the Rules of Procedure of the Dispute Tribunal).

Normally, cases before the Dispute Tribunal are considered by one single judge (when necessary, by reason of the particular complexity or importance of the case, proceedings may be entrusted to a panel of three judges[19]). After receipt of the reply, a judge will normally have a first review of the case.

In general, the Dispute Tribunal follows an inquisitorial approach. This approach implies that the judge will not wait for, nor be bound to, the parties' views on facts and/or law. On her or his own initiative (*sua sponte*), the judge will check, for example, whether the application falls within the jurisdiction of the Tribunal, whether management evaluation has been requested in a timely manner, or whether the application itself is time-barred. According to the Appeals Tribunal in *Christensen* 2013-UNAT-335, "this competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable". It is also possible for the judge to render orders on production of additional documents which are deemed to be important.[20] Article 19 of the Rules of Procedure of the Dispute Tribunal provides that:

"The Dispute Tribunal may at any time, either on application of a party or on its

18 See *Planas* 2010-UNAT-049.

19 See Art. 10, para. 9, UNDT Statute. Until now, this procedure has been used very rarely (as an example, see *Kasmani* UNDT/2012/049).

20 Regarding the procedure to be followed where documents are alleged to be confidential, see *Bertucci* 2011-UNAT-121.

own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties."[21]

At this stage, parties may also be called to attend a "case management hearing" or a "status conference" before the judge. The purpose of these hearings is to clarify factual questions, as well as to identify the major legal aspects of the case.

The case management hearing provides also for an opportunity to discuss with the parties their availability to consider possible ways for an amicable settlement. Although the case is already before the judge, the door to mediation remains open.[22] Article 10, paragraph 3, of the Statute of the Dispute Tribunal explicitly states that "[a]t any time during the deliberations, the Dispute Tribunal may propose to refer the case to mediation". Once the parties agree to such a proposal, the proceedings before the Tribunal shall be suspended. If no mediation agreement can be reached, the proceedings before the Tribunal will continue.

Following case management - which does not necessarily include a hearing but may also be done in writing by way of orders and parties' submissions - the Tribunal will consider the usefulness of a hearing. It falls within the judge's discretion to hold or not to hold a hearing.[23] This decision will take into account whether there are crucial facts in dispute between the parties or whether only legal questions of minor complexity are at stake. Whereas in the latter case a hearing may not be necessary, the former is probably in need of a hearing with witnesses or other means of evidence. Since the hearing is an important tool of the principles of transparency and "open justice" ("Justice must not only be done but must manifestly be seen to be done"[24]), a hearing will normally be granted in case one of the parties requests it.

The preparation of the hearing includes a number of steps which will be determined by judicial orders and Registries' activities: dates must be arranged, witnesses have to be contacted, video-conference facilities may be needed, etc. From the judge's side, it may be necessary to determine the admissibility of evidence offered by the parties.[25]

Hearings are open to the public, except when the judge decides otherwise, e.g. in order to protect privacy. There is no general answer to how a hearing is to be conducted. It mainly depends on the circumstances of each single case and - a matter that shall not be forgotten - on the "style" of the judge to whom the case is assigned. Sometimes, a hearing may not last longer than an hour; in other, complex cases, several days of interrogation and cross-examination of witnesses may be needed.

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21 The Appeals Tribunal has held that the Dispute Tribunal is in the best position to decide what is appropriate for the fair and expeditious disposal of the case and to do justice to the parties and that the Appeals Tribunal "will not lightly interfere with the broad discretion of the UNDT in the management of cases" (*Leboeuf et al.* 2013-UNAT-354).

22 For further information on the mediation process, see above Chapter III.C.

23 Art. 16, para. 2, UNDT Rules provides that a "hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure".

24 *Macharia* 2011-UNAT-128.

25 See Art. 18, para. 1, UNDT Rules.

Once the hearing is closed, the judge will consider the case in all aspects and prepare a judgment. Paragraph 7(b) of the Code of Conduct for the judges[26] requests that judgments should be given no later than three months from the end of the hearing or the closing of pleadings. The judgment shall be issued in writing and shall state the reasons, facts and law on which it is based, and a copy of the judgment shall be communicated to each party in the case (Article 11 of the Statute of the Dispute). All judgments are published, while protecting personal data, on the Tribunal's website.

2. Application for suspension of action

In some situations, for example in case of non-renewal of appointment, urgent judicial intervention is necessary to preserve the applicant's rights on a provisional basis. The Dispute Tribunal is entitled to render such interim measures.

According to Article 2, paragraph 2, of the Statute of the Dispute Tribunal an individual may request the Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision where this decision appears prima facie to be unlawful, in cases of particular urgency, and where such implementation would cause irreparable damage.

It is noteworthy that this type of interim measures is, legally speaking, closely related and restricted to the management evaluation process. It follows that, where management evaluation is not requested (e.g. when the contested decision consists of a disciplinary measure) an application for suspension of action is inappropriate.[27] Furthermore, no suspension can be granted when a request for management evaluation has not - yet - been filed, or, on the other hand, when management evaluation has already been completed. Finally, suspension of action can only been granted until the end of the management evaluation process.[28]

In addition, it has to be emphasized that no suspension of action is available when the contested administrative decision has already been implemented.[29] Therefore, in cases of non-renewal of appointment, no suspension of action is possible after the expiration of the last appointment. In some cases, it is difficult to determine the date of implementation. For example, the Dispute Tribunal has taken different approaches with respect to the date of implementation of selection decisions based on ST/AI/2010/3.[30]

Finally, all three criteria for granting suspension of action listed in Article 2, paragraph 2, must be fulfilled. Even if only one is missing, the application has no success.

(a) Prima facie unlawfulness

Due to the provisional character of the proceedings at stake, a suspension of action does

26 See GA res. 66/106.
27 See Staff Rule 11.2 (b), and *Jahnsen Lecca* UNDT/2012/132.
28 See *Igbinedion* 2011-UNAT-159.
29 See *Tiwathia* UNDT/2012/109.
30 Compare, e.g., *Wang* UNDT/2012/080 and *Nwuke* UNDT/2012/116.

not provide the Tribunal with an opportunity to render a full assessment of all legal aspects of the case. Pursuant to Article 13 of the Rules of Procedure, the Dispute Tribunal shall consider an application for suspension of action within five working days of the service of the application on the respondent. Considering the short timeframe for management evaluation, the effects of granting suspension may not be overestimated. Therefore, the Dispute Tribunal has repeatedly held that "the prerequisite of prima facie unlawfulness does not require more than serious and reasonable doubts about the illegality of the contested decision" (*Ullah* UNDT/2012/140.) In other words, "it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith" (*Khambatta* UNDT/2012/058).

(b) Urgency

Urgency requires that the applicant cannot await the outcome of the normal and full procedure without loss of substantial rights. Generally, disputes about mere financial matters are not urgent. On the other hand, abolition of posts, non-renewal or non-selection often fulfils the requirement of particular urgency.

For potential applicants, it is not recommended to wait until the very last moment to make their submission to the Tribunal. In *Maloka Mpacko* UNDT/2012/081, the Dispute Tribunal stated:

> "If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant."

(c) Irreparable damage

Damage is irreparable where possible compensation at the end of the full judicial review would be too late or would not repair the damage done. While the Dispute Tribunal has established that mere financial loss is not enough to satisfy this requirement,[31] it has also found in a number of cases that harm to professional reputation and career prospects, harm to health or sudden loss of employment may constitute irreparable damage[32]. In *Khambatta* UNDT/2012/058, the Tribunal stated that:

> "Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system the prospect of returning to a comparable post within the United Nations is significantly reduced."

31 See *Fradin de Bellabre* UNDT/2009/004, and *Utkina* UNDT/2009/096.
32 See, e.g., *Calvani* UNDT/2009/092, and *Villamoran* UNDT/2011/126.

In addition to suspension of action during management evaluation, Article 10, paragraph 2, of the Statute enables the Dispute Tribunal, at any time during the judicial proceedings, to order an interim measure to provide temporary relief to either party under the same requirements as described above. This temporary relief may include an order to suspend the implementation of the contested administrative decision, "except in cases of appointment, promotion or termination". This type of interim measure has not - yet - played a significant role in the Tribunal's practice, due to the quoted restriction. It follows from the latter that in cases of dismissal as a disciplinary measure, no interim measures are available.[33]

The application for suspension of action during management evaluation is a tool that is frequently used, and with considerable success. Within the first three years of operation of the Dispute Tribunal, 155 applications for suspension of action were filed, and, in 2012, more than a third of these applications were successful. Although of a provisional character, the Tribunal's preliminary legal assessment can give valuable advice for the ongoing management evaluation process and, by doing so, contribute to the avoidance of further litigation.

3. Other motions and applications

There are a number of additional motions and applications during or following the first instance proceedings. For example, during the proceedings, parties may file motions to suspend or waive deadlines (Article 10, paragraph 3, of the Statute of the Dispute Tribunal), with regard to production of evidence (Article 18, paragraph 2, of the Rules of Procedure of the Dispute Tribunal) or to request the recusal of a judge on the grounds of a conflict of interest (Articles 27 and 28 of the Rules of Procedure of the Dispute Tribunal). It is neither possible nor necessary to present all possible actions within the framework of this volume.[34] Therefore, the following paragraphs are restricted to a short overview of a few major applications.

(a) Application for revision

A party may apply for revision of an executable judgment on the basis of the discovery of a decisive fact which was, at the time of the judgment was rendered, unknown to the Dispute Tribunal and to the party, always provided that such ignorance was not due to negligence (Article 12, paragraph 1, of the Statute).

As a first requirement for such an application, the judgment must be executable. This is the case when the Dispute Tribunal's judgment is neither still appealable nor already under appeal (see Article 11, paragraph 3, of the Statute). This type of application has very strict requirements, summarized in *Muthuswami et al*. 2011-UNAT-102:

> "The moving party must show that (i) there is a new fact which, at the time the judgment was rendered, was unknown to the... Tribunal and the party applying for revision; (ii) that such ignorance was not due to negligence of the moving party; and (iii) that the new fact would have been decisive in reaching the original decision."

33 See *Jahnsen Lecca* UNDT/2012/132.

34 The case law of the Tribunals is still limited to a few examples, see, e.g., *Calvani* 2010-UNAT-032 (production of evidence), *Rahman* UNDT/2012/136 (recusal).

Only if all these criteria are met, an application may succeed "since a party may not seek revision of the judgment merely because it is dissatisfied with the pronouncement of this Tribunal and wants to have a new round of litigation" (*Muthuswami et al*. 2011-UNAT-102). Not surprisingly, until now no application for revision has been accepted.[35]

(b) Application for interpretation

A party may apply for an interpretation of the meaning or the scope of the final judgment, provided that it is not under consideration by the Appeals Tribunal (Art. 12, paragraph 3, of the Statute of the Dispute Tribunal).

It may happen from time to time that the wording of a judgment raises questions with respect to its meaning or effects. For example, the award of a compensation of "two months' net base salary" does not answer the question about the correct date of reference for the calculation of this amount of money - is it the date of the judgment, the (earlier) date of the contested administrative decision or the (even earlier) date of the event that caused the contested decision[36]? However, according to *Abbassi* 2013-UNAT-315, "interpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will of the Tribunal or the arguments leading to the decision. But if the judgment is comprehensible, whatever the opinion the parties may have about it or its reasoning, an application for interpretation is not admissible". Therefore, an application for interpretation is no proper means to re-litigate the case. In the words of *Shanks* UNAT-2010-026,

> "There must be an end to litigation and the stability of the judicial process requires that final judgments by an appellate court be set aside only on limited grounds and for the gravest of reasons..."

The decision on a request for interpretation is not a "fresh decision" or judgment within the meaning of the Statutes; therefore, it cannot be appealed.[37]

(c) Application for execution

Once a judgment is executable, a party may apply for an order for execution of the judgment if the judgment requires execution within a certain period of time and such execution has not been carried out (Article 12, paragraph 4, of the Statute of the Dispute Tribunal). Fortunately, until now, only one application has been filed - and rejected.[38]

4. Appeal before the United Nations Appeals Tribunals

The Appeals Tribunal has various competencies. Its major task is - as its name indicates - to hear and pass judgment on appeals against judgments rendered by the Dispute Tribunal

35 See, *Luvai* 2011-UNAT-127, *Macharia* 2011-UNAT-128, *Eid* 2011-UNAT-145, *El Khatib* 2013-UNAT-317 or *Tiwathia* UNDT/2012/119.
36 See *Kasyanov* 2011-UNAT-161.
37 See *Gehr* 2013-UNAT-333.
38 See *Frechon* 2013-UNAT-318.

(Article 2, paragraph 1, of the Statute of the Appeals Tribunal). In addition, it also functions as a first (and last) instance Tribunal for decisions taken by the United Nations Joint Staff Pension Board (Article 2, paragraph 9, of the Statute of the Appeals Tribunal) and for decisions of those international agencies, organizations or entities which concluded a special agreement with the Secretary-General in order to accept the terms of the jurisdiction of the Appeals Tribunal (Article 2, paragraph 10, of the Statute of the Appeals Tribunal).[39] In line with the limited scope of this volume, the following presentation is restricted to a brief overview of the appeals proceedings.

(a) Appealable decisions

Normally, only appeals against judgments of the Dispute Tribunal concerning matters of substance are receivable. A judgment is a final determination of the first instance proceedings or of a particular issue in those proceedings. Some decisions are explicitly excluded from appeal, namely decisions on applications for suspension of action and other interim measures (respectively, Article 2, paragraph 2, and Article 10, paragraph 2, of the Statute of the Dispute Tribunal). It follows that so-called interlocutory decisions on matters of evidence, procedure and conduct of the trial are not separately appealable.

Based on this principle, the Appeals Tribunal has established an exception, stating "[a]n interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence" (*Villamoran* 2011-UNAT-160). This exception also applies to decisions on suspension of action.[40]

Those decisions of the Dispute Tribunal that are not appealable have to be executed. In *Igunda* 2012-UNAT- 255, the Appeals Tribunal emphasized

> "that a party is not allowed to refuse the execution of an order issued by the Dispute Tribunal under the pretext that it is unlawful or was rendered in excess of that body's jurisdiction, because it is not for a party to decide about those issues. Proper observance must be given to judicial orders. The absence of compliance may merit contempt procedures."

(b) Grounds for appeal

An appeal may be based on the assertion that the Dispute Tribunal, in its appealed judgment:

- exceeded its jurisdiction or competence;
- failed to exercise jurisdiction vested in it;
- erred on a question of law;
- committed an error in procedure, such as to affect the decision of the case; or
- erred on a question of fact, resulting in a manifestly unreasonable decision.

39 A list of these agencies, organizations and entities is included as Annex VIII.

40 Examples in *Nwuke* 2012-UNAT-230 or *Bertucci* 2010-UNAT-162 (full bench).

In *Larkin* 2012-UNAT-263, the Appeals Tribunal has emphasized:

> "that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the UNDT. Rather he or she must demonstrate that the UNDT has committed an error of fact or law warranting intervention by the Appeals Tribunal".[41]

Therefore, it is important for the appellant to clearly indicate the errors made in the first instance judgment. For example, in order to establish that the Dispute Tribunal judge erred in dismissing evidence, it is necessary to demonstrate that the evidence, if admitted, would have led to different findings of fact and changed the outcome of the case.[42]

A successful party has no right to appeal. In *Sefraoui* 2010-UNAT-048, the Appeals Tribunal clarified: "A party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds."

(c) Proceedings and results

Only the parties in the judgment of the Dispute Tribunal may file an appeal. They must do so within 60 days of receipt of the judgment (Article 2, paragraph 2, and Article 7, paragraph 1(c), of the Statute of the Appeals Tribunal). Of course, it is possible that both parties submit an appeal, in which case there shall be an appeal and a cross-appeal. The filing of appeals has the effect of suspending the execution of the contested judgment (Article 7, paragraph 5, of the Statute of the Appeals Tribunal).

Normally, cases before the Appeals Tribunal are reviewed by a panel of three judges. Cases raising a significant question of law may be referred for consideration by the whole Appeals Tribunal (Article 10, paragraphs 1 and 2, of the Statute of the Appeals Tribunal); this, however, has not happened often.[43] The Appeals Tribunal may hold hearings, although these have been up to now the exception.

A crucial issue within the appeals proceedings is the admittance of new evidence. Under Article 2, paragraph 5, the Statute provides that the Appeals Tribunal may receive additional documentary evidence in "exceptional circumstances", but that it shall not receive such evidence "if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal". In general, the Appeals Tribunal is reluctant to receive new evidence, stating, in *Shakir* 2010-UNAT-056, that it "will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT. The UNDT is not a dress rehearsal."

