

The UN Administration of Justice:

Redesign Panel Themes and Implementation

22 January 2016

In the United Nations, prospects for accountability have rested for the most part on the judicial function. With the intent of increasing those prospects, the General Assembly established a Redesign Panel for the purposes of optimizing the contributions of the internal system for the administration of justice.

“The Redesign Panel on the United Nations system of administration of justice was established by the Secretary-General in January 2006 pursuant to resolution 59/283, in which the General Assembly requested him to establish a panel of external, independent experts to review and possibly redesign the system of administration of justice at the United Nations.” (A/61/205) The members of the Redesign Panel were: Ahmed El-Kosheri, Diego Garcia-Sayan, Mary Gaudron, Kingsley C. Moghalu and Louise Otis,

The previous paper in this series, **Policies and Values for Individual and Corporate Accountability** outlined the very significant differences between individual accountability as set forth in the Staff Regulations and Rules (SRRs), Secretary-General’s Bulletins (SGBs) and the Administrative Instructions (AIs) and corporate accountability as set forth in the Tribunal Statutes. **This paper considers some of the key themes set forth by the Redesign Panel including independence, administrative review, administrative decision, individual accountability, corporate accountability, equality of arms and due process. The administration of justice depends on the administration of just laws. The dual classes of justice: one for the staff member and the other for the manager is inherently unjust, inequitable, discriminatory and is inconsistent with the administration of justice.**

1. The Internal Justice System to Ensure the Effective Accountability of Managers and Staff

For the Redesign Panel, “[e]ffective reform of the United Nations cannot happen without an efficient, independent and well-resourced internal justice system that will safeguard the rights of staff members and ensure the effective accountability of managers and staff members.” (A/61/205, Summary).

Staff and managers “...voiced strong support for a professional, independent and adequately resourced system of internal justice that guarantees the rule of law within the United Nations.” (A/61/205, 6)

“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, 6)

“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, 120)

2. Accountability for Management of Human Resources:

Management accountability, as used here, relates primarily to management of human resources rather than the management of material and financial resources.

The Secretary-General is designated by the Charter as the chief administrative officer of the Organization (Article 97). As such he has the authority to appoint staff under regulations established by the General Assembly (Article 101, para. 1). In the appointment of staff and the determination of the conditions of service, the paramount consideration is the necessity of securing the highest standards of efficiency, competence and integrity, with due regard paid to the importance of recruiting the staff with regard to gender and on as wide a geographical basis as possible.

This authority for human resources management is, in turn, delegated to the Office for Human Resources Management (OHRM) which, in turn, delegates much of the responsibility for appointment, assignments, reassignments, to program managers. While enabling a speedier recruitment and reassignment process, the delegation of such authority to the program managers leaves much to be desired since individual managers can each give their own interpretation to these actions.

Management accountability refers to accountability by those Offices, officers and others who have delegated responsibility for them, for the proper application and implementation of personnel policies as set forth in the Staff Regulations and Rules (SRR), Secretary-General's Bulletins (SGB), and Administrative Instructions (AI), and the responsibilities and rights they convey. The responsibilities created by these policies and the rights bestowed establish the foundations for staff expectations of the legal system and staff morale.

Prospects for accountability in the United Nations Secretariat have been anemic and uncertain at best. Because of its centrality to the issues of accountability and justice, this paper will review briefly the recommendations of the Redesign Panel (A/61/205).

