

## The United Nations: Policies and Values for Accountability

### **United Nations: Policies and Values for Individual and Corporate Accountability**

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There is little if any literature regarding accountability within the United Nations Secretariat. This paper will begin an exploration of that issue.

First, a word of caution: this paper is not a comprehensive treatment related to the UN Secretariat. It does address the major elements of the internal system for the administration of justice. It does not address other organizations in the UN system, peacekeeping missions; nor does it address disciplinary matters.

**Accountability is a difficult subject in the best of circumstances.** One author suggests “[t]he lexicon of accountability includes such terms as responsibility, liability, sanction, answerability, transparency and obligation.” (Hirohide Takikawa, “Conceptual Analysis of Accountability”, in Envisioning Reform, Enhancing UN Accountability in the Twenty-First Century. United Nations University Press, , p.74)

**The notion of accountability is not well-developed and there is little in the way of policies and procedures, much less a culture of accountability within and among the staff and managers of the Secretariat.** How well can staff and managers be expected to address the requirements of the Secretariat being accountable to the Secretary-General (SG), much less, the Member States? This will be reflected in the comments of the Advisory Committee on Administrative and Budgetary Questions of the General Assembly (GA) (ACABQ) with respect to the SG’s submissions on accountability.

An examination of accountability certainly leads one to a determination of responsibilities: the mandate (authority, command, orders, terms of reference) given to both the staff members and managers, the tasks, the time frame, the resources (material, technological, financial and human) one has at one’s command for the tasks and the rules in effect.

Questions will be addressed as to accountability: to whom and for what. Inconsistencies and contradictions will become apparent. Any particular “snapshot” of accountability in the United Nations will differ with the organizational structures, the posts or positions, ranks, authority, power, personalities, integrity, disclosure, rules, events, issues, expectations, appeals and Tribunals. Depending upon circumstances, management will at times have very rigorous expectations, norms and standards, at other times, far more relaxed expectations. The issue of the Tribunal’s independence from the Respondent is of paramount importance for determinations as to accountability.

At a more basic level, one can find situations in the UN where there are those who do not know what they are supervising, who they are supervising, how they are supervising or why they are supervising.

This paper reviews the importance of policies, values, staff morale and issues of: i) individual accountability, (Staff Regulations and Rules) ii) corporate or collective accountability,(Tribunal Statutes) and iii) how, contrary to the Staff Regulations and Rules, the Statues of the Dispute and Appeals Tribunals provide for corporate or collective accountability which is never mentioned in

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the Staff Regulations and Rules; and iv) ways by which the Secretary-General has, over the years, consistently eroded the norms and criteria by which one might be required to reimburse the UN for the Organization's financial losses;

### 1.0. Importance of Policies for Accountability

In addition to the Charter, General Assembly resolutions are the principal sources of policies for the guidance and direction of the UN Secretariat and its staff members. They establish or authorize development plans and priorities, program budgets and personnel policies within which staff are accountable to managers and managers to staff and they are both accountable to the Secretary-General (SG).

General Assembly resolutions also establish the rights, entitlements, duties and responsibilities of staff and managers to each other, managers to the SG and from the SG to the GA. These are given effect through the Staff Regulations and Rules (SRRs), Secretary-General's Bulletins (SGBs), and Administrative Instructions (AIs). These also establish parameters within which the General Assembly is accountable to managers and staff as a guarantor, if you will, of its intents with respect to the rights, entitlements and responsibilities of staff. Policies are central to the United Nations fulfilling its fundamental responsibilities to the Member States, and to its staff to assure the highest and best use of the limited resources entrusted to the Organization for its stewardship.

In the United Nations, as elsewhere, policies establish the norms and standards by which programs, projects, procurements, salaries, benefits, actions, events, and behaviors are determined and measured as well as the foundations for expectations as to accountability of staff and managers. While most of these do not establish any staff rights, some do, especially those on the subject of human resources. With the United Nations, however, there is an added obligation on Organization policies. Unless waived by the Secretary-General, U.N. officials are immune to prosecution by national authorities for any misdeeds as international civil servants. Hence, U.N. policies must establish bodies of administrative laws and the mechanisms for their application and administration.

### 2.0 Values and Accountability

The U.N., more than most organizations, is heavily value-based and politically driven. It should come as no surprise that these are not always compatible. While values are of significance as statements of principle, they hold little in the way of the force of law, unless expressly adopted as law or policy. When adopted as U.N. staff policy, they acquire legitimacy and establish benchmarks for staff and management performance. In the absence of such performance benchmarks, there can be little expectation as to performance and perhaps none as to accountability.

Three values are established in the Charter (Article 101(3)) as underpinning the conditions of service: "The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity."

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To give further effect to the Charter's provisions, the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat are set forth in the Staff Regulations and Rules. They represent the broad principles of human resources policy for the staffing and administration of the Secretariat.

As one example, an important expansion on the concept of integrity may be seen in Staff Regulation 1.2(b) : “ Staff members shall uphold the highest standards of efficiency, competence and integrity. **The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.**” (Emphasis added.) Having been set forth as policy, these become foundations and standards for accountability.

Efficiency and competence, on the other hand, have not been so elaborated in the Staff Regulations.