Pursuant to Article 2, paragraph 3, of its Statute, the Appeals Tribunal may affirm, reverse, modify or remand the judgment of the Dispute Tribunal. Statistically speaking, until the end of 2012, about two thirds of the appealed judgments have been affirmed. Less than 20% of the appealed decisions were reversed or modified. Reversal can affect the entirety of the first

41 See also *Crichlow* 2010-UNAT-035, *Charles* 2013-UNAT-284 and *Balinge* 2013-UNAT-377.
42 See *Abbassi* 2011-UNAT-110.
43 *Bertucci* 2010-UNAT-162 or *Warren* 2010-UNAT-059, *Baig et al.* 2013-UNAT-357.

instance judgment or only part of it. Modification can consist, for example, of a change of the amount of compensation. A number of decisions were remanded to the Dispute Tribunal for further consideration, for example in cases where the first instance judgment had only dealt with questions of receivability without assessing the merits of the application.[44] When a case is remanded, once the Dispute Tribunal has assessed the merits in a new judgment, this judgment is also subject to appeal.[45] After the decision of the Appeals Tribunal, no further legal remedy can be sought.[46] In legal terms, as provided for in Article 10, paragraph 5, of its Statute and mentioned at the beginning of this overview, "[t]he judgments of the Appeals Tribunal shall be binding upon the parties".

C. Major problems: Selected case law of the Tribunals

With the introduction of the new system, a new era of administration of justice has started. Although many substantial problems remain the same, the decisions of the former United Nations Administrative Tribunal are not considered as binding in the new system. The Appeals Tribunal held in *Sanwidi* 2010-UNAT-084:

> "The Statutes creating the Tribunals do not provide that the judgments of the former Administrative Tribunal shall be treated by the new Tribunals as binding precedent. The new system of justice will naturally have a fresh approach on the legal issues, and new jurisprudence will develop over time, which may or may not be different from that of the former Administrative Tribunal. Consequently, the jurisprudence of the former Tribunal, though of persuasive value, cannot be binding precedent for the new Tribunals to follow."

Therefore, the following overview is restricted to the case law of the new Tribunals. As the Appeals Tribunal is the highest instance in the system, which provides general guidance to both the parties and the Dispute Tribunal,[47] the presentation hereinafter mainly refers to the case law of the Appeals Tribunal. Judgments of the Dispute Tribunal will only be mentioned if they have not been appealed. The selection of issues takes into account the frequency of their occurrence and their importance for the relations between staff and the Organization.

It should be preliminarily observed that the Tribunals' judicial review is based on a number of basic procedural rules, which include the undisputed and widely accepted principles of fairness, transparency and the right of both parties to be heard (*audi alteram parte*).

More delicate questions are related to the burden of proof. The Appeals Tribunal follows the approach that the decisions of the Administration "are afforded a presumption of regularity",[48]

44 See *Gabaldon* 2010-UNAT-115 or *Iskandar* 2011-UNAT-116.
45 See *Iskandar* 2011-UNAT-268.
46 For reasons of clarification, it should be mentioned that applications for revision, correction, interpretation and execution are also available at the level of the Appeals Tribunal (see Art. 11 UNAT Statute).
47 According to *Benchebbak* 2012-UNAT-256, the Dispute Tribunal "is expected to follow the clear and consistent jurisprudence of the Appeals Tribunal."
48 *Majbri* 2012-UNAT-200, and *Rolland* 2011-UNAT-122.

which means that they are supposed to be lawful. Therefore, as a general guideline, it is for the applicant to demonstrate that the contested administrative decision is not in compliance with the terms of appointment or the contract of employment. If the record of the case shows "no evidence of irregularity, harassment, unlawful treatment or discrimination... the lack of such evidence, which forms part of the burden of proof of the claimant, determines the dismissal of the requested compensation" (*Rantsiou* UNAT-2012-250).

The lawfulness of the Administration's decisions, however, "is a rebuttable presumption".[49] The burden of proof may shift to the Administration under certain circumstances. These circumstances vary from issue to issue and will be described below.

1. Renewal of appointment

Appointment is the basis of the staff member's relation to the Organization. Unlike civil servants in some States, many of the international civil servants of the United Nations are not appointed on a permanent basis, but for a limited period of time. Once the term of a limited appointment comes close to its end, the crucial question arises as to whether the staff member has a right to get the appointment renewed.

The short answer to this question is: no. It is highlighted in the Staff Rules (as well as in nearly all letters of appointments received by staff members) that "temporary" and "fixed-term" appointments do "not carry any expectancy, neither legal nor otherwise, of renewal".[50] Based on these rules, the Appeals Tribunal has emphasized more than once that, normally, "appointments of limited duration have no expectancy of renewal or conversion to any other type of appointment."[51]

However, upon closer review, the Appeals Tribunal has established, in *Frechon* 2011-UNAT-132:

> "an administrative decision not to renew a fixed-term contract may be challenged in certain circumstances, for example where the actions of the Administration give rise to a legitimate expectation on the part of the staff member that his or her fixed-term contract may be renewed or extended. The case law has also established that an exception to the rules governing the expiry of a fixed-term contract will arise if the administrative decision not to renew is based on improper motives or if there are countervailing circumstances."

Whether an action of the Administration does give rise to the expectation of renewal can only be decided on a case-by-case basis. In any event, such expectation "must not be based on mere verbal assertions, but on a firm commitment to renewal revealed by the circumstances of the case".[52] Accordingly, a firm commitment may be deduced from an "express promise".[53]

49 *Ibekwe* 2011-UNAT-179.
50 See Staff Rules 4.12 (c), and 4.13 (c).
51 *Beaudry* 2010-UNAT-085, see also *Balesteri* 2010-UNAT-041, *Syed* 2010-UNAT-061.
52 *Abdalla* 2011-UNAT-138.
53 *Ahmed* 2011-UNAT-153, concurring with the former Administrative Tribunal.

Further, the Tribunal may intervene in cases "where a decision of non-renewal does not follow the fair procedure... "[54]. It follows that procedural irregularities may lead to the unlawfulness of the decision not to renew the appointment.

In addition, once the Administration explains the reasons for the non-renewal, these reasons have to be based on facts. The Appeals Tribunal noted, in *Islam* 2011-UNAT-215, "that when a justification is given by the Administration for the exercise of its discretion it must be supported by the facts."

Finally, and generally, the contested decision not to renew the applicant's appointment may not be based on improper motives or grounds. The Appeals Tribunal has strengthened the staff members' rights to information about the reasons of such decisions. "Due process requires that a staff member must know the reasons for a decision so that he or she can act on it" (*Hepworth* 2011-UNAT-178). It is sufficient for the reasons to be disclosed at the stage of management evaluation.[55] With respect to the burden of proof, the Appeals Tribunal, in *Obdeijn* 2012-UNAT-201, has stated the following:

> "Whereas, normally, the staff member bears the burden of proof of showing that the non-renewal decision was arbitrary or tainted by improper motives, the refusal by the Administration to disclose the reasons for a contested decision shifts the burden of proof, so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives."

When the decision not to renew the applicant's appointment is considered as unlawful, the Tribunals may order his or her reinstatement.[56] It is worth noting that since such a decision concerns "appointment" in the sense of Article 10, paragraph 5(a), of the Statute of the Dispute Tribunal, the Tribunals are obliged to set an amount of compensation that the Administration may elect to pay as an alternative. Therefore, the Administration can (and normally does) evade the renewal of the appointment by choosing the alternative.

Sometimes, the non-renewal of appointment is the result of a restructuring of the applicant's work environment ending in the abolishment of the post the staff member encumbers. According to *Gehr* 2012-UNAT-236, "an international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff". It is noteworthy that abolition and non-renewal are two different administrative decisions, which must be contested separately. If, for instance, an earlier decision to abolish the post has not been contested (and is, due to the time-limits, no longer contestable) it will be difficult - to say the least - to contest successfully the following decision not to renew the staff members contract. It should also be noted that reorganization has been accepted as a reason for non-renewal.[57] Finally, poor performance of the staff member may be the basis for the non-renewal of a fixed-term appointment.[58]

54 *Ahmed* 2011-UNAT-153.
55 See *Pirnea* 2013-UNAT-311.
56 See *Azzouni* 2010-UNAT-081.
57 See *Islam* 2011-UNAT-215.
58 See *Ahmed* 2011-UNAT-153, *Morsy* 2013-UNAT-298.

2. Selection/promotion

Aside from appointment, promotion is understandably one of the major concerns of staff. In such cases, a candidate who has been informed that the candidature was unsuccessful must take appropriate action within the well-known time-limits. It is not recommendable to wait until the successful candidate has been appointed which may happen much later[59]. It is important to note that it is for the Administration, and not for the Tribunals, to select the most suitable candidate for a position. As it had been emphasized by the Appeals Tribunal, in *Ljungdell* 2012-UNAT-265:

> "Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration." [60]

In this context, the administrative instruction on the staff selection system[61] plays an important, although not exclusive, role in many promotion cases within the Organization.[62] It is clear that the Administration has to follow the rules governing the selection process. In the jurisprudence of the Tribunals, one may find quite a few cases in which these rules have not been observed. Such flaws in the procedure are more than regretful, but they do not automatically result in the rescission of the contested decision and/or in an award of compensation. In *Bofill* 2011-UNAT-174, the Appeals Tribunal held:

> "The direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation."

It follows from this approach[63] that an applicant has to demonstrate not only that there has been some kind of procedural flaw during the selection process. In addition, the applicant has to prove that, if these irregularities had not happened, he or she would have had a "significant chance" of being selected. The legal consequence of the annulment of a selection procedure is restricted to placing the staff member in the same position he or she would have been in if the illegality had not occurred. Therefore, the Tribunals may, for example, order the Administration to repeat the selection process whenever there were procedural flaws in the original process. However, in such cases it not possible for the Tribunals to order directly a promotion or other benefits - e.g. being put on a roster[64].

59 See *Roig* 2013-UNAT-368.
60 See also *Abbassi* 2011-UNAT-110.
61 ST/AI/2010/3, superseding ST/AI/2006/3/Rev.1, which may still be applicable for older cases.
62 It should be noted that some offices, funds and programmes, such as UNHCR or UNICEF, have their own set of rules.
63 See also *Dualeh* 2011-UNAT-175 and *de Saint Robert* 2012-UNAT-259.
64 See *Farr* 2013-UNAT-350.

In substance, the question is whether the candidacy was given a sufficient amount of consideration. With respect to the burden of proof, the Appeals Tribunal emphasized, in *Rolland* 2011-UNAT-122:

> "If the management is able to even minimally show that the appellant's candidature was given a full and fair consideration, then the presumption of law is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to show through clear and convincing evidence that she was denied a fair chance of promotion."[65]

It is not easy for an applicant to meet these requirements. Generally speaking, the Appeals Tribunal emphasizes the Administration's discretionary powers concerning selection and promotion. In *Rolland* 2011-UNAT-122, this attitude was summarized as follows:

> "The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion."

3. Disciplinary cases

Like in any other civil service, misconduct also happens at the United Nations. Chapter X of the Staff Rules deals with "Disciplinary measures and procedures". Once a disciplinary sanction is taken, the staff member concerned is entitled to appeal directly before the Dispute Tribunal, without going through the management evaluation process.[66]

Judicial review of a disciplinary measure includes a three-step check. In *Masri* UNAT-2010-098, the Appeals Tribunal held that

> "when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence."[67]

In *Shahatit* 2012-UNAT-195, the Appeals Tribunal also indicated that in the context of disciplinary measures irregularities in the procedural handling of the matter may also impact on the legality of the disciplinary measure.

(a) Facts

Regarding the first step, i.e. the establishment of facts, an important question arises with respect to the standard of proof that has to be applied. The Appeals Tribunal offered general guidance on this point, in *Molari* 2011-UNAT-164:

65 See also *Ibekwe* 2011-UNAT-179.
66 See Staff Rule 11.2 (b) and above B 1(b) (ii).
67 See also *Shahatit* 2012-UNAT-195.

> "Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt - it means that the truth of the facts asserted is highly probable."

(b) Misconduct

The second requirement is related to the staff member's failure to comply with obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant (see Staff Rule 10.1(a)). Such misconduct may appear in various forms, including accepting credits from vendors in business with the Organization[68] or submitting receipts for tax reimbursement in an improper way.[69] Whether or not a certain conduct has amounted to misconduct is a legal question, which will be finally determined by the Tribunals.

(c) Proportionality

At the third stage, the Tribunals have to apply the general principle of proportionality. In *Sanwidi* 2010-UNAT-084, the Appeals Tribunal stated:

> "In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective."

Staff Rule 10.2 provides for a list of nine different disciplinary measures, ranging from "written censure" to "dismissal". Based on this elaborated set of actions, the Tribunals ask for their appropriate use. While emphasizing that decision-makers enjoy a wide discretionary area of judgment into which a court applying the test of proportionality will never intrude, the Appeals Tribunal set aside a disciplinary measure in *Doleh* 2010-UNAT-025, finding that: "The decision is more drastic than necessary. It is like taking a sledgehammer to crack a nut".

Further, it has been repeatedly held that the level of the sanction falls within the remit of the Administration and can only be reviewed in cases of "obvious absurdity or flagrant arbitrariness".[70]

As a conclusion, it may be said that the principle of proportionality in disciplinary cases is used as a tool to rescind such measures that proved to be clearly disproportionate - and

68 See *Sanwidi* 2010-UNAT-084.
69 See *Masri* 2011-UNAT-164.
70 *Shahatit* 2012-UNAT-195. See also *Aqel* 2010-UNAT-040 and *Nasrallah* 2013-UNAT-310.

such measures only. Once a specific measure has been determined to be disproportionate, it is for the Tribunal, where appropriate, to substitute this measure with a milder, proportionate one. For example, the Appeals Tribunal set aside the disciplinary measure of demotion with loss of salary and transfer, and substituted it with a written censure.[71]

4. Harassment and other complaints

For the purpose of ensuring that staff members are treated with dignity and respect and are aware of their role and responsibilities in maintaining a workplace free of any form of discrimination, harassment, including sexual harassment, and abuse of authority, a Secretary-General's bulletin has been promulgated which includes a set of informal and formal corrective measures (ST/SGB/2008/5). The formal procedures provide for an aggrieved individual's right to submit a formal complaint or report that has to be reviewed promptly and appropriate action has to be taken.[72] It is not necessary for the aggrieved person to submit full evidence that prohibited conduct took place. A fact-finding investigation already ought to be initiated if the overall circumstances of the particular case offer at least a reasonable chance that the alleged facts may amount to prohibited conduct within the meaning of the bulletin.[73] Both the aggrieved person and/or the alleged offender may appeal where they have grounds to believe that the procedure was improper.

In *Nwuke* 2010-UNAT-099, the Appeals Tribunal held:

> "In light of ST/SGB/2008/5, Chapter XI of the Staff Rules, and the UNDT Statute, the Appeals Tribunal concludes that when the claims regard issues covered by ST/SGB/2008/5, the staff member is entitled to certain administrative procedures. If he or she is dissatisfied with their outcome, he or she may request judicial review of the administrative decisions taken. The UNDT has jurisdiction to examine the administrative activity (act or omission) followed by the Administration after a request for investigation, and to decide if it was taken in accordance with the applicable law. The UNDT can also determine the legality of the conduct of the investigation."

Complaints may also be directly addressed to OIOS.[74] In this case, the decisions of OIOS can also be reviewed by the Tribunals. In *Koda* 2011-UNAT-130, the Appeals Tribunal emphasized that OIOS

> "operates under the 'authority' of the Secretary-General, but has 'operational independence'. As to the issues of budget and oversight functions in general, the General Assembly, in its resolution 48/218B, calls for the Secretary-General's involvement. We hold that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) also has no jurisdiction to do so, as it can only review the Secretary-General's administrative decisions. But this is a minor distinction. Since OIOS is part of the Secretariat, it is of

71 See *Abu Hamda* 2010-UNAT-022.
72 See Sec. 5 of ST/SGB/2008/5.
73 See *Östensson* UNDT/2011/050.
74 See ST/SGB/2008/5, Sec. 5.12.

course subject to the Internal Justice System. To the extent that any OIOS decisions are used to affect an employee's terms or contract of employment, the OIOS report may be impugned. "

In addition, ST/SGB/2005/21 has been rendered with the objective of enhancing protection against retaliation for individuals who report misconduct or cooperate with duly authorized audits or investigations. In this context, the Ethics Office may take decisions, e.g. to reject a request for an investigation. Such decisions are also open to judicial review. In *Muratore* 2012-UNAT-241, the Appeals Tribunal has explicitly considered that declining to entertain the applicant's request for an ethics enquiry constitutes an "administrative decision".[75]

5. Compensation

The issue of compensation is one that cannot be overlooked. Indeed, very often, it is an important objective of an application to receive at least financial compensation for the suffered economic and/or moral damage. The present section is dedicated to the description of some guiding principles governing the "inexact science" of calculation of damages.