3. Redesign Panel's Findings: The Former System for Administration of Justice

"The Redesign Panel found that the United Nations internal justice system is outmoded, dysfunctional ... ineffective,... (A/61/205, Summary) and is neither professional nor independent." (A/61/205, 5)

"The financial, reputational and other costs to the Organization of the present system are enormous, and a new, redesigned system of internal justice will be far more effective than an attempt to improve the current system." (A/61/205, Summary)

"In summary, the structure of the formal justice system is both fragmented and overcentralized. It is slow, expensive and inefficient. It does not provide proper or adequate remedies and fails to guarantee individual rights. It promotes neither managerial efficiency nor accountability. It generally lacks transparency and fails to satisfy minimum requirements of the rule of law. It enjoys neither the confidence nor the respect of staff, management or Member States." (A/61/205, 73)

It would be difficult to overstate the seriousness and the importance of these findings. In essence, they reflect a finding that the UN staff for decades have essentially been abandoned by the GA with little attention to a secretariat and system of justice to support their "efficiency, competence and integrity." To have seriously neglected the staff is, in effect, to have seriously neglected the Organization.

4. Independence

4.1 Independence: Redesign Panel

Paramount among the qualities recommended by the Redesign Panel was independence. A close reading of the report of the Redesign Panel reveals a clear and incisive understanding of the functioning of the UN. The report will be seen as a fairly dark yet realistic assessment of the UN's negative disposition towards a properly functioning system for the internal administration of justice. Sensing that the then current system had attained the negative characteristics described above by design rather than by accident, the Panel realized any attempt to significantly alter the system would probably encounter the disaffection of the administration and the GA.

The Panel's tone and recommendations are replete with references to the critical need for establishing an independent system for the administration of justice. The Panel used the terms independent or independence 38 times; it was stressed more than any other quality. The Panel seemed to understand that management could not be counted on to ensure the independence of those functions essential for the internal administration of justice.

Reflecting the perception that the internal justice system was not independent, staff members who did not have permanent appointments were sometimes reluctant to volunteer to serve as Counsel. "Further, they often believe that services as counsel could pit them against a management that has to review their employment contract." (A/61/205, Para. 104) Could the prospects for retribution and retaliation offer a more damning indictment of the prospects for integrity, the Charter's most important value.

There is also a fairly explicit recognition of a major issue: the long-term, structural abandonment of the principles undergirding the international civil service and the shift from permanent appointments to fixed-term appointments. Consequently there is a widespread fear of retribution by administrators against those who might do anything that would displease the administration. While the Panels of Counsel no longer exist, the need for volunteer counsels continues. They would be subject to all the same pressures.

4.2 Independence: Definition and Implementation:

The Secretary-General's reports make frequent mention of independence. However, there appear to be no operational criteria by which one might define, describe or assess independence. Unknown are: its defining characteristics, whether the Organization is moving closer towards it or farther away, whether the efforts may be succeeding or failing. Nor does there appear to be any elaboration or understanding of the reasons for independence and its importance. Consequently, there are no known criteria established in policy for a determination and establishment of an "independent" office.

For example, there are those offices that are established as independent but are not (the MEU). Then there are those offices that are not established as independent but are claimed to be (the OSLA and the Ethics Office).

4.3 Independence as critical to the internal justice system and vice versa

"Accountability can be guaranteed only by an independent, professional and efficient internal justice system." (A/61/205, 13) This makes clear the importance of independence to the realization of any assurances of accountability.

The Redesign Panel "...found that the administration of justice in the United Nations is neither professional nor independent. The system of administration of justice as it currently stands is extremely slow, underresourced, inefficient and, thus, ultimately ineffective. It fails to meet many basic standards of

due process established in international human rights instruments. For all these reasons, staff of the Organization have little or no confidence in the system as it currently exists.” (A/61/205, 5)

The Redesign Panel did not elaborate on ways by which the independence of the administration of justice had been compromised, denied or violated.

4.4 Independence: The Management Evaluation Unit (MEU)

The Redesign Panel, not having anticipated the establishment of the management evaluation function, explicitly recommended against the administrative review.

Instead, the GA decided: “... to establish an independent Management Evaluation Unit in the Office of the Under-Secretary-General for Management [OUSGM]....” (A/RES/62/228, 52) The creation of the Management Evaluation Unit stood the Redesign Panel recommendations on their head. It was designated to: i) undertake the management evaluation of ii) administrative decisions for iii) appeals filed against the SG.