### 3.0 Core Values, Core Competencies, and Managerial Competencies:

Embroidering on these three values, a competency model has emerged with the **three core values** of integrity, professionalism and respect for diversity. Linked to these are **eight core competencies** which include communication, teamwork, planning and organizing accountability, client orientation, commitment to continuous learning and technological awareness. In addition, **six managerial competencies** have been identified as leadership, vision, empowering others, building trust, managing performance and judgement/decision-making. (ST/SGB/1999/15) Sadly, managerial competencies are not found to include the fostering of team work, cooperation or collaboration.

These do not explicitly address efficiency and competence, although it might be assumed that if one has assimilated the eight core competencies, one is competent. But these should not be operationalized on the basis of assumptions.

Perhaps more than any other value, integrity shapes the demands and expectations of accountability. Integrity would seem to be the indispensable foundation for the exercise of accountability.

Integrity as a core value has been set forth: “Competencies: the organizational competencies listed in ST/SGB/1999/15<sup>2</sup> define a performance standard against which all staff can be consistently and objectively evaluated. **All staff members are held accountable for demonstrating the three core values of integrity, professionalism and respect for diversity/ gender equality.**” (ST/AI/2010/5, Performance Management and Development System, para. 6.3 (b))

Having been set forth in an Administrative Instruction, the policy foundation is established for the three core values. However there is no specification as to how these standards are to be applied, implemented or operationalized. This is a reflection of and has resulted in difficulties in coming to grips with the concept of integrity as a management practice and more importantly as a fundamental aspect of UN culture.

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### 4.0. Policies, Staff Rights and Responsibilities

Personnel are at once the most beneficial and costly resource of the United Nations. While on occasion they may be respected and honored, too often their value is ignored, dismissed, belittled, or eroded.

Personnel policies set forth many of the responsibilities of staff and many of the rights that have been created for them. The Charter, Staff Regulations and Rules, and other administrative issuances besides conveying appropriate procedures to be followed, also establish staff rights. These rights should endure; they are not privileges to be granted or withheld at the discretion of the Secretary-General.

“Integrity, while perhaps not subject to exhaustive and precise definition, must be judged on the basis of the total behaviour of the person concerned. Such elementary personal or private qualities as honesty, truthfulness, fidelity, probity and freedom from corrupting influences, are clearly included.” (The International Civil Service Advisory Board (ICSAB), 1954)

Integrity, therefore, is a reflection of the extent to which staff and managers respect and uphold, each other’s rights and responsibilities and are seen to do so. They are not likely to be long respected and upheld in the absence of accountability.

Staff rights were established by the General Assembly out of respect for its staff and in the expectation that that respect would be mutual and would continue to be observed. These rights create a minimum set of conditions (policies, procedures, and processes) on which staff may depend while undertaking/addressing their responsibilities. To many, if not most, these rights are effectively and efficiently nurtured but at times they are denied, abused and weakened.

As noted, these values established by the General Assembly, especially that of integrity are absolutely fundamental. Where a culture of integrity within the Secretariat is not established, the integrity of the United Nations is not established. Where these values are eroded or be seen to be, one result is the erosion of staff morale.

### 5.0 Staff Morale

The establishment of Organization personnel policies and their objective and disinterested application are indispensable foundations for high morale. Policies can and should be known and understood regardless of duty station or department or office, official language used, the opportunities and privileges and rights they confer, the obligations and responsibilities they require and the penalties for not adhering to policies. These convey a certain predictability, transparency and fairness.

Policies and procedures for the effective, efficient honoring and upholding of such policies are essential for an atmosphere of accountability. Critical to this is an honest, transparent process for the resolution of conflicts.

Staff morale, not unexpectedly, has vast financial implications for the Organization and, by extension, for the Member States. It is when integrity and its attendant behaviors and staff rights are ignored or abrogated that morale suffers and costs that do not enter into any balance sheet begin to soar.

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Staff morale is a function of the staff's and managers' sharing of the Organization's values, the shared sense of mission, their commitment to the highest standards of service, the sense of fair play, honesty and loyalty and their sense of commitment.

In effect, one of the most expensive things that could befall the Organization is to lose, or be seen to lose, the commitment to integrity. While of great significance financially, procurement issues pale into insignificance compared to low staff morale resulting from low or no commitment to integrity. The motivation, commitment and devotion on the part of its staff members are literally priceless. These amount to much more than simply idealism, as important as that is. Yet one of the most frequent observations is that these qualities are the first to be washed out of new staff members by the same managers who are supposed to have an elevated appreciation of their value, only to be replaced with an heightened sense of cynicism.

High morale assumes a particularly important role given the Organization's very limited ability or willingness to recognize, much less reward, fine performance. Despite the huge financial importance of high morale, it appears there have been no surveys or studies of staff morale. Speculating that such a survey would yield much the same kinds of findings as with the Integrity Survey, the administration might not want to have yet another study identifying threats or risk factors impacting staff morale and calling into question current levels of integrity and accountability. Despite its importance, there seems to have been little if any follow through based on the results of the Integrity Survey.

A lack of effective oversight by managers or oversight bodies, such as the Office of Internal Oversight Services (OIOS), with respect to the proper implementation and application of policies by managers has, on occasion, given rise to the arbitrary and capricious ignoring or application of policies, the devaluation and depreciation of policies and the erosion of staff morale. Under these circumstances, for staff, knowledge gives way to ignorance and suspicion; predictability gives way to uncertainty and objectivity gives way to discrimination. Jealousy and resentment are fostered and encouraged. Disincentives rarely await those managers not adhering to policies, we hear little or nothing of consequences for errant managers. As a result, immunity from accountability and impunity are indulgences that may be too often cultivated by managers.