The Statutes of the Tribunals include provisions on two different types of compensation, i.e. the compensation that the Administration, in cases concerning appointment, promotion or termination, may elect to pay as an alternative to the rescission of the contested decision or specific performance, and other compensation which shall normally not exceed the equivalent of two years' net base salary of the applicant. Further, the Statutes prohibit the award of exemplary or punitive damages.[76] Apart from that, the Statutes are silent on the calculation of damages.

From the outset, the Appeals Tribunal has stated that "[t]he very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations".[77]

Further, as a general principle, the Appeals Tribunal has indicated that "damages must be proportionate to the harm suffered" (*Marshall* 2012-UNAT-270).

With respect to damages, the Appeals Tribunal held, in *Nyakossi* 2012-UNAT-254, that "compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury".

On the other hand, it is important to note that not all irregularities will lead to the award of compensation. As from *Wu* 2010-UNAT-052, the Appeals Tribunal constantly held the view that "not every violation of due process rights will necessarily lead to an award of compensation." And in *Shkurtaj* 2011-UNAT-148 the Appeals Tribunal clarified that "[d]amages awarded for violations of due process rights are not exemplary or punitive, but must be awarded with great care and be of a reasonable amount."

75 See also *Koumoin* 2011-UNAT-119.
76 See Art. 10, paras. 5(a), 5(b) and 7, UNDT Statute; Art. 9, paras. 1(a), 1(b) and 3 UNAT Statute.
77 *Warren* 2010-UNAT-059 (full bench). See also *Azzouni* 2011-UNAT-162 and *Alaudin* 2011-UNAT-81.

Additional requirements for compensation were established in *Israbhakdi* 2012-UNAT-277:

> "It is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting directly from the illegality on a cause-effect lien. If these other two elements of the notion of responsibility are not established, only the illegality can be declared but compensation cannot be awarded."

(a) 'Compensation in lieu'

Regarding the compensation that the Administration may elect as an alternative to rescission or specific performance, the Appeals Tribunal, in *Mushema* 2012-UNAT-247, characterized as

> "elements which can be considered..., among others, the nature and the level of the post formerly occupied by the staff member (i.e., continuous, provisional, fixed-term), the remaining time, chances of renewal, etc. It must also be taken into account that the two-year limit imposed by the Statute of the Dispute Tribunal constitutes a maximum, as a general rule with exceptions. As such, it cannot be the average 'in lieu compensation' established by the court. The assessment of compensation must also be done on a case-by-case basis. Contemplating the particular situation of each claimant, it carries a certain degree of empiricism to evaluate the fairness of the 'in lieu compensation' to be fixed."

Where previous appointments of an applicant had been restricted to a fixed term, the compensation in lieu for non-renewal may not exceed the respective period of time since the expectancy of renewal could not be fixed beyond such period or else it would not be reasonable[78].

(b) Other compensation

Financial loss may be calculated in a rather simple way. Of course, benefits must be taken into account. In *Cohen* 2011-UNAT-131, the Appeals Tribunal clarified that

> "the period of compensation for loss of earnings resulting from the dismissal should be limited to, except where compelling reasons would lead to a different judgment, two years, and that the compensation must be calculated taking into account the net base salary and entitlements not related to actual service performance after deducting any salaries and entitlements that the staff member received during the period considered, based on the situation as at the beginning of that period."

In other cases, calculation of damages is more complicated. In *Mezoui* 2012-UNAT-220, the Appeals Tribunal gave guidance as follows:

> "The Appeals Tribunal has consistently held that compensation must be set by the UNDT following a principled approach on a case-by-case basis. The UNDT should

78 See *Gakumba* 2013-UNAT-387.

be guided by two elements. The first element is the nature of the irregularity, which led to the rescission of the contested administrative decision. The second element is the chance that the staff member would have had to be promoted had the correct procedure been followed. "

Further, the Appeals Tribunal held in *Hastings* 2011-UNAT-109:

"While not subject to exact probabilities, such assessments are sometimes necessary in cases where a staff member is unlawfully denied a position - and in many cases alternative means of calculating damages may be available. The trial court is in a much better position than this Court in assessing the probabilities."

(c) Moral damage

Where no economic loss can be claimed, some compensation may be awarded for moral injury. In *Asariotis* 2013-UNAT-309, the Appeals Tribunal has held:

"To invoke its jurisdiction to award moral damages, the UNDT must in the first instance identify the moral injury sustained by the employee. This identification can never be an exact science and such identification will necessarily depend on the facts of each case. What can be stated, by way of general principle, is that damages for a moral injury may arise:

i. From a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they specifically designated in the Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.
ii. An entitlement to moral damages may also arise where there is evidence produced to the Dispute Tribunal by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights and where the UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

We have consistently held that not every breach will give rise to an award of moral damages under (i) above, and whether or not such a breach will give rise to an award under (ii) will necessarily depend on the nature of the evidence put before the Dispute Tribunal."

In addition, for this kind of damage, the Appeals Tribunal has established, in *Massabni* 2012-UNAT-238:

"The claimant carries the burden of proof about the existence of factors causing moral damage to the victim's psychological, emotional and spiritual wellbeing. When the circumstances of a certain case do not allow the Judge to presume that kind of damage

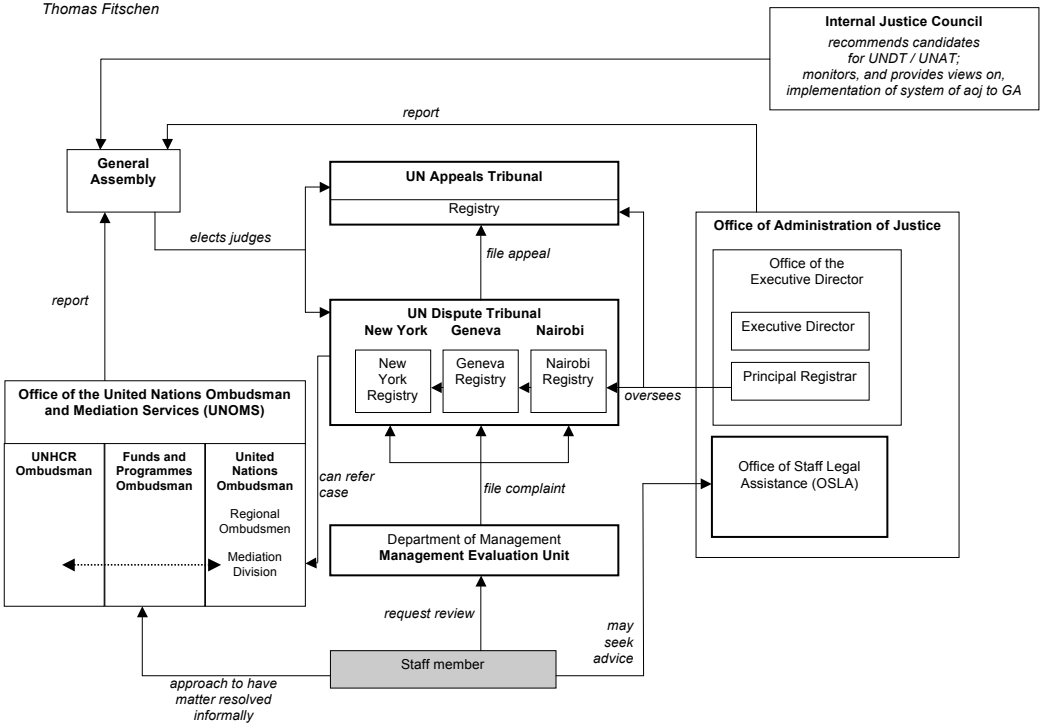
> just as a normal consequence to an average person placed in the same situation of the claimant, evidence must be produced and the lack of it will lead to the denial of compensation."

Finally, according to *Kozlov and Romadanov* 2012-UNAT-228, a "note from a psychotherapist is not sufficient evidence, when no medical bills or other evidence have been produced. 'Moral' damages may not be awarded without specific evidence supporting the award".

Annexes

Annex I
Administration of justice in the UN: The informal and formal system (chart)

Administration of Justice at the UN: The informal and formal system
Thomas Fitschen



Annex II
General Assembly Resolutions *

A. Resolution 61/261 of 4 April 2007
Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004 and 59/283 of 13 April 2005,

Reiterating that a transparent, impartial, independent and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff and is important for the success of human resources reform in the Organization,

Affirming the importance of the United Nations as an exemplary employer,

Stressing the importance of measures to eliminate any conflicts of interest in the system of administration of justice,

Recognizing that the current system of administration of justice at the United Nations is slow, cumbersome, ineffective and lacking in professionalism, and that the current system of administrative review is flawed,

Noting with concern that an overwhelming majority of individuals serving in the system of administration of justice lack legal training or qualifications,

Noting that legal assistance to the management of the Organization is provided by a cadre of professional lawyers,

Emphasizing the importance for the United Nations to have an efficient and effective

* *Source: Official document system of the United Nations (ODS): http://ods.un.org.*

system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations,

Expressing its appreciation for the consensual outcome of the seventh special session of the Staff-Management Coordination Committee,

Having considered the report of the Secretary-General on the administration of justice in the Secretariat: implementation of resolution 59/283,[1] the report of the Redesign Panel on the United Nations system of administration of justice,[2] the note by the Secretary-General thereon[3] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[4] the reports of the Secretary-General on the activities of the Ombudsman,[5] the reports of the Secretary-General on the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board and statistics on the disposition of cases and the work of the Panel of Counsel,[6] the report of the Secretary-General on the administration of justice in the Secretariat[7] and the related report of the Advisory Committee,[8] the reports of the Secretary-General concerning his practice in disciplinary matters and in cases of criminal behaviour,[9] and the letter dated 14 October 2005 from the President of the General Assembly to the Chairman of the Fifth Committee,[10]

1. *Welcomes* the report of the Redesign Panel on the United Nations system of administration of justice[2] and the note by the Secretary-General thereon;[3]

2. *Takes note of* the reports of the Secretary-General on the administration of justice in the Secretariat: implementation of resolution 59/283,[1] the activities of the Ombudsman,[5] the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board and statistics on the disposition of cases and the work of the Panel of Counsel,[6] the administration of justice in the Secretariat[7] and the practice of the Secretary-General in disciplinary matters and in cases of criminal behaviour,[9] and the reports of the Advisory Committee on Administrative and Budgetary Questions;[4,8]

3. *Recalls* its decision 61/511 B of 28 March 2007;

New system of administration of justice

4. *Decides* to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure

1 A/61/342.
2 A/61/205.
3 A/61/758.
4 A/61/815.
5 A/60/376 and A/61/524.
6 A/60/72 and Corr.1 and A/61/71.
7 A/59/883.
8 A/60/7/Add.1. For the final text, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 7A*.
9 A/60/315 and A/61/206.
10 A/C.5/60/10.

respect for the rights and obligations of staff members and the accountability of managers and staff members alike;

5. *Recognizes* that the introduction of the new system of administration of justice should, inter alia, have a positive impact on staff-management relations and improve the performance of both staff and managers;

6. *Stresses* the importance of increased transparency in decision-making and increased accountability of managers for the system;

7. *Also stresses* the importance of the proper implementation of a sound performance appraisal system as a potential means of avoiding conflict and the need to provide training to improve the conflict-resolution skills of managers;

8. *Reaffirms* staff rule 112.3, which relates to the financial liability of managers;

9. *Stresses* the need for comprehensive training for all participants in the system of administration of justice as well as the dissemination of information among staff members about the system of administration of justice, the remedies available and the rights and obligations of staff members and managers;

10. *Endorses* the recommendation of the Redesign Panel to abolish the Panels on Discrimination and Other Grievances, whose functions relating to the informal system will be transferred to the Office of the Ombudsman and whose other functions will be transferred to the formal system of administration of justice;

Informal system

11. *Recognizes* that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation;

12. *Decides* to create a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes;

13. *Requests* the Secretary-General to identify three posts for the Office of the Ombudsman for Geneva, Vienna and Nairobi;

14. *Emphasizes* the need for the Ombudsman to encourage staff to seek resolution through the informal system;

15. *Affirms* mediation as an important component of an effective and efficient informal system of administration of justice that should be available to any party to the conflict at any time before a matter proceeds to final judgement;

16. *Decides* to formally establish a Mediation Division located at Headquarters within the Office of the United Nations Ombudsman to provide formal mediation services for the United Nations Secretariat, funds and programmes;

17. *Stresses* that once parties have reached an agreement through mediation they are precluded from litigating claims covered by the agreement and that parties should be able to bring an action in the formal system to enforce the implementation of that agreement;

18. *Emphasizes* the role of the Ombudsman to report on broad systemic issues that he or she identifies, as well as those that are brought to his or her attention;

Formal system

19. *Agrees* that the formal system of administration of justice should comprise two tiers, consisting of a first instance, the United Nations Dispute Tribunal, and an appellate instance, the United Nations Appeals Tribunal, rendering binding decisions and ordering appropriate remedies;

20. *Decides* that a decentralized United Nations Dispute Tribunal shall replace existing advisory bodies within the current system of administration of justice, including the Joint Appeals Boards, Joint Disciplinary Committees and other bodies as appropriate;

21. *Emphasizes* the importance of efficiency in the work practices of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

22. *Stresses* that the effectiveness of the formal system will depend largely on the legal and judicial expertise, experience, independence and other qualifications of the judges;

23. *Agrees* that legal assistance for staff should continue to be provided, and supports the strengthening of a professional office of staff legal assistance;

24. *Reiterates* the invitation to staff representatives to further explore the possibility of establishing a staff-funded scheme in the Organization that would provide legal advice and support to the staff; staff representatives may consult with the Secretary-General as they deem appropriate;

Management evaluation

25. *Acknowledges* the need to have in place a process for management evaluation that is efficient, effective and impartial;

26. *Reaffirms* the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted;

27. *Endorses* the measures to ensure managerial accountability contained in paragraph 31 of the note by the Secretary-General;[3]

Office of the Administration of Justice

28. *Agrees* to establish the Office of the Administration of Justice, headed by a senior management-level official, which will have overall responsibility for the coordination of the United Nations system of administration of justice;

Transitional measures

29. *Requests* the Secretary-General to ensure that the Joint Appeals Boards, the Joint Disciplinary Committees, the United Nations Administrative Tribunal and other bodies, as appropriate, continue to function until the new system is operational with a view to clearing all cases that are before them;

30. *Urges* the Secretary-General to continue his efforts to ensure the proper functioning of the current system of administration of justice prior to the implementation of the new system, including through the implementation of General Assembly resolution 59/283;

31. *Also urges* the Secretary-General to continue the efforts needed to comply with the time limits of the appeals process and to clear the existing backlog of cases at all stages;

Further reports

32. *Requests* the Secretary-General to report on the following issues regarding the establishment of the new system of administration of justice:

(a) An in-depth analysis regarding the scope of persons who might be covered by the new system of administration of justice;
(b) Proposals on the nomination and selection process for the Ombudsmen and judges, taking into account the recommendations of the Advisory Committee on Administrative and Budgetary Questions as set out in paragraphs 30 and 48 of its report;[4]
(c) Revised terms of reference for the Ombudsman, as appropriate, taking into account the proposed changes and suggested locations;
(d) Detailed proposals for the strengthening of an office of staff legal assistance, including information on practices in the governmental and intergovernmental sectors;
(e) Detailed and objective criteria for determining which peacekeeping operations and special political missions should have elements of the system of administration of justice within their post structures;
(f) The outcome of the Staff-Management Coordination Committee working group on disciplinary proceedings, including on the recommendations of the Redesign Panel on peacekeeping operations;
(g) Arrangements for the members of the United Nations Administrative Tribunal whose terms of office are affected by the implementation of the new system;
(h) Proposals for registries for the United Nations Dispute Tribunal and its interim rules;
(i) A proposal for management evaluation, taking into account the recommendations of the Advisory Committee as set out in paragraphs 32 to 40 of its report;[4]
(j) Detailed information on the relationship and cost-sharing arrangements with the funds and programmes and underlying cost parameters, taking into consideration the comments of the Advisory Committee;
(k) A comparison of the cost of the current Joint Appeals Board/Joint Disciplinary Committee/United Nations Administrative Tribunal system and the proposed United Nations Dispute Tribunal/United Nations Appeals Tribunal system;
(l) Resource requirements for the new system of administration of justice;

33. *Also requests* the Secretary-General to consolidate the above-mentioned reports

to the extent possible and to submit them to the General Assembly as a matter of priority no later than the early part of the main part of its sixty-second session;

34. *Further requests* the Secretary-General to submit to the General Assembly a report on resources required for the implementation of the present resolution as a matter of priority at the second part of its resumed sixty-first session;

Other issues

35. *Invites* the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters;

36. *Decides* to continue consideration of this item during its sixty-second session as a matter of priority with the objective of implementing the new system of administration of justice no later than January 2009.