It is the case that the term “independent “ in the UN lexicon is one of the most overused and underinvested terms. When the term is used, there seems to be an inclination to want to access the objectivity and disinterestedness the term conveys but with none of the commitment or investment required. The notion that an office would be located in the OUSGM and be independent is an oxymoron.

As noted, it is precisely the lack of any operational definition or description of “independent” that makes it so useful. As Humpty Dumpty said: “...it means just what I choose it to mean, neither more nor less.” This principle was argued again by the SG in the Wasserstrom case. (2014-UNAT-457) The Secretary-General “...reiterates that the Ethics Office is independent from the Secretary-General and it is not capable of making an administrative decision within the meaning of Article 2 of the United Nations Dispute Tribunal (UNDT) Statute; it has the authority to make only recommendations to the Organization that are not binding.” (2014-UNAT-457, 14)

The Ethics Office, however, was not established as independent in its foundation documents. Can an independent system be established wherein a number of the component parts are NOT independent? One would not intuit that that would be the case.

While the MEU is established as an independent office, as a fundamental aspect of the Office of the USGM, it has never functioned independently, nor could there be any ascribing of independence to that office. Where an issue had been presented for management evaluation, the MEU may have failed or refused to address it; it may have then argued it had never been presented. The MEU has also argued that if it had not addressed an issue, the Applicant could have appealed that failing thereby injecting yet another level of administrative decision that could be appealed adding yet more layers to the confusion.

The SG has reported that the MEU “...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 [OLA] and the OHRM Administrative Law Section (OHRM/ALS).The Under-Secretary- General for Management (USGM) 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” (A/65/373, para. 149)

The assertion that the MEU operates “independently” with no operational linkages between the MEU and any of the substantive offices and departments could only be disingenuous. This was a reckless use of the term which could only foster disdain and incredulity. 1) The MEU and the Office for Human Resources

Management (OHRM) both report to the USGM. These are two of the four major legal resources available to the SG. 2) Since the MEU represents the core thinking of the Secretary General and the USGM with respect to the issues in any particular appeal, and reports to the USGM, it is certainly not independent. Its arguments are not independent nor are they seen by anyone to be independent. 3) The offending manager is not required by statute or known to be involved in any meaningful way with respect to identifying the antecedents and the rationale for the offending decision or actions. 4) Since the MEU's principal task is to review contested administrative decisions for compliance with Organizational policy and practice, the MEU works closely with the OHRM/ALS which is the "keeper" of Human Resources policies and practices such as the Staff Regulations and Rules, the SGBs and the AIs and has the responsibility for providing the Respondent's Reply for any appeals to the UNDT. They all work closely with the Office of Legal Affairs, General Legal Division (OLA/GLD) especially in the event of an appeal to the UNAT where the OLA/GLD provides legal representation.

For any counsel who has had the opportunity to pursue an appeal, it is readily apparent there are few if any differences between the arguments of the MEU and those of the OHRM/ALS. The extent to which the OHRM/ALS endorses the MEU replies even when factually and legally inaccurate becomes very clear.

5. Administrative Review

5.1 Administrative Review: The Redesign Panel

"With the streamlining of the formal system of justice..." the Redesign Panel concluded, "...it is recommended that the present system of administrative review before action be abolished." (A/61/205, para. 87) It should be understood that this system involving the administrative review had called for the identification of the "administrative decision" to be eligible for an appeal.

In its stead, the Panel proposed: "The complaint should identify the **decision or conduct** that is challenged, the person responsible for it, the date or dates on which it occurred and, in the case of injury or loss, the date on which it was first suffered. Additionally, it should state the grounds of complaint and the relief claimed. The complaint should be forwarded by the Dispute Tribunal to the person whose decision or conduct is at issue and also to the appropriate designated legal representative of the Organization or fund or programme." (A/61/205, 89)(Emphasis added.)