### **6.0 Morale, Whistle Blowing and Accountability**

Morale is also related to whistle blowing and accountability. Where high norms and standards are observed with less misconduct, one might expect precious little whistle blowing. Where high norms and standards are much more loosely adhered to there may be well more misconduct and more whistle blowing.

Of all the values, none, perhaps, has a greater impact on staff morale than integrity. This emerged clearly as a result of the 2004 United Nations Organizational Integrity Survey.

The Secretary-General noted in a follow-up to the 2004 Organizational Integrity Survey: "Concerns about fairness and integrity were raised by staff in the 2004 integrity survey. We are moving ahead with a series of measures to strengthen ethical conduct. First, I am introducing a robust new policy for the protection of whistleblowers so that staff can feel sufficiently protected to come forward with concerns about conduct without reprisal. Second, the Organization is moving swiftly to take appropriate disciplinary action against all proven cases of sexual misconduct. At the same time, measures to improve training, to impose a unified standard of conduct, to establish credible complaint mechanisms and to review welfare and recreational needs for

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personnel in the field are well under way. Third, a more expansive requirement for financial disclosure by senior officials and better dissemination of code of conduct requirements are being introduced.” (A/60/1, para. 246) (2005)

While progress undoubtedly has been made with respect to a number of these issues, rather than a robust new policy for protection of whistle blowers, the term was eliminated from its only mention in the 2001 OIOS Investigations Manual. Nor does there seem to be any appreciation of the strong linkages between how whistleblowers’ claims are treated and staff morale.

Unlike many other organizations, the UN has never established a policy on whistle blowing, *per se*. Whistle blowing is seen as something to be contended with, to be discouraged, disparaged and ignored, if not punished.

The UN has made staff reporting of misconduct a duty but not a right. While whistle blowing should be fully legitimized and rewarded, retaliation must be prevented. Without that, retaliation will always be a temptation for managers. High-sounding verbiage on protection of whistle blowers carries little meaning in an environment as implacably hostile to whistle blowing as is the UN and where there is little commitment to objective and disinterested investigation of whistle blower reports of misconduct.

Even if it were the case that the UN adopted policies favorable to whistle blowing, even if whistle blowers were to be rewarded and even if the UN committed itself to preventing retaliation, even if the UN were to define retaliation as adverse administrative actions and attitudes prior to, during and after the whistle blower’s report, it would have to go a long way to alter the present UN culture to conform. The decisions of the Management Evaluation Unit (MEU) and the Tribunals would have to support them, a marked departure from the present. Only then could a culture of accountability be established.

### **7.0 Accountability:**

#### **7.1 General Assembly Requests of the Secretary-General**

While accountability has been the subject of much discussion, few issues have been the subject of such devoted avoidance. Accountability is mentioned only briefly in the Staff Regulations and Rules and there are no SGBs or AIs focused on this issue. The administration seems to have decided the less thought given to this issue the better. The basic parameters, the common denominators as to the various forms of accountability are not explored. While weak policy had been established on whistle blowing, having been mentioned in the 2001 OIOS Investigations Manual, it has since been eliminated. This suggests accountability is still an orphan in the system.

Then there is the issue, not addressed, as to who would hold the S-G accountable, a remote prospect fraught with political peril.

The GA, repeatedly requested the S-G to propose a definition of accountability and a set of measures to give expression to it. Among the Secretary-General’s proposals to the General Assembly that he believed it might wish to consider adopting were the following accountability definitions:

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“A comprehensive system of accountability is based on the premises that responsibility must be clearly defined, managers and staff must have the resources, capacity and authority to carry out their respective responsibilities, and accountability must be established at all levels through appropriate mechanisms.” (A/60/846/Add.6, para.9)

“ (a) Institutional accountability : the responsibility of the Secretary-General **to explain and justify** to the General Assembly and other relevant intergovernmental bodies, in a systematic framework and by an orderly process using transparent mechanisms, the performance of the Organization in using resources to achieve results mandated by the Member States in the Assembly and/or other intergovernmental bodies established under the Charter of the United Nations; (“Investing in the United Nations for a stronger Organization worldwide: detailed report”, (Emphasis added.) (A/60/846/Add.6, para. 7, 19 June 2006.) (JIU/REP/2006/6, para. 99)

Saying that accountability is to be established through mechanisms, says nothing about policies, personal commitment to accountability, to staff and managers holding themselves accountable, and anyone being held accountable by one’s own supervisors, especially managers. It says nothing about any moral or legal imperatives, a sense of ethics, a culture of accountability, a culture of ethics, a culture of responsibility or a culture of organizational sustainability. It certainly says nothing about what the Integrity Survey calls the “Tone at the Top”.