93rd plenary meeting
4 April 2007

B. Resolution 62/228 of 22 December 2007
Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005 and 61/261 of 4 April 2007,

Emphasizing the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations,

Reaffirming its decision in paragraph 4 of resolution 61/261 to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike,

Having considered the reports of the Secretary-General on revised estimates relating to the programme budget for the biennium 2006-2007 and the proposed programme budget for the biennium 2008-2009 pursuant to General Assembly resolution 61/261,[1] on the administration of justice,[2] on the outcome of the work of the Joint Appeals Board during 2005 and 2006 and statistics on the disposition of cases and work of the Panel of Counsel[3] and on the activities of the Ombudsman,[4] the related reports of the Advisory Committee on Administrative and Budgetary Questions,[5] and the letter dated 20 November 2007 from the President of the General Assembly to the Chairman of the Fifth Committee,[6]

1. *Takes note* of the reports of the Secretary-General on revised estimates relating to the programme budget for the biennium 2006-2007 and the proposed programme budget for the biennium 2008-2009 pursuant to General Assembly resolution 61/261,[1] on the administration of justice,[2] on the outcome of the work of the Joint Appeals Board during 2005 and 2006 and statistics on the disposition of cases and work of the Panel of Counsel[3] and on the activities of the Ombudsman[4] and the related reports of the Advisory Committee on Administrative and Budgetary Questions;[5]

2. *Recalls* its decision 62/519 of 6 December 2007;

3. *Endorses* the conclusions and recommendations contained in the report of the

1 A/61/891.
2 A/62/294.
3 A/62/179.
4 A/62/311.
5 A/61/936; and A/62/7/Add.7 (for the final text, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 7A*).
6 A/C.5/62/11.

Advisory Committee on Administrative and Budgetary Questions,[7] subject to the provisions of the present resolution;

I

New system of administration of justice

4. *Stresses* the importance of allocating adequate resources to establish the new system of administration of justice;

5. *Acknowledges* the evolving nature of the new system of administration of justice and the need to carefully monitor its implementation;

6. *Stresses* the importance of ensuring access for all staff members to the system of administration of justice, regardless of their duty station;

A. Scope

7. *Decides* that individuals who have access to the current system of administration of justice shall have access to the new system;

8. *Also decides* to revert to the issue of the scope of the system of administration of justice at the second part of its resumed sixty-second session, and requests information in this regard from the Secretary-General;

9. *Requests* the Secretary-General to ensure that the daily paid workers in peacekeeping missions are made aware of their rights and obligations and that they have access to suitable recourse procedures within the framework of the United Nations;

B. Office of Administration of Justice

10. *Decides* to establish the Office of Administration of Justice, comprising the Office of the Executive Director and the Office of Staff Legal Assistance, as well as the Registries for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

11. *Also decides* that the Office of the Executive Director is to consist of one Executive Director (D2), one Special Assistant (P4) and one Administrative Assistant (General Service (Other level)), and requests the Secretary-General to ensure that these positions are filled as a matter of priority but no later than 1 July 2008;

C. Office of Staff Legal Assistance

12. *Stresses* that professional legal assistance is critical for the effective and appropriate utilization of the available mechanisms within the system of administration of justice;

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7 A/62/7/Add.7. For the final text, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 7A*.

13. *Recalls* paragraph 23 of its resolution 61/261, reiterates its support for the strengthening of professional legal assistance for staff in order for staff to continue to receive legal assistance, and decides to establish the Office of Staff Legal Assistance to succeed the Panel of Counsel;

14. *Decides* that the Office of Staff Legal Assistance is to consist of one Chief of Unit (P5), one Legal Officer (P3), one Legal Officer (P2) and three Legal Assistants (General Service (Other level)) in New York, and one Legal Officer (P3) each in Addis Ababa, Beirut, Geneva and Nairobi;

15. *Also decides* that staff at all duty stations shall continue to have access to legal assistance;

16. *Requests* the Secretary-General to establish a code of conduct regulating the activity of internal and external individuals providing legal assistance to staff to ensure their independence and impartiality;

17. *Reiterates* paragraph 24 of its resolution 61/261, and requests the Secretary-General to report on the progress made to establish a staff-funded scheme in the Organization that would provide legal advice and support to staff;

18. *Requests* the Secretary-General to develop incentives for staff and management, including through training opportunities, to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance;

19. *Decides* to revert to the issue of the mandate of the Office of Staff Legal Assistance at its sixty-third session;

20. *Requests* the Secretary-General to report on possible measures to encourage responsible use of the system of administration of justice;

21. *Recognizes* that the Office of Staff Legal Assistance and the Ombudsman have two distinct functions;

II

Informal system

22. *Recognizes* that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation;

23. *Also recognizes* that the strengthening of the informal system may reduce recourse to the formal system, thereby avoiding unnecessary litigation;

24. *Stresses* the pivotal role of mediation in reconciling differences;

A. Office of the Ombudsman

25. *Reiterates* its decision to create a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes, decides to establish the Office as from 1 January 2008, and urges the Office of the United Nations Ombudsman, the Office of the Joint Ombudsperson (United Nations Development Programme/United Nations Population Fund/United Nations Children's Fund/United Nations Office for Project Services) and the Office of the Mediator of the Office of United Nations High Commissioner for Refugees to strengthen the ongoing efforts for coordination and harmonization of standards, operating guidelines, reporting categories and databases;

26. *Decides* to establish branch offices for the Office of the Ombudsman in Bangkok, Geneva, Nairobi, Santiago and Vienna, each with one Regional Ombudsman (P5) and one Administrative Assistant (General Service (Other level/Local level));

27. *Takes note* of paragraph 22 of the report of the Advisory Committee on Administrative and Budgetary Questions;[7]

28. *Requests* the Secretary-General to ensure that staff at all duty stations have access to the Ombudsman;

29. *Endorses* the process of nomination and appointment of the Ombudsman, as set out in paragraphs 47 to 49 of the report of the Secretary-General[2] and recommended by the Redesign Panel on the United Nations system of administration of justice in its report;[8]

B. Mediation Division

30. *Endorses* paragraph 21 of the report of the Advisory Committee on Administrative and Budgetary Questions,[7] and decides to establish the Mediation Division as from 1 January 2008;

C. Systemic issues

31. *Notes* section IV, on systemic issues, of the report of the Secretary-General on the activities of the Ombudsman,[4] and emphasizes that the role of the Ombudsman is to report on broad systemic issues that he or she identifies, as well as those that are brought to his or her attention, in order to promote greater harmony in the workplace;

32. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session, in the context of human resources management, on specific measures taken to address systemic issues;

8 A/61/205.

III

Formal system

33. *Reaffirms* paragraphs 19 to 24 of its resolution 61/261;

34. *Emphasizes* the importance of ensuring access for all staff to the United Nations Dispute Tribunal, and requests the Secretary-General to make provisions for the travel and related costs of staff whose physical presence before the Tribunals is deemed necessary by the Tribunals and for judges to travel as necessary to hold sessions at duty stations other than New York, Geneva and Nairobi, in particular in Bangkok, Santiago and Vienna;

A. Internal Justice Council

35. *Stresses* that the establishment of an internal justice council can help to ensure independence, professionalism and accountability in the system of administration of justice;

36. *Decides* to establish by 1 March 2008 a five-member Internal Justice Council consisting of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and chaired by a distinguished jurist chosen by consensus by the four other members;

37. *Also decides* that the Internal Justice Council shall perform the following tasks:

(a) Liaise with the Office of Human Resources Management on issues related to the search for suitable candidates for the positions of judges, including by conducting interviews as necessary;
(b) Provide its views and recommendations to the General Assembly on two or three candidates for each vacancy in the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, with due regard to geographical distribution;
(c) Draft a code of conduct for the judges, for consideration by the General Assembly;
(d) Provide its views on the implementation of the system of administration of justice to the General Assembly;

38. *Further decides* that the Internal Justice Council shall be assisted, as appropriate, by the Office of Administration of Justice;

B. United Nations Dispute Tribunal and United Nations Appeals Tribunal

39. *Decides* to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal as from 1 January 2009;

40. *Also decides* that judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be appointed by the General Assembly on the recommendation of the Internal Justice Council;

41. *Further decides* to endorse the qualifications of the judges as set out in paragraphs

58 and 67 of the report of the Secretary-General[2] and as further described in its decision 62/519;

42. *Decides* that the United Nations Dispute Tribunal shall, initially, be composed of three full-time judges, to be located in New York, Geneva and Nairobi, and two half-time judges;

43. *Also decides* that further consideration should be given to cases before the United Nations Dispute Tribunal being decided by a panel of judges, depending on the nature of the cases, the workload of judges and the grounds for appeal, and requests the Secretary-General to present further proposals in this regard, including resource implications, to the General Assembly at the second part of its resumed sixty-second session;

44. *Further decides* that the United Nations Appeals Tribunal shall be composed of seven members who will sit in panels of at least three;

45. *Decides* that judges shall serve only one non-renewable term of seven years on either the United Nations Dispute Tribunal or the United Nations Appeals Tribunal, with the exception of two of the initial judges of the United Nations Dispute Tribunal and three of the initial judges of the United Nations Appeals Tribunal, to be determined by drawing of lots, who shall serve three years and may consequently apply to the same Tribunal for a non-renewable term of seven years;

C. Registries

46. *Decides* to establish a Registry for the United Nations Dispute Tribunal in New York, Geneva and Nairobi and a Registry for the United Nations Appeals Tribunal in New York;

47. *Also decides* that the Registries will consist of one D1 Registrar who will oversee the Registries and, for the United Nations Dispute Tribunal in New York, one P5 Registrar, one P2 Legal Officer and two General Service (Other level) Administrative Assistants; for the United Nations Dispute Tribunal in Geneva, one P5 Registrar, one P3 Legal Research Officer and two General Service (Other level) Administrative Assistants; for the United Nations Dispute Tribunal in Nairobi, one P5 Registrar, one P3 Legal Research Officer and two General Service (Local level) Administrative Assistants; and for the United Nations Appeals Tribunal in New York, one P5 Registrar, one P3 Legal Officer and two General Service (Other level) Administrative Assistants; and further decides to approve, as general temporary assistance in New York, the equivalent of one P4 Information Technology Officer, one General Service (Other level) Information Technology Assistant and Legal Research Officer positions equivalent to P4 in both Geneva and Nairobi;

48. *Requests* the Secretary-General to provide to the General Assembly at its sixty-third session terms of reference for the Registries, taking into account the current working methods of the United Nations Administrative Tribunal;

D. Disciplinary proceedings

49. *Decides* to endorse, in principle, the delegation of authority for disciplinary measures to heads of offices away from Headquarters and heads of missions/Special Representatives

of the Secretary-General, and requests the Secretary-General to present a report containing a detailed proposal regarding possible options for delegation of authority for disciplinary measures, including full delegation, as well as an assessment of possible implications for due process rights of staff members;

E. Management evaluation

50. *Emphasizes* the need to have in place a process for management evaluation that is efficient, effective and impartial;

51. *Reaffirms* the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted;

52. *Decides* to establish an independent Management Evaluation Unit in the Office of the Under-Secretary-General for Management, with one Chief of Unit (P5), two Legal Officers (P4) and three Administrative Assistants (General Service (Other level)) and general temporary assistance equivalent to one P4 Legal Officer position;

53. *Takes note* of paragraph 35 of the report of the Advisory Committee on Administrative and Budgetary Questions;[7]

54. *Emphasizes* the importance of prompt decisions and responses to formal requests for management evaluation, and decides that such evaluation should be completed in a timely manner, as soon as possible and within a limit of thirty calendar days for Headquarters and forty-five calendar days for offices away from Headquarters after the submission of such a request;

55. *Stresses* the importance of establishing adequate accountability measures for managers to ensure their timely response to management evaluation requests;

56. *Emphasizes* the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations;

IV

Transitional measures

57. *Recalls* paragraph 31 of its resolution 61/261, and urges the Secretary-General to intensify the efforts needed to clear the existing backlog of cases before the Panel on Discrimination and Other Grievances, Joint Appeals Boards, Joint Disciplinary Committees, Disciplinary Boards, the Administrative Law Unit, the Executive Office of the Secretary-General and the United Nations Administrative Tribunal;

58. *Endorses* paragraphs 73, 74, 76 and 80 of the report of the Advisory Committee on Administrative and Budgetary Questions;[7]

59. *Decides* to revert to the issue of transitional arrangements at the second part of its resumed sixty-second session;

60. *Requests* the Secretary-General to consult with the organizations which currently participate in the United Nations Administrative Tribunal with the aim of providing for an orderly transition to another system of their choosing, if they were not to join the new system of administration of justice;

V

Financial implications and cost-sharing arrangements

61. *Underlines* that the funding for administration of justice, based on cost-sharing arrangements, should be clear, predictable and secure;

62. *Decides* to approve the cost-sharing arrangement as outlined by the Secretary-General in paragraphs 161 and 162 of his report;[2]

63. *Urges* the Secretary-General to conclude cost-sharing arrangements with the relevant funds and programmes by July 2008;

64. *Requests* the Secretary-General to review the arrangements for the provision of services of the United Nations Administrative Tribunal to the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the International Seabed Authority, the International Tribunal for the Law of the Sea, the International Court of Justice, the International Maritime Organization, the International Civil Aviation Organization and the United Nations Joint Staff Pension Fund;

VI

Further information

65. *Requests* the Secretary-General to report to the General Assembly at the second part of its resumed sixty-second session on the following:

(a) Draft statute for the United Nations Dispute Tribunal;
(b) Draft statute for the United Nations Appeals Tribunal that reflects the decisions contained in the present resolution and resolution 61/261;
(c) Jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;
(d) Grounds of appeal before the United Nations Appeals Tribunal;
(e) Conditions under which the United Nations Dispute Tribunal may refer cases pending before it to mediation, including the requirement of the consent of the parties and the issue of time frames;
(f) A detailed proposal regarding the allocation of cases to the United Nations Dispute Tribunal, taking into account geographical accessibility, the type of cases and the number of cases;
(g) Compensation awarded by the tribunals and alternatives;
(h) The role of staff associations vis-à-vis the formal system of justice;

66. *Also requests* the Secretary-General to provide further information and

recommendations, as appropriate, to the General Assembly at the second part of its resumed sixty-second session, on the following:

(a) The different categories of non-staff personnel performing personal services for the Organization, including experts on mission, United Nations officials other than staff members of the Secretariat and daily workers;
(b) The types of dispute settlement mechanisms available to the different categories of non-staff personnel and their effectiveness;
(c) The types of grievances the different categories of non-staff personnel have raised in the past and what bodies of law are relevant to such claims;
(d) Any other mechanism that could be envisaged to provide effective and efficient dispute settlement to the different categories of non-staff personnel, taking into account the nature of their contractual relationship with the Organization;

67. *Further requests* the Secretary-General to report to the General Assembly at the main part of its sixty-third session on the following:

(a) The revised terms of reference for the Ombudsman, taking into account the changes in functions, presence and proposed locations;
(b) The results of the negotiations between the United Nations and other participating entities on cost-sharing arrangements for the system of administration of justice;
(c) Mechanisms for the formal removal of judges, definition of the "grounds of misconduct or incapacity" and the means for the establishment of such grounds in a specific case;
(d) Viable options for programme support cost/trust funds to share the cost of the new internal justice system;

VII

Other issues

68. *Invites* the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters;

69. *Requests* the Secretary-General to ensure that information concerning the details of the new system of administration of justice, in particular options for recourse, is readily accessible by all staff covered under the new system;

70. *Also requests* the Secretary-General to develop a comprehensive approach to address privacy rights of staff, including their right to confidentiality, and the responsibility of the Organization for ensuring the due process rights of its staff under investigation;

71. *Further requests* the Secretary-General to report to the General Assembly at its sixty-third session on how information and communications technology can improve the functioning of the system of administration of justice.

79th plenary meeting
22 December 2007

C. Resolution 63/253 of 24 December 2008 Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007 and 62/228 of 22 December 2007, and its decisions 62/519 of 6 December 2007 and 63/531 of 11 December 2008,

Reaffirming the decision in paragraph 4 of its resolution 61/261 to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike,

Having considered the reports of the Secretary-General on the administration of justice at the United Nations,[1] on the activities of the Office of the Ombudsman[2] and on the administration of justice in the Secretariat, including the outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel,[3] the note by the Secretary-General on the administration of justice, including further information requested by the General Assembly,[4] the letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee,[5] the letter dated 27 October 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee[6] and the related reports of the Advisory Committee on Administrative and Budgetary Questions,[7]

1. *Takes note* of the reports of the Secretary-General on the administration of justice at the United Nations,[1] on the activities of the Office of the Ombudsman[2] and on the administration of justice in the Secretariat, including the outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel,[3] the note by the Secretary-General on the administration of justice, including further information requested by the General Assembly,[4] the letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee,[5] and the letter dated 27 October 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee;[6]

2. *Reaffirms* its resolutions 61/261 and 62/228 on the establishment of the new system of administration of justice;

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1 A/62/782 and A/63/314.
2 A/63/283.
3 A/63/211.
4 A/62/748 and Corr.1.
5 A/C.5/62/27.
6 A/C.5/63/9.
7 A/62/7/Add.39 (for the final text, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 7A*) and A/63/545.

3. *Expresses* its appreciation to staff members of the United Nations system who have participated in the system of administration of justice, including the joint disciplinary committees and the joint appeals boards;

4. *Also expresses* its appreciation to the former and present members and staff of the United Nations Administrative Tribunal for their work;

5. *Endorses* the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions,[7] subject to the provisions of the present resolution;

I

New system of administration of justice

6. *Regrets* the delays in the filling of posts established by the General Assembly in its resolution 62/228, and requests the Secretary-General to fill the posts as a matter of priority, in particular the post of the Executive Director of the Office of Administration of Justice;

7. *Decides* that interns, type II gratis personnel and volunteers (other than United Nations Volunteers) shall have the possibility of requesting an appropriate management evaluation but shall not have access to the United Nations Dispute Tribunal or to the United Nations Appeals Tribunal;

8. *Recalls* paragraphs 7 and 9 of its resolution 62/228, and its decision 63/531, by which the Ad Hoc Committee on the Administration of Justice at the United Nations would continue its work, and decides to revert to the issue of the scope of the system of administration of justice at its sixty-fifth session, with a view to ensuring that effective remedies are available to all categories of United Nations personnel, with due consideration given to the types of recourse that are the most appropriate to that end;

9. *Commends* the role that volunteers have traditionally played in representing employees in the dispute resolution process under the existing system;

10. *Notes* that some current and former United Nations staff have been reluctant to represent their fellow staff members in the dispute resolution process because of the burden that such service would place on them;

11. *Requests* the Secretary-General to provide incentives to encourage current and former staff to assist staff members in the dispute resolution process;

12. *Decides* that the role of professional legal staff in the Office of Staff Legal Assistance shall be to assist staff members and their volunteer representatives in processing claims through the formal system of administration of justice;

13. *Recalls* paragraph 13 of its resolution 62/228, in which it decided to establish the Office of Staff Legal Assistance to succeed the Panel of Counsel, and decides to revert to

the mandate and functioning of that Office, including the participation of current and former staff as volunteers, at its sixty-fifth session;

14. *Reiterates* paragraph 24 of its resolution 61/261, and requests the Secretary-General to report to the General Assembly at its sixty-fifth session on proposals for a staff-funded scheme in the Organization that would provide legal assistance and support to staff;

15. *Decides* to revert to the issue of the possibility of staff associations filing applications before the Dispute Tribunal at its sixty-fifth session;

16. *Recalls* paragraph 55 of the report of the Secretary-General,[8] and requests the Secretary-General to work with staff associations to develop incentives to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance, including by providing volunteer professional legal counsel;

II

Informal system

17. *Welcomes* the steps taken by the Office of the Ombudsman towards the implementation of the new informal system as set out in resolution 62/228;

18. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation;

19. *Decides* that all persons who have access to the Office of the Ombudsman under the current system shall also have access to the new informal system;

20. *Requests* the Secretary-General to consider and make proposals at its sixty-fifth session for providing incentives for employees seeking dispute resolution to submit disputes to mediation under the auspices of the Office of the Ombudsman;

21. *Recalls* its request to the Secretary-General, contained in paragraph 67 (a) of its resolution 62/228, to report to it on the revised terms of reference for the Office of the Ombudsman, and requests the Secretary-General to ensure that the terms of reference and guidelines for the Mediation Division are promulgated as soon as possible;

22. *Requests* the Secretary-General to take advantage of existing mechanisms for conflict resolution and mediation, as deemed useful and appropriate, in order to facilitate a renewed dialogue between staff and management;

23. *Welcomes* the intention of the Secretary-General to issue a joint report in 2009 for the entities covered by the integrated Office of the Ombudsman, taking into consideration the different legislative bodies that will receive the report;

8 A/63/314.

24. *Notes* section V, on systemic issues, of the report of the Secretary-General on the activities of the Office of the Ombudsman,[2] and emphasizes that the role of the Ombudsman is to report on broad systemic issues that he or she identifies, as well as issues that are brought to his or her attention, in order to promote greater harmony in the workplace;

25. *Requests* the Secretary-General to report to the General Assembly at its sixty-fifth session on specific measures taken to address systemic issues in the context of human resources management;

III

Formal system

26. *Decides* to adopt the statutes of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal, as set out in annexes I and II to the present resolution;

27. *Also decides* that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be operational as of 1 July 2009;

28. *Affirms* that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes;

29. *Notes* article 7, paragraph 1, of the statute of the United Nations Dispute Tribunal and article 6. paragraph 1 of the statute of the United Nations Appeals Tribunal, requests the Secretary-General to submit, for approval, the rules of procedure of the Tribunals as soon as possible but no later than at its sixty-fourth session, and decides that until then the Tribunals may apply the rules of procedure on a provisional basis;

30. *Approves* the proposed conditions of service of the judges of the United Nations Dispute Tribunal and United Nations Appeals Tribunal, as set out in the report of the Secretary-General;[8]

31. *Decides* that the conditions of service referred to in paragraph 30 above shall be treated separately from the conditions of service of other judicial appointments in the United Nations system;

32. *Also decides* to carry out, at its sixty-fifth session, a review of the statutes of the Tribunals, in the light of experience gained, including on the efficiency of the overall functioning of the Tribunals, in particular regarding the number of judges and the panels of the United Nations Dispute Tribunal;

33. *Recalls* paragraph 49 of its resolution 62/228, and requests the Secretary-General to submit to the General Assembly at its sixty-fifth session a new detailed proposal, including a variety of options for delegation of authority for disciplinary measures, with full costing and a cost-benefit analysis, taking into account the recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions;[9]

9 A/63/545.

34. *Also recalls* paragraph 23 of the report of the Advisory Committee on Administrative and Budgetary Questions,[9] and requests the Secretary-General to further clarify the role of the Department of Management of the Secretariat in the evaluation process, in order to ensure the appropriate independence of the Management Evaluation Unit, and to report thereon to the General Assembly at its sixty-fifth session;

IV

Transitional measures

35. *Requests* the Secretary-General to ensure that the current formal system of administration of justice continues to function, as appropriate, until the completion of the transition to the new system;

36. *Recalls* paragraph 57 of its resolution 62/228, and in that context urges the Secretary-General to take the measures necessary to reduce the existing backlog;

37. *Notes* the refusal of some staff associations to participate in the joint appeals boards and the joint disciplinary committees, and authorizes the Secretary-General to obtain the assistance of other staff associations, including staff associations of the funds and programmes and at the various duty stations, in identifying staff members willing to serve on the joint appeals boards and/or joint disciplinary committees, in order to ensure that the current system continues to operate in an effective and timely manner;

38. *Decides* to abolish, as of 1 July 2009, the joint appeals boards, the joint disciplinary committees and the disciplinary committees of the separately administered funds and programmes;

39. *Also decides* that the terms of the members of the United Nations Administrative Tribunal that expire on 31 December 2008 shall be extended to 31 December 2009;

40. *Authorizes* honorariums for the members of the United Nations Administrative Tribunal as of 1 January 2009, in the amount of 1,500 United States dollars per case (1,000 dollars for the drafter and 250 dollars each for the other two signatories);

41. *Acknowledges* the need to clear the existing backlog of cases as soon as possible, requests the Secretary-General to coordinate with the United Nations Administrative Tribunal in order to hold Administrative Tribunal sessions in 2009 earlier than scheduled, and authorizes extension of the sessions by up to four weeks;

42. *Decides* that the United Nations Administrative Tribunal shall cease to accept new cases as of 1 July 2009;

43. *Also decides* to abolish the United Nations Administrative Tribunal as of 31 December 2009;

44. *Further decides* that all cases pending before the joint appeals boards, the joint disciplinary committees and the disciplinary committees shall be transferred, as from the abolishment of those bodies, to the United Nations Dispute Tribunal;

45. *Decides* that all cases from the United Nations and the separately administered funds and programmes pending before the United Nations Administrative Tribunal shall be transferred to the United Nations Dispute Tribunal, as from the abolishment of the United Nations Administrative Tribunal;

46. *Also decides* that pending cases from the United Nations Joint Staff Pension Fund and from organizations that have concluded a special agreement with the Secretary-General, according to article 2, paragraph 10, of the statute of the United Nations Appeals Tribunal, or article 2, paragraph 5, of the statute of the United Nations Dispute Tribunal, shall be transferred to the Appeals Tribunal or the Dispute Tribunal, as appropriate, as from the abolishment of the United Nations Administrative Tribunal;

47. *Invites* the United Nations Administrative Tribunal to consider cases from organizations that have concluded a special agreement under article 14 of the its statute as a matter of priority, with a view to concluding those cases before its abolishment;

48. *Decides* that three ad litem judges shall be appointed by the General Assembly to the United Nations Dispute Tribunal;

49. *Stresses* that the three ad litem judges appointed to the United Nations Dispute Tribunal shall have all the powers conferred on the permanent judges of the Dispute Tribunal and shall be appointed only for a period of one year as of 1 July 2009;

50. *Requests* the Secretary-General to ensure that all entities that utilize the United Nations Administrative Tribunal pursuant to article 14 of its statute are notified that it will cease to accept new cases as of 1 July 2009, and that if those entities (with the exception of the United Nations Joint Staff Pension Fund) wish to continue to participate in the internal justice system of the Organization they will need to negotiate new special agreements;

51. *Invites* the United Nations Joint Staff Pension Board to consider the new system of administration of justice as approved by the General Assembly;

V

Financial implications and cost-sharing arrangements

52. *Recalls* paragraphs 62 and 63 of its resolution 62/228, and requests the Secretary-General to conclude cost-sharing arrangements, based on headcount, with the relevant funds and programmes by 30 June 2009 and to report thereon;

53. *Requests* the Secretary-General to make every effort to meet any additional requirements relating to the decisions in section IV above within the existing appropriation and to report on the actual costs in the context of the second performance report on the programme budget for the biennium 2008-2009;

VI

Other issues

54. *Recalls* paragraph 14 of its resolution 59/283, and requests the Secretary-General, in accordance with existing rules and regulations, to pursue the financial liability of managers when the situation justifies such action;

55. *Also recalls* paragraph 69 of its resolution 62/228, reiterates its request to the Secretary-General to ensure that information concerning the details of the new system of administration of justice, in particular options for recourse, is readily accessible by all persons covered under the new system, and stresses that the information should clearly explain the roles of the various elements in the new system, as well as the process for bringing complaints;

56. *Reiterates* its request to the Secretary-General to provide the terms of reference of the Registries of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal as soon as possible;

57. *Decides* that for future appointments the Internal Justice Council shall not recommend more than one candidate from any one Member State for a judgeship on the United Nations Dispute Tribunal, or more than one candidate from any one Member State for a judgeship on the United Nations Appeals Tribunal;

58. *Invites* Member States, when electing judges to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, to take due consideration of geographical distribution and gender balance;

59. *Requests* the Secretary-General to conduct a review of the new system of administration of justice and to report thereon to the General Assembly at its sixty-fifth session;

60. *Decides* that the sub-item entitled “Appointment of members of the United Nations Administrative Tribunal” of the item entitled “Appointments to fill vacancies in subsidiary organs and other appointments” shall be deleted from its agenda;

61. *Approves* revision of staff regulations 10.1 and 11.1, as proposed in paragraph 80 of the report of the Secretary-General,8 and decides to abolish staff regulations 10.2 and 11.2, with effect from the implementation of the new system of administration of justice on 1 July 2009.

74th plenary meeting
24 December 2008

Annex I

Statute of the United Nations Dispute Tribunal

[*Omitted: See Annex III in this volume.*]

Annex II

Statute of the United Nations Appeals Tribunal

[*Omitted: See Annex IV in this volume.*]

Annex III

Statute of the United Nations Dispute Tribunal *

Article 1

A tribunal is established by the present statute as the first instance of the two-tier formal system of administration of justice, to be known as the United Nations Dispute Tribunal.

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary- General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;
(b) To appeal an administrative decision imposing a disciplinary measure;
(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

3. The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.

* *As adopted by GA res. 63/253 of 24 December 2008. Source: Official website of the United Nations Dispute Tribunal: http://www.un.org/en/oaj/dispute/.*

4. The Dispute Tribunal shall be competent to permit an individual who is entitled to appeal the same administrative decision under paragraph 1 (a) of the present article to intervene in a matter brought by another staff member under the same paragraph.

5. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Dispute Tribunal, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Dispute Tribunal and be responsible for the payment of any compensation awarded by the Dispute Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Dispute Tribunal and concerning its sharing of the expenses of the Dispute Tribunal. Such special agreement shall also contain other provisions required for the Dispute Tribunal to carry out its functions vis-à-vis the agency, organization or entity.

6. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Dispute Tribunal shall decide on the matter.

7. As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgement on:

(a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations, or from another similar body established by a separately administered fund or programme;
(b) A case transferred to it from the United Nations Administrative Tribunal; as decided by the General Assembly.

Article 3

1. An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

2. A request for a suspension of action under article2, paragraph 2, of the present statute may be filed by an individual, as provided for in paragraph 1 of the present article.

Article 4

1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.

2. The judges shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and
(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years. A current or former judge of the United Nations Appeals Tribunal shall not be eligible to serve in the Dispute Tribunal.

5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.

6. A judge of the Dispute Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post, for a period of five years following his or her term of office.

7. The Dispute Tribunal shall elect a President.

8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Dispute Tribunal who has, or appears to have, a conflict of interest shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Dispute Tribunal.

10. A judge of the Dispute Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General of the United Nations. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 5

The three full-time judges of the Dispute Tribunal shall exercise their functions in New York, Geneva and Nairobi, respectively. However, the Dispute Tribunal may decide to hold sessions at other duty stations, as required by its caseload.

Article 6

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Dispute Tribunal is deemed necessary by the Dispute Tribunal and for judges to travel as necessary to hold sessions at other duty stations.

2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff as necessary.

3. The expenses of the Dispute Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal.

Article 7

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules of procedure of the Dispute Tribunal shall include provisions concerning:

(a) Organization of work;
(b) Presentation of submissions and the procedure to be followed in respect thereto;
(c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;
(d) Intervention by persons not party to the case whose rights may be affected by the judgement;
(e) Oral hearings;
(f) Publication of judgements;
(g) Functions of the Registries;
(h) Procedure for summary dismissal;
(i) Evidentiary procedure;
(j) Suspension of implementation of contested administrative decisions;
(k) Procedure for the recusal of judges;
(l) Other matters relating to the functioning of the Dispute Tribunal.

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;
(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;
(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and
(d) The application is filed within the following deadlines:
(i) In cases where a management evaluation of the contested decision is required:
a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or
b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;
(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision;
(iii) The deadlines provided for in subparagraphs (d) (i) and (ii) of the present paragraph shall be extended to one year if the application is filed by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
(iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

2. An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

5. The filing of an application shall not have the effect of suspending the implementation of the contested administrative decision.

6. An application and other submissions shall be filed in any of the official languages of the United Nations.

Article 9

1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.

2. The Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 10

1. The Dispute Tribunal may suspend proceedings in a case at the request of the parties for a time to be specified by it in writing.

2. At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

3. At any time during the deliberations, the Dispute Tribunal may propose to refer the case to mediation. With the consent of the parties, it shall suspend the proceedings for a time to be specified by it. If a mediation agreement is not reached within this period of time, the Dispute Tribunal shall continue with its proceedings unless the parties request otherwise.

4. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General of the United Nations, remand the case for institution or correction of the required procedure, which, in any case, should not exceed three months. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay to the applicant for such loss as may have been caused by such procedural delay, which is not to exceed the equivalent of three months' net base salary.

5. As part of its judgement, the Dispute Tribunal may order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided

that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

6. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

7. The Dispute Tribunal shall not award exemplary or punitive damages.

8. The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

9. Cases before the Dispute Tribunal shall normally be considered by a single judge. However, the President of the United Nations Appeals Tribunal may, within seven calendar days of a written request by the President of the Dispute Tribunal, authorize the referral of a case to a panel of three judges of the Dispute Tribunal, when necessary, by reason of the particular complexity or importance of the case. Cases referred to a panel of three judges shall be decided by a majority vote.

Article 11

1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.

2. The deliberations of the Dispute Tribunal shall be confidential.

3. The judgements of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

4. The judgements of the Dispute Tribunal shall be drawn up in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

5. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the application was submitted unless he or she requests a copy in another official language of the United Nations.

6. The judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 12

1. Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.

3. Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

4. Once a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

Article 13

The present statute may be amended by decision of the General Assembly.

Annex IV
Statute of the United Nations Appeals Tribunal *

Article 1

A tribunal is established by the present statute as the second instance of the two-tier formal system of administration of justice, to be known as the United Nations Appeals Tribunal.

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

(a) Exceeded its jurisdiction or competence;
(b) Failed to exercise jurisdiction vested in it;
(c) Erred on a question of law;
(d) Committed an error in procedure, such as to affect the decision of the case; or
(e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

2. An appeal may be filed by either party (i.e., the applicant, a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgement of the Dispute Tribunal.

3. The Appeals Tribunal may affirm, reverse, modify or remand the judgement of the Dispute Tribunal. It may also issue all orders necessary or appropriate in aid of its jurisdiction and consonant with the present statute.

4. In cases of appeal under paragraph 1 (e) of the present article, the Appeals Tribunal shall be competent:

* *As adopted by GA Res. 63/253 of 24 December 2008 and amended by GA Res. 66/237 of 24 December 2011. Source: Official website of the United Nations Appeals Tribunal: http://www.un.org/en/oaj/appeals/.*

(a) To affirm, reverse or modify findings of fact of the Dispute Tribunal on the basis of substantial evidence in the written record; or
(b) To remand the case to the Dispute Tribunal for additional findings of fact, subject to paragraph 5 of the present article, if it determines that further findings of fact are necessary.

5. In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

6. Where the Appeals Tribunal remands a case to the Dispute Tribunal, it may order that the case be considered by a different judge of the Dispute Tribunal.

7. For the purposes of the present article, "written record" means anything that has been entered in the formal record of the Dispute Tribunal, including submissions, evidence, testimony, motions, objections, rulings and the judgement, and any evidence received in accordance with paragraph 5 of the present article.

8. In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute, the Appeals Tribunal shall decide on the matter.

9. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;
(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization. In such cases, remands, if any, shall be to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board.

10. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal,

consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal. Such special agreement shall also contain other provisions required for the Appeals Tribunal to carry out its functions vis-à-vis the agency, organization or entity. Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. In such cases remands, if any, shall be to the first instance process of the agency, organization or entity.

Article 3

1. The Appeals Tribunal shall be composed of seven judges.

2. The judges shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and
(b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years. A current or former judge of the Dispute Tribunal shall not be eligible to serve in the Appeals Tribunal.

5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.

6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post, for a period of five years following his or her term of office.

7. The Appeals Tribunal shall elect a President and two Vice-Presidents.

8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Appeals Tribunal who has, or appears to have, a conflict of interest

shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Appeals Tribunal.

10. A judge of the Appeals Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General of the United Nations. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 4

1. The Appeals Tribunal shall exercise its functions in New York. However, it may decide to hold sessions in Geneva or Nairobi, as required by its caseload.

2. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules of procedure, subject to the determination of its President that there is a sufficient number of cases to justify holding the session.

3. Extraordinary sessions may be convoked by the President, as required by the caseload.

Article 5

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Appeals Tribunal is deemed necessary by the Appeals Tribunal and for judges to travel as necessary to hold sessions in Geneva and Nairobi.

2. The Registry of the Appeals Tribunal shall be established in New York. It shall consist of a Registrar and such other staff as necessary.

3. The expenses of the Appeals Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.

Article 6

1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules of procedure of the Appeals Tribunal shall include provisions concerning:

(a) Election of the President and Vice-Presidents;
(b) Composition of the Appeals Tribunal for its sessions;

(c) Organization of work;
(d) Presentation of submissions and the procedure to be followed in respect thereto;
(e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;
(f) Intervention by persons not party to the case whose rights may have been affected by the judgement of the Dispute Tribunal and whose rights might therefore also be affected by the judgement of the Appeals Tribunal;
(g) The filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunal;
(h) Oral proceedings;
(i) Publication of judgements;
(j) Functions of the Registry;
(k) Procedure for the recusal of judges;
(l) Other matters relating to the functioning of the Appeals Tribunal.

Article 7

(*Amended by Resolution 66/237*)

1. An appeal shall be receivable if:

(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute;
(b) The appellant is eligible to file the appeal, pursuant to article 2, paragraph 2, of the present statute; and
(c) The appeal is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal.

2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within 90 calendar days of receipt of the Board's decision.

3. The Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal.

5. The filing of appeals shall have the effect of suspending the execution of the judgement contested.

6. An appeal and other submissions shall be filed in any of the official languages of the United Nations.

Article 8

1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary, subject to article 2 of the present statute.

2. The Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose.

3. The judges assigned to a case will determine whether to hold oral proceedings.

4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 9

1. The Appeals Tribunal may order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Appeals Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.

3. The Appeals Tribunal shall not award exemplary or punitive damages.

4. At any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal.

5. The Appeals Tribunal may refer appropriate cases to the Secretary-General of the United Nations or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

Article 10

1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and shall be decided by a majority vote.

2. Where the President or any two judges sitting on a particular case consider that the

case raises a significant question of law, at any time before judgement is rendered, the case may be referred for consideration by the whole Appeals Tribunal. A quorum in such cases shall be five judges.

3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.

4. The deliberations of the Appeals Tribunal shall be confidential.

5. The judgements of the Appeals Tribunal shall be binding upon the parties.

6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.

7. The judgements of the Appeals Tribunal shall be drawn up in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

8. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the appeal was submitted unless he or she requests a copy in another official language of the United Nations.

9. The judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 11

1. Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own motion or on the application of any of the parties.

3. Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.

4. Where the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.

Article 12

The present statute may be amended by decision of the General Assembly.

Annex V
Rules of procedure of the United Nations Dispute Tribunal *

Article 1
Election of the President

1. The Dispute Tribunal shall elect a President from among the full-time judges, for a renewable term of one year, to direct the work of the Tribunal and of the Registries, in accordance with the statute of the Dispute Tribunal.

2. Until otherwise decided by the Dispute Tribunal:

(a) The election shall occur at a plenary meeting every year and the President shall take up his or her duties upon election;
(b) The retiring President shall remain in office until his or her successor is elected;
(c) If the President should cease to be a judge of the Dispute Tribunal, should resign his or her office before the expiration of the normal term or is unable to act, an election shall be held for the purpose of appointing a successor for the unexpired portion of the term;
(d) Elections shall be by majority vote. Any judge who cannot attend for that purpose is entitled to vote by correspondence.

Article 2
Plenary meeting

1. The Dispute Tribunal shall normally hold a plenary meeting once a year to deal with questions affecting the administration or operation of the Dispute Tribunal.

2. Three judges shall constitute a quorum for plenary meetings of the Dispute Tribunal.

* As adopted at the First Plenary Meeting of Judges in New York and approved by GA res. 64/119 of 16 December 2009. Source: Official website of the United Nations Dispute Tribunal: http://www.un.org/en/oaj/dispute/.

Article 3
Commencement of office

Unless otherwise decided by the General Assembly, the term of office of the judges of the Dispute Tribunal shall commence on the first day of July following their appointment by the General Assembly.

Article 4
Venue

The judges of the Dispute Tribunal shall exercise their functions in New York, Geneva and Nairobi respectively. However, the Dispute Tribunal may decide to hold sessions at other duty stations as required.

Article 5
Consideration by a panel

1. Except in cases falling under article 5.2 below, cases shall be considered by a single judge.

2. As provided for in its statute, the Dispute Tribunal may refer any case to a panel of three judges for a decision.

3. If a case is examined by a panel of three judges, the decision shall be taken by majority vote. Any concurring, separate or dissenting opinion shall be recorded in the judgement.

Article 6
Filing of cases

1. An application shall be filed at a Registry of the Dispute Tribunal, taking into account geographical proximity and any other relevant material considerations.

2. The Dispute Tribunal shall assign cases to the appropriate Registry. A party may apply for a change of venue.

Article 7
Time limits for filing applications

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;
(b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or
(c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

2. Any person making claims on behalf of an incapacitated or deceased staff member of the United Nations, including the Secretariat and separately administered funds and programmes, shall have one calendar year to submit an application.

3. Where the parties have sought mediation of their dispute, the application shall be receivable if filed within 90 calendar days after mediation has broken down.

4. Where an application is filed to enforce the implementation of an agreement reached through mediation, the application shall be receivable if filed within 90 calendar days of the last day for implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after 30 calendar days from the date of the signing of the agreement.

5. In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. The request shall not exceed two pages in length.

6. In accordance with article 8.4 of the statute of the Dispute Tribunal, no application shall be receivable if filed more than three years after the applicant's receipt of the contested administrative decision.

Article 8
Applications

1. An application may be submitted on an application form to be prescribed by the Registrar.

2. The application should include the following information:

(a) The applicant's full name, date of birth and nationality;
(b) The applicant's employment status (including United Nations index number and department, office and section) or relationship to the staff member if the applicant is relying on the staff member's rights;
(c) Name of the applicant's legal representative (with authorization attached);
(d) The address to which documents should be sent;
(e) When and where the contested decision, if any, was taken (with the contested decision attached);
(f) Action and remedies sought;
(g) Any supporting documentation (annexed and numbered, including, if translated, an indication thereof).

3. The signed original application form and the annexes thereto shall be submitted together. The documents may be transmitted electronically.

4. After ascertaining that the requirements of the present article have been complied with, the Registrar shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate. If the formal requirements of the article are not fulfilled, the Registrar may require the applicant to comply with the requirements of the article within

a specified period of time. Once the corrections have been properly made, the Registrar shall transmit a copy of the application to the respondent.

Article 9
Summary judgement

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

Article 10
Reply

1. The respondent's reply shall be submitted within 30 calendar days of the date of receipt of the application by the respondent. The signed original reply and the annexes thereto shall be submitted together. The document may be transmitted electronically. A respondent who has not submitted a reply within the requisite period shall not be entitled to take part in the proceedings, except with the permission of the Dispute Tribunal.

2. After ascertaining that the requirements of the present article have been complied with, the Registrar shall transmit a copy of the response to the applicant and to any other party a judge considers appropriate. If the formal requirements of the article are not fulfilled, the Registrar may require the respondent to comply with the requirements of the article within a specified period of time. Once the corrections have been properly made, the Registrar shall transmit a copy of the reply to the applicant.

Article 11
Joining of a party

The Dispute Tribunal may at any time, either on the application of a party or on its own initiative, join another party if it appears to the Dispute Tribunal that that party has a legitimate interest in the outcome of the proceedings.

Article 12
Representation

1. A party may present his or her case to the Dispute Tribunal in person, or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction.

2. A party may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies.

Article 13
Suspension of action during a management evaluation

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management

evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

2. The Registrar shall transmit the application to the respondent.

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

Article 14
Suspension of action during the proceedings

1. At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

2. The Registrar shall transmit the application to the respondent.

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

Article 15
Referral to mediation

1. At any time during the proceedings, including at the hearing, the Dispute Tribunal may propose to the parties that the case be referred for mediation and suspend the proceedings.

2. Where the judge proposes and the parties consent to mediation, the Dispute Tribunal shall send the case to the Mediation Division in the Office of the Ombudsman for consideration.

3. Where parties on their own initiative decide to seek mediation, they shall promptly inform the Registry in writing.

4. Upon referral of a case to the Mediation Division, the concerned Registry shall forward the case file to the Mediation Division. The proceedings will be suspended during mediation.

5. The time limit for mediation normally shall not exceed three months. However, after consultation with the parties, where the Mediation Division considers it appropriate, it will notify the Registry that the informal efforts will require additional time.

6. It shall be the responsibility of the Mediation Division to apprise the Dispute Tribunal of the outcome of the mediation in a timely manner.

7. All documents prepared for and oral statements made during any informal conflict-resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Dispute Tribunal. No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Dispute Tribunal or in any oral arguments made before the Dispute Tribunal.

Article 16
Hearing

1. The judge hearing a case may hold oral hearings.

2. A hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure.

3. The Registrar shall notify the parties of the date and time of a hearing in advance and confirm the names of witnesses or expert witnesses for the hearing of a particular case.

4. The parties or their duly designated representatives must be present at the hearing either in person or, where unavailable, by video link, telephone or other electronic means.

5. If the Dispute Tribunal requires the physical presence of a party or any other person at the hearing, the necessary costs associated with the travel and accommodation of the party or other person shall be borne by the Organization.

6. The oral proceedings shall be held in public unless the judge hearing the case decides, at his or her own initiative or at the request of one of the parties, that exceptional circumstances require that the oral proceedings be closed. If appropriate in the circumstances, the oral hearing may be held by video link, telephone or other electronic means.

Article 17
Oral evidence

1. The parties may call witnesses and experts to testify. The opposing party may cross-examine witnesses and experts. The Dispute Tribunal may examine witnesses and experts called by either party and may call any other witnesses or experts it deems necessary. The Dispute Tribunal may make an order requiring the presence of any person or the production of any document.

2. The Dispute Tribunal may, if it considers it appropriate in the interest of justice to do so, proceed to determine a case in the absence of a party.

3. Each witness shall make the following declaration before giving his or her statement: “I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth.”

4. Each expert shall make the following declaration before giving his or her statement: “I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.”

5. Any party may object to the testimony of a given witness or expert, stating reasons for such objection. The Dispute Tribunal shall decide on the matter. Its decision shall be final.

6. The Dispute Tribunal shall decide whether the personal appearance of a witness or expert is required at oral proceedings and determine the appropriate means for satisfying the requirement for personal appearance. Evidence may be taken by video link, telephone or other electronic means.

Article 18
Evidence

1. The Dispute Tribunal shall determine the admissibility of any evidence.

2. The Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.

3. A party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence.

4. The Dispute Tribunal may, at the request of either party, impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances.

5. The Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate.

Article 19
Case management

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

Article 20
Remand of case for the institution or correction of the required procedure

Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Tribunal may, with the concurrence of the Secretary-General, remand the case for the institution or correction of the required procedure, which, in any case, should not take longer than three months. In such cases, the Dispute Tribunal may order the payment of compensation to the applicant for such loss as may have been caused by the procedural delay. The compensation is not to exceed the equivalent of three months' net base salary.

Article 21
Registry

1. The Dispute Tribunal shall be supported by Registries, which shall provide all necessary administrative and support services to it.

2. The Registries shall be established in New York, Geneva and Nairobi. Each Registry shall be headed by a Registrar appointed by the Secretary-General and such other staff as is necessary.

3. The Registrars shall discharge the duties set out in the rules of procedure and shall support the work of the Dispute Tribunal at the direction of the President or the judge at each location. In particular, the Registrars shall:

(a) Transmit all documents and make all notifications required in the rules of procedure or required by the President in connection with proceedings before the Dispute Tribunal;
(b) Establish for each case a master Registry file, which shall record all actions taken in connection with the preparation of the case for hearing, the dates thereof and the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
(c) Perform any other duties that are required by the President or the judge for the efficient functioning of the Dispute Tribunal.

4. A Registrar, if unable to act, shall be replaced by an official appointed by the Secretary-General.

Article 22
Intervention by persons not party to the case

1. Any person for whom recourse to the Dispute Tribunal is available under article 2.4 of the statute may apply, on an application form to be prescribed by the Registrar, to intervene in a case at any stage thereof on the grounds that he or she has a right that may be affected by the judgement to be issued by the Dispute Tribunal.

2. After ascertaining that the requirements of the present article have been complied with, the Registrar shall transmit a copy of the application for intervention to the applicant and to the respondent.

3. The Dispute Tribunal shall decide on the admissibility of the application for intervention. Such decision shall be final and shall be communicated to the intervener and the parties by the Registrar.