At the United Nations University’s Tokyo Symposium on Accountability in October 2006 one proposal for a structure of accountability at its simplest: “X asks Y to explain and justify Y’s actions. Y then has the obligation to explain and justify his or her actions to X.” This usually takes place in the context of rules. It may be the rules that make possible the prospect of consequences for Y. (Takikawa, Hirohide, *Conceptual Analysis of Accountability*, p.76-78, In United Nations University Press, (2009), *Envisioning Reform, Enhancing UN Accountability in the Twenty-First Century*)

White and Hollingsworth proposed: “... that the fundamental concept of accountability consists of two elements: a person A has a *duty* to render an account to another person B, which discloses, explains and justifies A’s conduct; and the *liability* of A to subsequent action by B in the event that B disapproves of A’s conduct.” If a liability exists, it may derive from rules or policies. (Fidelma White and Kathryn Hollingsworth, (1999) *Audit, Accountability and Government*, Oxford: Clarendon Press, p.6, as quoted by Hasuo, Ikuyo “Subconcepts of Managerial Accountability”, in United Nations University Press, *Envisioning Reform, Enhancing UN Accountability in the Twenty-First Century*,

It is not known if the above definitions evolved from or contributed to the SG’s definitions below. It does appear they have a common heritage. This definition suggests that the “accountability” process is largely intended to have negative consequences rather than positive ones and that little if anything positive is to emerge from it.

These definitions appear to be a straightforward descriptive narrative in an atmosphere devoid of any value-orientation and in the absence on any linkage to the policy context in which it takes place. Nor is it clear how such a transaction might reflect the strengthening or weakening of integrity. Thus it is not clear if the action explained and justified contributes to or erodes the policies. Nor does it say anything as to how an explanation and justification by themselves can have such a powerful effect on trust, confidence, and staff morale.

It is strongly proposed here that the policy context in which the accountability process takes place

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include consequences, both positive and negative. If primarily negative, there will be little interest in embracing accountability.

The SG's focus on "explain and justify" would appear to be much more closely related to reporting than to accountability. While reporting certainly should address one's responsibilities and should be an aspect of accountability, this would seem to involve much less than an answering for the failure to address one's responsibilities or to adhere to the norms, standards and policies established by the organization. It also suggests no consequences, either rewards or penalties.

The S-G's suggestion that the G.A. would or could be satisfied with an explanation or justification almost makes it sound as though the G.A. is seen as being a rather naïve and toothless watchdog. Indeed, that might be well-suited to its role historically and currently. For many reasons, especially political ones, the G.A. has been reluctant to take on any significant oversight of the S-G, much less hold the S-G accountable.

These provisions should enable **institutional accountability** where the Secretary-General reports to the General Assembly and **programmatic accountability** where program managers report to the Secretary-General. Current provisions for reporting to the GA appear much more oriented towards a programmatic emphasis. There are, however, no policy provisions for managers and for the S-G to be **accountable** to staff members for the safeguarding of staff rights. It is maintained that accountability works both ways: from staff to managers but also from managers to staff.

Effective 1 July 2009, a new system for the internal administration of justice was implemented. The foundations for this system had been put forward by the Redesign Panel, a group established by the GA. (A/61/205) Central to the Panel's proposals were its independence and the fostering of accountability.

### 7.2 The General Assembly's Definition of Institutional Accountability

Having sought, unsuccessfully, for years to elicit even the most rudimentary definitions of accountability from the Secretary-General, the General Assembly in May 2010, having become frustrated with the glacial pace of reform and in response to the rudderless condition in the UN, in its resolution 64/259, decided: "**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.**" (A/RES/64/259)

This, of course, begged the questions as to whom one would be answerable and what the resultant consequences might be. Would the SG be answerable to the GA? If so, how? Would managers be accountable to the SG? Would the SG be accountable to the managers and the managers to the staff? If so in what ways?

The GA continued, one should be accountable for: "...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

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system of rewards and sanctions; and with due recognition to the important role of the oversight bodies and in full compliance with accepted recommendations.” (A/RES/64/259)

“13. Emphasizes the importance of establishing and fully implementing real, effective and efficient mechanisms that foster institutional and personal accountability at all levels;” (A/RES/64/259) The establishment of any such mechanisms is unknown.

### 7.3 General Assembly Frustration with Secretary-General’s Implementation.

Having been spoon-fed a definition, in a subsequent report to the GA, the Secretary General was reluctant to undertake its implementation and come to grips with the implications for the Organization.

Two years later, in March 2012, the Advisory Committee on Administrative and Budgetary Questions of the GA (ACABQ) noted:

“With respect to the format and content of the report, the Advisory Committee notes that the Secretary-General provides a description of the administrative policies, procedures, tools and systems implemented or envisaged for implementation under each of the areas of the accountability framework. The report provides few details on the accountability measures themselves, their underlying principles, the weaknesses they are intended to address, the timetable for their implementation or the next steps envisaged. It also lacks information on the mechanisms for monitoring and reporting on the application of those measures, the indicators and performance data used to measure progress and an analysis of their effectiveness in terms of strengthening accountability. In several instances, the Secretary-General affirms that progress was achieved in strengthening accountability but without providing any explanation or evidence to support his assertions. **In the view of the Advisory Committee, the lack of such details on the accountability measures and their application constitutes a weakness in the report of the Secretary-General. Moreover, the Committee points out that such information is necessary, not only for reporting purposes, but also for the day-to-day management of the implementation of the accountability framework, including monitoring progress, evaluating results and taking corrective action, as required. The Committee is concerned that the absence of such information may create the impression of a lack of commitment in implementing an effective accountability system.**” (A/66/738, para.5) (Emphasis in the original.)

**“Accordingly, the Advisory Committee recommends [to the GA] that the Secretary-General be requested to improve the content of future progress reports on the implementation of the accountability framework (see also para. 11 below) by providing more complete and transparent information that would enable a clear understanding of the principles and mechanisms of the accountability measures implemented or envisaged, including an analysis of the impact of their application on strengthening accountability, with key performance indicators and supporting statistical information to substantiate results.”** (A/66/738 para. 6) (Emphasis in the original.)

“To supplement the information contained in the report of the Secretary-General, the Advisory Committee requested, by way of example, additional information on a number of elements, including: (a) the number of staff who had been subject to the withholding of salary increments or non-extension or termination of their contracts for performance reasons; (b) the number of cases of misconduct in which disciplinary measures had been taken, as well as the number of cases in

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which recovery actions were undertaken in 2011; (c) the number of cases in which staff had been protected under the whistleblower policy; (d) the number of cases in which staff had been subject to sanctions and/or reprimand for violating the “zero tolerance” policy on gifts or hospitality imposed under the United Nations Supplier Code of Conduct; and (e) the number of cases in which recovery actions were undertaken pursuant to staff rule 10.1.” (A/66/738, para. 7)

The ACABQ has more recently noted (March 2013): **“With respect to the format and content of the report of the Secretary-General, the Advisory Committee is of the view that, seven years after the initial resolution of the General Assembly on this subject (see resolution 60/254) and two years following the adoption of an agreed definition of accountability (resolution 64/259, para. 8), much of the information contained in the report remains conceptual in nature, with insufficient practical detail provided on specific accountability measures and the impact of those measures, once applied. The Committee recalls its prior observation that progress reports on the implementation of the accountability framework should include an analysis of the impact of the application of the different accountability measures implemented or envisaged, with key performance indicators and supporting statistical information to substantiate results (A/66/738, para. 6)”** . (A/67/776, para. 5) (Emphasis in the original.)

The Advisory Committee noted with concern that no such plan was contained in the second progress report of the Secretary-General and recommended that the General Assembly reiterate its request to the Secretary-General in this regard. (A/67/776, para. 7)

### 7.4. Culture of Accountability

The culture of accountability was addressed by Kofi Annan when he said: “A key ingredient of any successful organization is an ethical and accountable culture pervading its staff from top to bottom.” (As cited in Michael Ross Fowler and Sumihiro Kuyama in Conclusion, p. 141, Envisioning Reform, Enhancing UN Accountability in the Twenty-First Century, United Nations Press

“The Committee [ACABQ] emphasizes the need for the Secretary-General to further develop the quantity, range and frequency of efforts in this regard, so that a culture of accountability becomes embedded in the core values of the Organization. The Committee looks forward to receiving information on the specific impact of such measures in the next progress report of the Secretary-General.” (A/67/776, para.14)

“As a prerequisite for achieving proper accountability and responsibility, the Committee underlines the importance of clearly articulating which United Nations officials have the delegated authority to take specific decisions and actions and identifying the legal source of authority in each instance. The Committee recommends that all of this work be completed without further delay.” (A/67/776, para.17)

It is hard to know the intended audience for such comments. The GA is sounding as though it is straining to provide much needed leadership. Then, with its approval of the Tribunal Statutes, the GA removed the Redesign Panel’s proposal that the offending managers will have to answer for their putative misconduct. Instead, the Tribunal Statutes call for corporate accountability with its subsidizing of the manager’s misconduct.

**“In a previous report on the subject of an accountability system in the United Nations**

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**Secretariat, the Advisory Committee indicated that an accountability framework could not, in and of itself, create a culture of accountability, and that such a culture required a change in the mindset of the staff, driven by a sustained commitment at the most senior levels of the Secretariat (A/64/683 and Corr.1, para. 52). The Committee added, in its report on the Secretary-General's first progress report, that the exemplary leadership of senior management was critical in setting the tone and the highest standards for a strong culture of accountability, and that a failure to hold senior managers to account would have a negative impact on setting the standards of accountability throughout the Organization (A/66/738, para. 15)." (A/67/776, para. 12)**

It may be seen that at this point in time (2015), there are still no SGBs, AIs, or ICs setting forth policy on the subject of accountability. Sadly, there is no mention of managerial accountability to staff; it proposes no indicators. This made clear there was little in the way of a favorable disposition or attitude to such matters. This suggests that accountability is of little importance. Should that be the case, justice would not really enter the equation.

A major indicator of the frailty of accountability in the UN may be seen in the internal system for the administration of justice. It is here that a review of the actions of the administration must be requested of the Management Evaluation Unit (MAU) prior to filing an appeal and, subsequently, an appeal may be made to the Tribunals.

### 7.5 Personal/ Individual Accountability:

The Secretary-General had previously proposed one dimension of individual accountability: "Personal accountability: the duty of an individual staff member to exercise defined responsibilities appropriately, with a clear understanding of the consequences, and **to explain and justify** to the official who conferred the authority the results achieved and the manner in which the authority has been exercised."<sup>1</sup> ("Investing in the United Nations for a stronger Organization worldwide: detailed report", A/60/846/Add.6, para. 7, 19 June 2006.) (JIU/REP/2006/6, para. 99)

As mentioned before, this should be seen as a necessary but insufficient component of a definition since the emphasis on "explain and justify" may be seen as a "reporting" function. Reporting is an essential aspect of accountability. But it is the beginning not the end.