4. The Dispute Tribunal shall establish the modalities of the intervention. If admissible, the Dispute Tribunal shall decide which documents, if any, relating to the proceedings are to be transmitted to the intervener by the Registrar and shall fix a time by which any written submissions must be submitted by the intervener. It shall also decide whether the intervener shall be permitted to participate in any oral proceedings.

Article 23
Intervention procedure

An application for intervention shall be submitted on a prescribed form, the signed original of which shall be submitted to the Registrar. It may be transmitted electronically.

Article 24
Friend-of-the-court briefs

1. A staff association may submit a signed application to file a friend-of-the-court brief on a form to be prescribed by the Registrar, which may be transmitted electronically. The Registrar shall forward a copy of the application to the parties, who shall have three days to file any objections, which shall be submitted on a prescribed form.

2. The President or the judge hearing the case may grant the application if it considers that the filing of the brief would assist the Dispute Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar.

Article 25
Judgements

1. Judgements shall be issued in writing and shall state the reasons, facts and law on which they are based.

2. When a case is decided by a panel of three judges, a judge may append a separate, dissenting or concurring opinion.

3. Judgements shall be drawn up in any official language of the United Nations, two signed originals of which shall be deposited in the archives of the United Nations.

4. The Registrars shall transmit a copy of the judgement to each party. An individual applicant or respondent shall receive a copy of the judgement in the language in which the original application was submitted, unless he or she requests a copy in another official language of the United Nations.

5. The Registrars shall send to all judges of the Dispute Tribunal copies of all the judgements of the Dispute Tribunal.

Article 26
Publication of judgements

1. The Registrars shall arrange for publication of the judgements of the Dispute Tribunal on the website of the Dispute Tribunal after they are delivered.

2. The judgements of the Dispute Tribunal shall protect personal data and shall be available at the Registry of the Dispute Tribunal.

Article 27
Conflict of interest

1. The term "conflict of interest" means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

2. A conflict of interest arises where a case assigned to a judge involves any of the following:

(a) A person with whom the judge has a personal, familiar or professional relationship;
(b) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;
(c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge's participation in the adjudication of the matter would be inappropriate.

Article 28
Recusal

1. A judge of the Dispute Tribunal who has or appears to have a conflict of interest as defined in article 27 of the rules of procedure shall recuse himself or herself from the case and shall so inform the President.

2. A party may make a reasoned request for the recusal of a judge on the grounds of a conflict of interest to the President of the Dispute Tribunal, who, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing. A request for recusal of the President shall be referred to a three-judge panel for decision.

3. The Registrar shall communicate the decision to the parties concerned.

Article 29
Revision of judgements

1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

2. An application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

3. The application for revision will be sent to the other party, who has 30 days after receipt to submit comments to the Registrar.

Article 30
Interpretation of judgements

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgement, provided that it is not under consideration by the Appeals Tribunal. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

Article 31
Correction of judgements

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form.

Article 32
Execution of judgements

1. Judgements of the Dispute Tribunal shall be binding on the parties, but are subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

2. Once a judgement is executable under article 11.3 of the statute of the Dispute Tribunal, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

Article 33
Titles

The titles of the articles in the rules of procedure are for reference purposes only and do not constitute an interpretation of the article concerned.

Article 34
Calculation of time limits

The time limits prescribed in the rules of procedure:

(a) Refer to calendar days and shall not include the day of the event from which the period runs;

(b) Shall include the next working day of the Registry when the last day of the period is not a working day;
(c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.

Article 35
Waiver of time limits

Subject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

Article 36
Procedural matters not covered in the rules of procedure

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

2. The Dispute Tribunal may issue practice directions related to the implementation of the rules of procedure.

Article 37
Amendment of the rules of procedure

1. The Dispute Tribunal in plenary meeting may adopt amendments to the rules of procedure, which shall be submitted to the General Assembly for approval.

2. The amendments shall operate provisionally until approved by the General Assembly or until they are amended or withdrawn by the Dispute Tribunal in accordance with a decision of the General Assembly.

3. The President, after consultation with the judges of the Dispute Tribunal, may instruct the Registrars to revise any forms from time to time in the light of experience, provided that such modifications are consistent with the rules of procedure.

Article 38
Entry into force

1. The rules of procedure shall enter into force on the first day of the month following their approval by the General Assembly.

2. The rules of procedure shall operate provisionally from the date of their adoption by the Dispute Tribunal until their entry into force.

Annex VI
Rules of procedure of the United Nations Appeals Tribunal *

Article 1
Election of the President and Vice-Presidents

1. The Appeals Tribunal shall elect a President, a First Vice-President and a Second Vice-President.

2. Until otherwise decided by the Appeals Tribunal:

(a) The election shall occur at a plenary meeting during the Appeals Tribunal's last session each year. The President and Vice-Presidents shall hold office for one year and shall take up their duties upon election;
(b) The retiring President and Vice-Presidents shall remain in office until their successors are elected;
(c) If a President or a Vice-President should cease to be a judge of the Appeals Tribunal or should resign his or her office before the expiration of the normal term, an election shall be held for the purpose of appointing a successor for the unexpired portion of the term;
(d) Elections shall be by majority vote. Any judge who cannot attend for that purpose is entitled to vote by correspondence.

Article 2
Functions of the President and Vice-Presidents

1. The President shall direct the work of the Appeals Tribunal and of the Registry, shall represent the Appeals Tribunal in all administrative matters and shall preside at the meetings of the Appeals Tribunal.

* As adopted by GA res. 64/119 of 16 December 2009 and amended by GA res. 66/107 of 9 December 2011, GA res. 66/237 of 24 December 2011 and GA res. 67/241 of 24 December 2012. Source: Official website of the United Nations Appeals Tribunal: http://www.un.org/en/oaj/appeals/.

2. If the President is unable to act, he or she shall designate one of the Vice- Presidents to act as President. In the absence of any such designation by the President, the First Vice-President or, in the event of the latter's incapacity, the Second Vice-President shall act as President.

3. The President of the Appeals Tribunal may, within seven calendar days of a written request by the President of the Dispute Tribunal, authorize the referral of a case to a panel of three judges of the Dispute Tribunal, when necessary, by reason of the particular complexity or importance of the case.

Article 3

Composition of the Appeals Tribunal for its sessions

1. Unless otherwise decided by the General Assembly, the term of office of the judges of the Appeals Tribunal shall commence on the first day of July following their appointment by the General Assembly.

2. No member of the Appeals Tribunal can be dismissed by the General Assembly unless the other members unanimously agree that he or she is unsuited for further service.

Article 4

Panels

(*Amended on 9 December 2011*)

1. The President shall normally designate a panel of three judges to hear a case or a group of cases.

2. When the President or any two judges sitting on a particular case consider that the case so warrants, the case shall be heard by the whole Appeals Tribunal. If there is a tie in the voting by the judges of the whole Appeals Tribunal, the President shall have a casting vote.

Article 5

Ordinary and extraordinary sessions

1. The Appeals Tribunal shall exercise its functions in New York and shall hold ordinary sessions for the purpose of hearing cases. The Appeals Tribunal shall normally hold two ordinary sessions per calendar year and may decide to hold sessions in Geneva or Nairobi, as required by its caseload.

2. Extraordinary sessions for the consideration of cases may be convened by the President when, in his or her opinion, the number or urgency of the cases requires such sessions. Notice of an extraordinary session shall be given to the members of the Tribunal at least 30 days before the opening date of the session.

3. The President shall decide the date and venue of ordinary and extraordinary sessions after consultation with the Registrar.

Article 6
Plenary meetings

1. The Appeals Tribunal shall normally hold four plenary meetings a year, at the beginning and at the end of each of the regular sessions, to deal with questions affecting the administration or operation of the Appeals Tribunal. It shall elect its officers at a plenary meeting, normally the last one in the calendar year.

2. Four judges shall constitute a quorum for plenary meetings of the Appeals Tribunal.

Article 7
Time limits for filing appeals
(*Amended on 24 December 2011*)

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal;
(b) 90 calendar days of the date of receipt by a party appealing a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board; or
(c) A time limit fixed by the Appeals Tribunal under article 7.2 of the rules of procedure.

2. In exceptional cases, an appellant may submit a written request to the Appeals Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1. The written request shall succinctly set out the exceptional reasons that, in the view of the appellant, justify the request. The written request shall not exceed two pages.

3. In accordance with article 7.4 of the statute of the Appeals Tribunal, no application shall be receivable if filed more than one year after the judgement of the Dispute Tribunal.

Article 8
Appeals

1. Appeals shall be submitted on a prescribed form.

2. The appeal form shall be accompanied by:

(a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon or, in the case of an appeal against a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, a brief containing pleas and an explanatory statement. The brief shall not exceed 15 pages;
(b) A copy of each document referred to by the appellant in the appeal, accompanied by a translation into one of the official languages of the United Nations if the original language is not one of the official languages; such documents shall be identified by the word “Annex” at the top of the first page of each document followed by sequential arabic numerals.

3. The signed original appeal form and the annexes thereto shall be submitted together to the Registrar. The documents may be transmitted electronically.

4. After ascertaining that the appeal complies with the requirements of the present article, the Registrar shall transmit a copy of the appeal to the respondent. If the formal requirements of the article are not fulfilled, the Registrar may require the appellant to conform the appeal to the requirements of the article within a specified time. Once the corrections have been properly made, the Registrar shall transmit a copy of the appeal to the respondent.

5. The President may direct the Registrar to inform an appellant that his or her appeal is not receivable because it is not an appeal against either a decision of the Dispute Tribunal or of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, as the case may be.

6. The filing of an appeal shall suspend the execution of the judgement contested.

Article 9

Answers, cross-appeals and answers to cross-appeals

(*Amended on 9 December 2011; further amended on 24 December 2012*)

1. The respondent's answer shall be submitted on a prescribed form.

2. The answer form shall be accompanied by:

(a) A brief, which shall not exceed 15 pages, setting out legal arguments in support of the answer;

(b) A copy of each document referred to by the respondent in the answer, accompanied by a translation into one of the official languages of the United Nations if the original language is not one of the official languages; such documents shall be identified by the word "Annex" at the top of the first page of each document and an arabic numeral which follows in sequence the numbering of the annexes to the appeal form referred to in article 8.2 (b).

3. The signed original answer form and the annexes thereto shall be submitted together to the Registrar within 60 days of the date on which the respondent received the appeal transmitted by the Registrar. The documents may be transmitted electronically.

4. Within 60 days of notification of the appeal, a party answering the appeal may file a cross-appeal, accompanied by a brief which shall not exceed 15 pages, with the Appeals Tribunal stating the relief sought and the grounds of the cross- appeal. The cross-appeal may not add new claims.

5. After ascertaining that the answer complies with the requirements of the present article, the Registrar shall transmit a copy of the answer to the appellant. If the formal requirements of the article are not fulfilled, the Registrar may require the respondent to conform the answer to the requirements of the present article within a specified time. Once the corrections have been properly made, the Registrar shall transmit a copy of the answer to the appellant. If the corrections are not submitted within the established time limit, including any extension granted

by the Appeals Tribunal, the preliminary proceedings will be considered closed and the Appeals Tribunal will adjudicate the matter on the basis of the appeal lodged by the appellant.

6. The provisions of article 9.1 to 9.3 and 9.5 apply, mutatis mutandis, to a cross-appeal and answer to a cross-appeal.

Article 10
Additional documentary evidence, including written testimony

1. A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

2. In all other cases where additional findings of fact are needed, the Appeals Tribunal may remand the case to the Dispute Tribunal for further fact-finding. Where the Appeals Tribunal remands a case to the Dispute Tribunal, it may order that the case be considered by a different judge of the Dispute Tribunal.

Article 11
Docket of cases

1. When the President considers the documentation of a case to be sufficiently complete, he or she shall instruct the Registrar to place the case on the docket of cases ready for adjudication by the Appeals Tribunal. The docket for the session shall be communicated to the parties.

2. As soon as the date of opening of the session at which a case listed for hearing has been fixed, the Registrar shall notify the parties thereof.

3. Any request for the adjournment of a case that is listed on the docket shall be decided by the President or, when the Appeals Tribunal is in session, by the judges hearing the case.

Article 12
Working languages

The working languages of the Appeals Tribunal shall be English and French.

Article 13
Representation

1. A party may present his or her case before the Appeals Tribunal in person or may

designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction.

2. A party may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies.

Article 14
Waiver of rules concerning written pleadings

Subject to article 7.4 of the statute of the Appeals Tribunal and provided that the waiver does not affect the substance of the case before the Appeals Tribunal, the President may waive the requirements of any article of the rules of procedure dealing with written proceedings.

Article 15
Exclusion of all documents and statements made during mediation

1. Except in cases concerning enforcement of a settlement agreement, all documents prepared for and oral statements made during any informal conflict resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Appeals Tribunal. No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Appeals Tribunal or in any oral arguments made before the Appeals Tribunal.

2. Subject to the provisions of paragraph 1 above, if a document relating to the mediation process is submitted to the Appeals Tribunal, the Registrar shall return that document to the submitting party. If such information is part of the brief or any other written pleadings submitted to the Appeals Tribunal by a party, all pleadings shall be returned to that party for resubmission to the Appeals Tribunal in compliance with paragraph 1 above.

3. Subject to article 7.4 of the statute of the Appeals Tribunal, the President may fix one non-renewable time limit not exceeding five days for the resubmission of the written pleadings if the initial period for the submission of such pleadings has expired.

Article 16
Intervention by persons not party to the case

1. Any person for whom recourse to the Appeals Tribunal is available under article 6.2 (f) of the statute may apply to intervene in a case at any stage thereof on the grounds that his or her rights may have been affected by the judgement of the Dispute Tribunal and might, therefore, be affected by the judgement of the Appeals Tribunal.

2. After ascertaining that the requirements of the present article have been complied with, the Registrar shall transmit a copy of the application for intervention to the appellant and to the respondent.

3. The President or, when the Tribunal is in session, the presiding judge of the panel of the Appeals Tribunal hearing the case shall rule on the admissibility of every application for

intervention. Such decision shall be final and shall be communicated to the intervener and the parties by the Registrar.

4. An application for intervention shall be submitted on a prescribed form, the signed original of which shall be submitted to the Registrar. It may be transmitted electronically.

Article 17
Friend-of-the-court briefs

1. A person or organization for whom recourse to the Appeals Tribunal is available and staff associations may submit a signed application to file a friend- of-the-court brief, which may be transmitted electronically. The Registrar shall forward a copy of the application to the parties, who shall have three days to file any objections on a prescribed form.

2. The President or the panel hearing the case may grant the application if it considers that the filing of the brief would assist the Appeals Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar.

Article 18
Oral proceedings

1. The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

2. The oral proceedings shall be held in public unless the judges hearing the case decide, on their own initiative or at the request of one of the parties, that exceptional circumstances require that the oral proceedings be closed. If appropriate in the circumstances, the oral hearing may be held by electronic means.

Article 18bis
Case management
(*Amended on 9 December 2011*)

1. The President may, at any time, either on a motion of a party or on his or her own volition, issue any order which appears to be appropriate for the fair and expeditious management of the case and to do justice to the parties.

2. If, before the opening date of the session during which the case is to be considered, the appellant informs the Appeals Tribunal, in writing, with notice to the respondent, that he or she wishes to discontinue the proceedings, the President may order the case to be removed from the register.

3. If an action has become devoid of purpose and there is no longer any need to adjudicate it, the President may, at any time, on his or her own volition, after having informed the parties of that intention and, if applicable, received their observations, adopt a reasoned order.

4. The President may designate a judge or a panel of judges to issue any order within the purview of the present article.

Article 19

Adoption and issuance of judgements

(*Amended on 9 December 2011*)

1. Judgements shall be adopted by majority vote. All deliberations shall be kept confidential.

2. Judgements shall be issued in writing and shall state the reasons, facts and law on which they are based. Summary judgements may be issued at any time, even when the Appeals Tribunal is not in session. They shall be adopted by panels of three judges designated by the President.

3. A judge may append a separate, dissenting or concurring opinion.

4. Judgements shall be drawn up in any official language of the United Nations, two signed originals of which shall be deposited in the archives of the United Nations.

5. The Registrar shall transmit a copy of the judgement to each party. An individual appellant or respondent shall receive a copy of the judgement in the language of the appeal or answer, as the case may be, unless a copy is requested in another official language of the United Nations.

6. The Registrar shall send to all judges of the Appeals Tribunal copies of all the decisions of the Appeals Tribunal.

Article 20

Publication of judgements

1. The Registrar shall arrange for publication of the judgements of the Appeals Tribunal on the website of the Appeals Tribunal after they are delivered.

2. The published judgements will normally include the names of the parties.

Article 21

Registry

1. The Appeals Tribunal shall be supported by a Registry, which shall provide all necessary administrative and support services to it.