Explaining and justifying might also suggest prospects of dissembling, deception, copping out, the opposite of an understanding of one's obligations and responsibilities.

There are no policies to elaborate in an operational sense how "accountability" is to be determined, and implemented; when it is underway and how and when it has been achieved and how and when it has not been achieved or to elaborate "...a clear understanding of the consequences....", or indeed, any consequences at all.

This would suggest little or no proactive role for managers for the adoption and expression and serving as a role model for accountability. The SG did not address the importance of accepting responsibilities for successes or shortcomings nor of being held accountable for successes or shortcomings.

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Nor does this definition address possible capricious and whimsical actions taken against staff members for no particular reason other than a manager's arbitrary antipathy. Such actions have included i) demotion, misrepresentation of a staff member's age, education, qualifications, experience, linguistic capabilities, and other qualifications to the Departmental Review Panels, ii) failure to apply personnel policies related to post applications and iii) the orders of an ASG/OHRM that staff were not to be notified of a Tribunal decision that would have enabled them to appeal key administrative decisions affecting their entitlements.

As a key indication of the eagerness of the UN to avoid accountability, it is absurd that the UN should have found itself in its 64<sup>th</sup> year with no definition and now in its 69<sup>th</sup> year with no established body of policy from which to quote in this important respect precisely because of the S.G.'s devotion to the avoidance of critical human resources policy and his the use of discretion and/or indiscretion in reaching decisions.

Nor does this definition include the acceptance of managerial responsibility for any shortcomings. While it does not explicitly say so, it appears that this is more programmatically oriented than service oriented as with personnel functions.

### **7.6 Individual Accountability: Holding Oneself Accountable**

Accountability and integrity are, and are seen to be, inextricably interrelated. Integrity would seem to be the indispensable foundation for the exercise of accountability.

Perhaps the highest form of individual accountability is when we hold ourselves morally, ethically and legally responsible for our actions. This goes to the heart of integrity: the ability to be honest with ourselves and with others, to accept ownership and the consequences for our actions and to be seen to do so.

Holding oneself accountable is perhaps most distant from the SG's definition.

The Redesign Panel noted: "An integrated and effective system of accountability requires that managers assume authority and responsibility for their decisions and, if necessary, answer for them within the context of the management structure and the justice system." (A/61/205, para. 120)

Sadly for lack of support by the SG and the GA, this may have been the closest the UN has come to an official expression on the importance of holding oneself accountable for one's actions. But it has not been adopted and so there seems to be no such expression in policy which is where it belongs.

Individual accountability refers here to the requirement that there be policies, duties, authority and responsibilities for an individual staff member, manager or senior official; that they be responsible and accept responsibility for the good faith application of those policies and to eschew a bad faith, or discriminatory and evasive application. An individual staff member, manager or senior official would hold him/herself responsible or accountable and would be individually responsible for his or her actions or inactions. This taking responsibility and taking ownership must be exercised, in the first instance, when we hold ourselves responsible; in the second instance, when there is established in policy the procedures and processes related to holding oneself accountable.

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This is analogous to the definition of accountability set forth by the International Civil Service Commission (ICSC) in its Framework for Human Resources Management where accountability **“...implies taking ownership of all responsibilities and honouring commitments; delivering outputs for which the staff member has responsibility within prescribed time, cost and quality standards; operating in compliance with organizational regulations and rules; supporting subordinates, providing oversight and taking responsibility for delegated assignments; taking personal responsibility for personal shortcomings and, where applicable, those of the work unit.”** (“Framework for human resources management”, A/55/30, annex II, p. 43. as cited in JIU/REP/2006/6, para. 98)

The fact that this statement seems never to have been used as a foundation upon which to build seems to be further evidence of the Organization’s commitment to avoidance. Despite the fact that the SRRs refer only to individual accountability, there is no body of U.N. policy for holding oneself accountable. With all the importance given to achieving the most economical Organizational functioning, this is something of an anomaly. Since there is no support in policy for this, the concept is far removed from the UN culture. One might expect the Organization to try to cultivate such a culture. That has yet to happen. Correspondingly, there are no incentives for such actions.

There appears to be little or no mention in U.N. policy of taking ownership, holding oneself accountable, and certainly there seems to be no indication of any such practice in the culture of the United Nations.

While staff members are those most frequently involved in accountability issues, there is every expectation that the same should apply to managers and to senior-level officials.

One dimension of holding oneself accountable involves an admitting of errant behaviour. But to whom does one confess? Who else is involved? Is this whistleblowing, squealing, tattling, telling? Being a large bureaucracy, holding oneself accountable might well involve misdeeds on the part of others. It should not be difficult to see where this leads: a discussion of whistleblowing.

### 7.7 Individual accountability: Being Held Accountable

A second dimension of individual accountability is being held accountable by others or when we hold others accountable to us.

The expression to be “held accountable”, implies that, in the first instance, one has failed or refused to hold oneself to be responsible for one’s actions and that one will have to be held to be responsible or accountable by another or higher authority.

Accountability is most often applied to staff members, especially in the form of Tribunal decisions and disciplinary matters; the same norms and standards should apply to managers and to senior-level officials.

“The Redesign Panel stresses that **the effective rule of law in the United Nations means not only the protection of the rights of staff members and management, but accountability of managers and staff members alike.**” (A/61/205, para. 6) (Emphasis added.) This recommendation was yet another casualty brought about by the UN’s eagerness to avoid accountability.

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Many, if not most, SRRs, SGBs and AIs offer some bases for holding staff members accountable. Their implementation may be at the discretion of the supervisor, or OHRM may well take an administrative decision based on personnel policies to justify a management/administrative decision, especially where a staff member is being held accountable by managers. Regardless, the holding of managers accountable seems to have made little if any progress. The absence of administrative norms for this, other than disciplinary procedures, makes clear that administrators seek to avoid holding other administrators accountable. Given this culture, this responsibility falls, or would appear to fall on whistle blowers or the judicial process.

Mechanisms for holding staff members accountable abound. At any time or place an administrative decision might be taken by managers and are frequently enforced by OHRM. Decisions may relate to performance, attitude, behaviors, can affect promotions, within-grade increments, suspensions, refusal to extend contracts, assignments, performance evaluations, even demotion in the absence of any disciplinary action.

Sadly, it is in the context of disciplinary measures one finds the only mention of due process, although it is not defined.

For most staff members and managers their **first** line of responsibility is to their duties and functions as often set forth in the Terms of Reference (TOR) accompanying their post. It is with respect to these TOR that the Performance Appraisal System (PAS) is primarily oriented. Access to resources, capacity and authority are central to being able to faithfully discharge one's responsibilities and for which one can be accountable. (A/60/846, Add.6, para 11)

### 7.8 Accountability and the United Nations: Institutional Contradictions

#### 7.8.1 Individual Accountability

The Staff Regulations and Rules provide for: "Regulation 1.3 (a) Staff members are accountable to the Secretary-General for the proper discharge of their functions." "Rule 1.3 (a) Staff members shall be evaluated for their efficiency, competence and integrity through performance appraisal mechanisms that shall assess the staff member's compliance with the standards set out in the Staff Regulations and Staff Rules for purposes of accountability." "Rule 1.5 (a) Staff members shall be held personally accountable for the accuracy and completeness of the information they provide." "Rule 10.1 (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 willful, reckless or grossly negligent."

The holding of individual staff members accountable is spelled out by these policy statements. Nowhere, however, do they make provision for corporate accountability whereby the Organization may assume responsibility for a manager's breaches of policy. While accountability is important in some contexts, this is not a body of policy on the subject.

Although accountability as established in policy, principally in the Staff Regulations and Rules, is exclusively individual in nature, (See former SRR 112.5 and current 10.1.) the Statutes of the

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Dispute Tribunal and the Appeals Tribunal, when making an award to a staff member, can only direct the SG to do so, a form of corporate accountability.

### 7.8.2 Corporate Accountability

The concept of corporate accountability does not appear to be spelled out and is not established in the Staff Regulations and Rules, SGBs or AIs. It seems, however, to be established *de facto* by the SG and *de jure* by the General Assembly but only in the context of the Statutes of the UNDT and the UNAT.

Instead of responsibility or accountability being assumed by the offending manager, supervisor or other high-level official as recommended by the Redesign Panel, the heart of corporate accountability is the assumption by the Organization, especially the MEU, of responsibility for preparation of replies to requests for management evaluation. In other words, the offending manager does not answer for his/her behavior. A key second element to corporate accountability is the Organization's provision of its finest legal services on behalf of the offending manager. A third element is the payment by the Organization of awards by the Tribunals to staff members to compensate for the managers' illegal conduct, breaches of policy and the failure to comply with policies.

All of the above significantly aggravate the "egregious inequality of arms" found by the Redesign Panel to contribute to the disparity in resources available to the management and staff members in the internal justice system. (A/61/205, 106)

Contrary to the call by the Redesign Panel for financial accountability on the part of both staff and managers, in any instance in which compensation is called for, the GA has established that the Tribunals may only direct that the individual staff member compensate the Organization or, where the staff member is to be compensated, such amounts be paid by the Organization, for the actions of an errant manager.

Thus the Statutes support individual accountability only where the Tribunals have found against the individual staff member and in favor of the SG. When the administrative decision against which the staff member, sometimes a manager, is appealing is sustained by the Tribunal, the staff member, sometimes a manager, becomes accountable by means of the decision and its implementation, usually by OHRM. Whatever penalties are assessed against the staff member are effected by OHRM. The staff member pays.

However, the Statutes do not support individual accountability when the Tribunals find in favor of the staff member, sometimes a manager, and against the SG. Any such awards are not paid by the offending manager but by the UN through its form of collective accountability. The UN pays.

Thus the SRR and the Tribunal statutes are fundamentally contradictory. This structural contradiction is incompatible with known norms of justice.

**This creates two classes of justice: one for the plaintiff and the other for the defendant. This is inherently unjust, inequitable and discriminatory.**

Another important constraint on the ability of the UNDT to ensure individual accountability relates to the referral of a case by a Tribunal to the SG "...for possible action to enforce accountability...."

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This language would seem to suggest that the Tribunals could find individual staff members or even managers to be accountable although this is not explicitly stated in the Statutes.