2. The Registry shall be established in New York and shall be headed by a Registrar appointed by the Secretary-General and such staff as is necessary.

3. The Registrar shall discharge the duties set out in the rules of procedure and shall support the work of the Appeals Tribunal at the direction of the President. In particular, the Registrar shall:

(a) Transmit all documents and make all notifications required in the rules of procedure or required by the President or a panel hearing a case in connection with proceedings before the Appeals Tribunal;
(b) Establish for each case a master Registry file, which shall record all actions taken in connection with the preparation of the case for hearing, the dates thereof and the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
(c) Perform any other duties that are required by the President for the efficient functioning of the Appeals Tribunal and the efficient disposal of its caseload.

4. The Registrar, if unable to act, shall be replaced by an official appointed by the Secretary-General.

Article 22
Conflict of interest

1. The term "conflict of interest" means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

2. A conflict of interest arises where a case assigned to a judge involves any of the following:

(a) A person with whom the judge has a personal, familiar or professional relationship;
(b) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;
(c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge's participation in the adjudication of the matter would be inappropriate.

Article 23
Recusal

1. A judge of the Appeals Tribunal who has or appears to have a conflict of interest as defined in article 22 of the rules of procedure shall recuse himself or herself from the case and shall so inform the President.

2. A party may make a reasoned request for the recusal of a judge on the grounds of conflict of interest to the President or the Appeals Tribunal, which, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing.

3. A decision by a judge to recuse himself or herself, or a decision by the President or the Appeals Tribunal to recuse a judge, shall be communicated to the parties concerned by the Registrar.

Article 24
Revision of judgements

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

Article 25
Interpretation of judgements

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement on a prescribed form. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application on a prescribed form. The Appeals Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

Article 26
Correction of judgements

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form.

Article 27
Execution of judgements

Where a judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.

Article 28
Titles

The titles to the articles in the rules of procedure are for reference purposes only and do not constitute an interpretation of the article concerned.

Article 29
Calculation of time limits

The time limits prescribed in the rules of procedure:

(a) Refer to calendar days, but shall not include the day of the event from which the period runs;

(b) Shall include the next working day of the Registry when the last day of the period is not a working day;
(c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.

Article 30
Waiver of time limits

Subject to article 7.4 of the statute of the Appeals Tribunal, the President or the panel hearing a case may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

Article 31
Procedural matters not covered in the rules of procedure

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Appeals Tribunal on the particular case, by virtue of the powers conferred on it by article 6 of its statute.

2. The Appeals Tribunal may issue practice directions related to the implementation of the rules of procedure.

Article 32
Amendment of the rules of procedure

1. The Appeals Tribunal in plenary meeting may adopt amendments to the rules of procedure, which shall be submitted to the General Assembly for approval.

2. The amendments shall operate provisionally until approved by the General Assembly.

3. The President, after consultation with the judges of the Appeals Tribunal, may instruct the Registrar to revise any forms from time to time in the light of experience, provided that such modifications are consistent with the rules of procedure.

Article 33
Entry into force

1. The rules of procedure shall enter into force on the first day of the month following their approval by the General Assembly.

2. The rules of procedure shall operate provisionally from the date of their adoption by the Appeals Tribunal until their entry into force.

Annex VII
United Nations Staff Rules and Staff Regulations *
(EXTRACTS)

…

Article X
Disciplinary measures

Regulation 10.1

(a) The Secretary-General may impose disciplinary measures on staff members who engage in misconduct;

(b) Sexual exploitation and sexual abuse constitute serious misconduct.

Chapter X
Disciplinary measures

Rule 10.1
Misconduct

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

(b) Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be wilful, reckless or grossly negligent.

* ST/SGB/2013/3. Source: United Nations.

(c) The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

Rule 10.2
Disciplinary measures

(a) Disciplinary measures may take one or more of the following forms only:
- (i) Written censure;
- (ii) Loss of one or more steps in grade;
- (iii) Deferment, for a specified period, of eligibility for salary increment;
- (iv) Suspension without pay for a specified period;
- (v) Fine;
- (vi) Deferment, for a specified period, of eligibility for consideration for promotion;
- (vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
- (viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;
- (ix) Dismissal.

(b) Measures other than those listed under staff rule 10.2 (a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:
- (i) Written or oral reprimand;
- (ii) Recovery of monies owed to the Organization;
- (iii) Administrative leave with or without pay pursuant to staff rule 10.4.

Rule 10.3
Due process in the disciplinary process

(a) The Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred. In such cases, no disciplinary measure or non-disciplinary measure, except as provided under staff rule 10.2 (b) (iii), may be imposed on a staff member following the completion of an investigation unless he or she has been notified, in writing, of the charges against him or her, and has been given the opportunity to respond to those charges. The staff member shall also be informed of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense.

(b) Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.

(c) A staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules.

(d) An appeal against a judgement of the United Nations Dispute Tribunal by the staff member or by the Secretary-General may be filed with the United Nations Appeals Tribunal in accordance with chapter XI of the Staff Rules.

Rule 10.4
Administrative leave pending investigation and the disciplinary process

(a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time pending an investigation until the completion of the disciplinary process.

(b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration, which, so far as practicable, should not exceed three months.

(c) Administrative leave shall be with full pay unless, in exceptional circumstances, the Secretary-General decides that administrative leave without pay is warranted.

(d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. If administrative leave is without pay and either the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal, any pay withheld shall be restored without delay.

(e) A staff member who has been placed on administrative leave may challenge the decision to place him or her on such leave in accordance with chapter XI of the Staff Rules.

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Article XI
Appeals

Regulation 11.1

There shall be a two-tier formal system of administration of justice:

(a) The United Nations Dispute Tribunal shall, under conditions prescribed in its statute and rules, hear and render judgement on an application from a staff member alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules;
(b) The United Nations Appeals Tribunal shall, under conditions prescribed in its statute and rules, exercise appellate jurisdiction over an appeal of a judgement rendered by the United Nations Dispute Tribunal submitted by either party.

Chapter XI
Appeals

Rule 11.1
Informal resolution

(a) A staff member who considers that his or her contract of employment or terms of appointment have been violated is encouraged to attempt to have the matter resolved informally. To that end, a staff member who wishes to pursue informal channels should approach the Office of the Ombudsman without delay, without prejudice to the right to pursue the matter formally in accordance with the provisions of the present chapter.

(b) Both the staff member and the Secretary-General may initiate informal resolution, including mediation, of the issues involved at any time before or after the staff member chooses to pursue the matter formally.

(c) The conduct of informal resolution by the Office of the Ombudsman, including mediation, may result in the extension of the deadlines applicable to management evaluation and to the filing of an application with the United Nations Dispute Tribunal, as specified in staff rules 11.2 (c) and (d) and 11.4 (c) below.

(d) An application shall not be receivable by the United Nations Dispute Tribunal if the dispute arising from a contested decision has been resolved by an agreement reached through mediation. However, a staff member may submit an application directly with the Dispute Tribunal to enforce the implementation of an agreement reached through mediation within 90 calendar days of the deadline for implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, within 90 calendar days of the thirtieth calendar day from the date on which the agreement was signed.

Rule 11.2
Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be

extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

Rule 11.3
Suspension of action

(a) Neither the submission of a request for a management evaluation nor the filing of an application with the United Nations Dispute Tribunal shall have the effect of suspending the implementation of the contested administrative decision.

(b) However, where a management evaluation of an administrative decision is required:

(i) A staff member may submit an application requesting the United Nations Dispute Tribunal to suspend the implementation of the contested administrative decision until the management evaluation has been completed and the staff member has received notification of the outcome. In accordance with article 2, paragraph 2, of its statute, the Dispute Tribunal may suspend the implementation of a decision where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. The Dispute Tribunal's decision on such an application is not subject to appeal;

(ii) In cases involving separation from service, a staff member may opt to first request the Secretary-General to suspend the implementation of the decision until the management evaluation has been completed and the staff member has received notification of the outcome. The Secretary-General may suspend the implementation of a decision where he or she determines that the contested decision has not yet been implemented, the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage to the staff member's rights. If the Secretary-General rejects the request, the staff member may then submit a request for suspension of action to the Dispute Tribunal under subparagraph (b) (i) above.

Rule 11.4
United Nations Dispute Tribunal

(a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

(b) Where a staff member is not required to request a management evaluation, pursuant to staff rule 11.2 (b), he or she may file an application directly with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received notification of the contested administrative decision.

(c) Where mediation has been pursued by either party within the deadline for filing an application with the United Nations Dispute Tribunal specified in staff rule 11.4 (a) or (b) and the mediation is deemed to have failed in accordance with the rules of procedure of the Mediation Division of the Office of the Ombudsman, the staff member may file an application with the Dispute Tribunal within 90 calendar days of the end of the mediation.

(d) A staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes, or may obtain outside counsel at his or her expense, in the presentation of his or her case before the United Nations Dispute Tribunal.

(e) A staff association may request permission from the United Nations Dispute Tribunal to submit a friend-of-the-court brief in relation to an application filed by a staff member.

(f) A staff member who is entitled to appeal the same administrative decision that is the subject of an application brought by another staff member may request permission from the United Nations Dispute Tribunal to intervene in the matter.

(g) In accordance with article 2, paragraph 1, of its statute, the United Nations Dispute Tribunal has jurisdiction over applications filed by staff members:

(i) To appeal an administrative decision that is alleged to not be in compliance with a staff member's contract of employment or terms of appointment, including all pertinent regulations and rules and relevant administrative issuances in force at the time of the alleged non-compliance;
(ii) To appeal an administrative decision imposing a disciplinary measure;
(iii) To enforce the implementation of an agreement reached through mediation.

(h) The competence of the United Nations Dispute Tribunal, as set forth in its statute, includes the authority:

(i) To suspend proceedings in a case at the request of the parties for a time to be specified by it in writing;
(ii) To order, at any time during the proceedings, an interim measure, which is not subject to appeal, to provide temporary relief to either party where the contested decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. Such temporary relief may include suspension of the implementation of the contested administrative decision, except in cases of appointment, promotion or termination;
(iii) To refer, at any time during its deliberations, a matter to mediation with the consent of both parties.

Rule 11.5
United Nations Appeals Tribunal

(a) In accordance with article 2, paragraph 1, of its statute, the United Nations Appeals Tribunal shall have jurisdiction over an appeal against a judgement of the United Nations Dispute Tribunal alleging that the Dispute Tribunal has:

(i) Exceeded its jurisdiction or competence;
(ii) Failed to exercise jurisdiction vested in it;
(iii) Erred on a question of law;
(iv) Committed an error in procedure, such as to affect the decision of the case; or
(v) Erred on a question of fact, resulting in a manifestly unreasonable decision.

(b) An appeal may be filed by either party against the judgement of the United Nations Dispute Tribunal within 45 calendar days following receipt of the Dispute Tribunal's judgement. An appeal shall not be receivable by the United Nations Appeals Tribunal unless the deadline has been met or has been waived or suspended by the Appeals Tribunal.

(c) The filing of an appeal with the United Nations Appeals Tribunal shall have the effect of suspending the execution of a judgement of the United Nations Dispute Tribunal that is contested.

(d) A staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes, or may obtain outside counsel at his or her expense in the presentation of his or her case before the United Nations Appeals Tribunal.

(e) The competence of the United Nations Appeals Tribunal, as set forth in its statute, includes the authority:

(i) To decide, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed;
(ii) To order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the United Nations Dispute Tribunal.

Annex VIII
List of entities falling under the jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

The Tribunals are competent to hear and pass judgments on applications filed by individuals from the following entities.

I. Entities falling under the jurisdiction of the United Nations Dispute Tribunal

1. United Nations Secretariat, including:
   - United Nations Headquarters in New York
   - United Nations Offices at Geneva (UNOG)
   - United Nations Offices at Nairobi (UNON)
   - United Nations Offices at Vienna (UNOV)
   - Department of Peacekeeping Operations (DPKO)
   - Regional Commissions, including:
   - Economic and Social Commission for Asia and the Pacific (ESCAP), Bangkok
   - Economic and Social Commission for Western Asia (ESCWA), Beirut
   - Economic Commission for Africa (ECA), Addis Ababa
   - Economic Commission for Europe (ECE), Geneva
   - Economic Commission for Latin America and the Caribbean (ECLAC), Santiago
   - Special political missions (Department of Political Affairs)

2. Agencies, Funds, Programmes and other United Nations entities:
   - United Nations Conference on Trade and Development (UNCTAD)
   - United Nations Development Programme (UNDP)
   - United Nations Environment Programme (UNEP)
   - United Nations Population Fund (UNFPA)
   - UN-Habitat
   - United Nations High Commissioner for Refugees (UNHCR)
   - United Nations Children's Fund (UNICEF)
   - United Nations Office on Drugs and Crime (UNODC)
   - United Nations Office for Project Services (UNOPS)
   - United Nations Volunteers (UNV)
   - UN-Women
   - World Food Programme (WFP) (Local staff only)

3. International criminal tribunals:
   - International Criminal Tribunal for Rwanda (ICTR);
   - International Criminal Tribunal for the former Yugoslavia (ICTY)

II. Entities falling under the jurisdiction of the United Nations Appeals Tribunal

1. All entities listed under I. above, regarding appeals from judgments of the Dispute Tribunal
2. The following entities that have concluded a special agreement under Article 2, paragraphs 9 and 10, of the Statute of the Appeals Tribunal:
   - United Nations Joint Staff Pension Fund (UNJSPF), regarding appeals from decisions of the Standing Committee of the United Nations Joint Staff Pension Board
   - International Civil Aviation Organization (ICAO)
   - International Maritime Organization (IMO)
   - International Tribunal for the Law of the Sea (ITLOS)
   - International Seabed Authority (ISA)
   - United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), regarding appeals from judgments of the UNRWA Dispute Tribunal
   - International Court of Justice (ICJ)

Authors' biographies

Helmut Buss is one of the Ombudsmen for the UN Funds and Programmes (UNDP/ UNFPA/ UNICEF/ UNOPS/ UN Women). Previously Head of UNHCR's Legal Affairs Section, he also served in refugee protection functions in Senegal and at UNHCR Headquarters in Geneva and held the position of UNHCR Country Representative in Kyrgyzstan. He is a certified Ombudsman and Mediator and has published articles on conflict management. He is German, holds a German law degree, a Master's degree in Mediation from the Institut Universitaire Kurt Boesch (IUKB) in Sion, Switzerland and an MBA degree from the Open University Business School in the United Kingdom.

Thomas Fitschen is a lawyer by training and currently the Deputy Permanent Representative of the Federal Republic of Germany to the Office of the United Nations and other International Organizations in Geneva. From 2005 to 2008 he was the Legal Adviser to the German UN Mission in New York, where he chaired the informal consultations in the 6th Committee and the Ad hoc Committee on the Administration of Justice on the statutes of the new Tribunals. He holds a doctorate in law from the University of Saarbrücken, Germany.

Thomas Laker is among the first judges of the United Nations Dispute Tribunal. Elected by his peers, he served two terms as the Tribunal's President in 2010-2011 and in 2013-2014. Before, he was a Presiding Judge at the Administrative Law Court in Hamburg, Germany. Continuously working as a judge since 1989, he was seconded to the Ministry of Justice, to the Administrative Law Appeals Tribunal and to the Social Security Law Tribunal. Judge Laker is also a qualified mediator. He studied law in Germany and Switzerland and holds a law degree (Dr. iur.) from Georg-August University in Göttingen, Germany.

Christian Rohde was appointed in 2011 as the chief of the Management Evaluation Unit in the Office of the Under-Secretary-General for Management at the UN Secretariat. He has served the Organization for the Prohibition of Chemical Weapons as a legal adviser, and the International Criminal Tribunal for the Former Yugoslavia as the legal adviser in the Court Administration. Prior to that, he served as the chief of the office for legal aid and detention matters at the Tribunal. He also worked as a senior officer in the Organization for Security and Cooperation's Mission to Bosnia and Herzegovina, in short-term missions in West Africa, and as an assistant professor for constitutional, administrative and International law in Germany. Christian Rohde studied law in Germany and France and holds a PhD in law with a thesis in the area of international administrative law.

Santiago Villalpando is the Chief of the Treaty Section at the United Nations Office of Legal Affairs. He has previously worked at the Codification Division of the Office of Legal Affairs, the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia. He has further served as Registrar of the United Nations Dispute Tribunal in New York. He has taught in several universities in Europe and the Americas, and has published two books and various articles in public international law. He is Argentinean, and holds an Italian Law Degree and a PhD in International Law from the Graduate Institute of International Studies in Geneva, Switzerland.