On the other hand, if the Tribunals could not find a staff member or manager accountable, it would seem they could not refer it for “enforcement of that accountability”.

What are the criteria for a finding of accountability? Do the Tribunals report to the GA on cases found to be accountable? How would the Tribunal learn of the disposition of a case by the SG?. A mere finding of accountability, however, would probably not be sufficient in order to enforce it administratively. Where an administrative decision had been taken against a staff member, and said decision had been found by the Tribunal to be valid, the administrative enforcement might be in keeping with the SRR and would be carried out by the OHRM.

From a management perspective, the disadvantages of individual accountability are significant when contrasted with corporate accountability. Corporate accountability is comparatively painless and easily available. Corporate accountability does not involve the offending official in any meaningful way. It involves no integrity, individual accountability, apologies, acknowledgement of guilt or fault; there are few or no awkward decisions; higher-level officials are not called on to decide the fate of the offender; the decisions are left to the Tribunal. There are few if any financial implications for the guilty or offending party; few, if any negative implications for a manager’s future career and therefore, few disincentives. The incentives for corporate accountability are significant and are seen by officials as being vastly superior. That is why corporate accountability is central to the avoidance of individual accountability.

In such instances, the determination as to accountability is not for managers but is transferred to the Tribunals. The key role of the Tribunals in reaching a decision as to guilt or innocence is not in question. The key question is why the SG should be the defendant? And why the Organization should assume responsibility for compensation of the plaintiff and why the offending manager should not be called to task.

Where there have been no reports to the SG and to the GA, it would suggest no official has ever held him or herself accountable. Should that be the case, this would be a quite damning comment on the UN culture.

The Secretary-General, in most cases, would much prefer to have a Tribunal decide an unpleasant issue rather than risking antagonizing his managers by making his own decision. That decision shapes the awards in powerful ways. Could a Tribunal possibly be a closer partner?

From the standpoint of the offending manager, corporate compensation awarded by the Tribunals relieves the manager of any financial obligation stemming from his or her actions and of the need to reform his or her behavior. Since any compensation awarded comes from the UN itself, the S-G, in effect, subsidizes and assumes accountability for the manager’s misbehavior. More to the point, corporate compensation should be seen as not only a subsidy for the errant behavior but also as a reward for it.

Accountability, therefore, is, in effect, rendered largely meaningless. But this should not convey the impression that corporate accountability is not important. To the contrary, for managers, while avoiding individual accountability is the highest order of importance, avoiding corporate accountability is a close second.

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### 7.9 The Erosion of Accountability: The Weakening of Staff Rule 112.3, Financial Responsibility:

While representing himself as a watchdog of financial responsibility, the S-G has, in fact, consistently weakened key policies. These have also been approved by the GA to reduce the prospect of managers and staff being held accountable for their actions. These may be seen in the progressive weakening of criteria by which one might be required to reimburse the UN for the Organization's financial losses.

i) "Any 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 the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction.**" (Rule 112.3, ST/SGB/Staff Rules/1/ Rev.8., 1 January 1995) (Emphasis added.) It should go without saying that the violation of any regulation, rule, SGB or AI that is appealed is going to involve financial loss to the Organization. [This writer had been reliably informed with regard to one of his cases that at about the half-way point the case had already cost the Organization over \$500,000. Although this case was "lost" by the administration there was no effort to recoup the costs from the manager or from the army of legal counsel that had represented him.]

ii) A few years later that Staff Rule was modified to read: "Any 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 the staff member's GROSS negligence or of his or her having violated any regulation, rule or administrative instruction.**" (ST/SGB/2002/1) Obviously, establishing accountability becomes much more difficult in this context.

iii) **But with the current Staff Rules prospects for accountability of managers are even more lax because much more stringent level of proof is required.** Effective 1 July 2009, this was replaced with Staff Rule 10.1: "(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 willful, reckless or grossly negligent.**" (ST/SGB/2009/7) No, longer is the violation of a regulation or a rule or an A/I cause for the reimbursement of the UN. The rest of the language seems clearly intended to ensure that as few as possible are held accountable. It is for the SG, not a Tribunal, to reach a finding of "willful, reckless or grossly negligent" actions in the absence of any policies or procedures to guide the reaching of such a finding.

None of these changes, all of which were proposed by the S-G, and approved by the GA could be said to foster a more rigorous accountability. To the contrary, these measures mark a long-term, secular weakening of accountability; this progression of changes in wording cannot convey the impression of increased vigilance.

This sets the bar at quite a height, effectively high enough to prohibit many, if not most, findings of managerial accountability. These changes, each time resulting in a higher threshold, seem to have been made so as to diminish the prospects for accountability by managers for their actions thereby facilitating the UN's avoidance of accountability.

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### **8.0 Recommendations:**

**It is strongly proposed here that:**

**the accountability context in which this takes place include consequences, both positive and negative.**

**approaches be established to foster one's holding of oneself accountable.**

**the 1995 definition be modified as set forth: "Any staff member should 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 the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."**

**consonant with the recommendations of the Redesign Panel, there should be a common sharing of the definition of individual accountability by the SRR and the Tribunal Statutes applicable to both staff and managers, so as to ensure individual accountability is the common standard except in those instances where the administrative decision relates purely to the application of benefits and allowances.**