"Proceedings in the formal justice system should be brought against the Organization or the relevant fund or programme, not the Secretary-General or the executive heads." (A/61/205, 172)

Thus the Redesign Panel argued strenuously against: i) the administrative review, ii) the administrative decision as the sole criterion for an appeal and iii) the filing of the appeal against the Secretary-General.

5.2 Administrative Review: The GA and the SG

If it had been adopted, the inclusion of "conduct" in addition to an "administrative decision" would have marked a watershed in jurisdiction for the Tribunals by significantly reducing the SG's prospects for avoiding accountability. But the SG and the GA did not adopt it.

The SG's arguments against these proposals for the elimination of administrative review seemed impressive: the management evaluation "...will be an essential management tool for executive heads to hold managers accountable for their decisions, including in cases where an improper decision has been taken. It will 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." (A/61/758, para. 29)

This was nothing new. The former administrative review process always offered this prospect although it was rarely implemented. Recently, the percent of the cases reversed has been between 4.7% and zero. (A/68/697, 63) This should raise significant questions as to the value derived from the investment for the MEU function.

5.3 Administrative Review: The Management Evaluation Unit (MEU)

Because it did not exist at the time, the Redesign Panel made no explicit mention of management evaluation. It did make clear, however, its distaste for the same function previously called the administrative review.

Previously, the review function fell to the Administrative Law Unit within the Office of Human Resources Management at Headquarters in New York, regardless of where the staff member was posted. Few staff members received a reasoned response, the vast majority receiving a letter at the end of the review period (60 days) telling them that they may file a statement of appeal with the JAB. (A/61/205, 87)

The new system proposed by the Redesign Panel called for proceedings to be "...commenced by a staff member by filing a complaint against the Organization or fund or programme by which he or she is employed." (A/61/205,88)

The Redesign Panel argued that the administrative review was the wrong approach since it deflected attention and accountability from the offending manager who should be the primary focus of the appeal and s//he should be the one to defend his/her action.

The MEU serves a critical gate-keeper function. As such, staff should be able to have the expectation that the first review of their appeal would be an honest, disinterested, objective analysis. Instead, staff are treated to a high powered, authoritative response from the SG's four units responsible for his legal representation: the MEU, the OHRM/ALS, the OLA/GLD and the work of the senior legal advisers for the Offices and Departments. This could significantly diminish prospects for an informal resolution.

There is a purported emphasis on peaceful resolution of issues and mediation: "The Unit is designed to give management a chance to correct an improper decision or to provide acceptable remedies in cases where the decision has been flawed, thereby reducing the number of cases that proceed to formal litigation." (A/65/373)

However, the SG has not been so determined to avoid spurious Departmental Recommendations which have, in cases, consistently and systematically denied the Departmental Review Panel honest, accurate information, or simply gave the wrong information related to the candidacy of the staff member. Where this has happened, it has mislead the Panel; it has abused the legitimate purposes of the Organization; it has corrupted the interests of the UN; it has frustrated the realization of its purposes; it has worked to achieve the desired discrimination against the staff member and favoritism towards others; it has failed to "enable a full and fair consideration of his applications for posts"; it has provoked 'direct legal consequences', and has produced a modification in the legal order, by extinguishing important rights of Applicants and their prospects of promotion.

The basic arguments established in the MEU's evaluation are usually incorporated subsequently into the Respondent's position to be presented with those of the OHRM/ALS in the defense of appeals to the UNDT and the OLA/GLD in the event of an appeal to the UNAT.

"Once a claim has advanced to the formal stage and a staff member has filed an application with the Dispute Tribunal, the Division [OLA/GLD] regularly provides advice to the entity representing the Organization.... includ[ing] the Administrative Law Section...." "[OHRM/ALS] "Such advice is necessary in

order to ensure coordination and consistency in the legal strategies and arguments advanced by the Organization on issues of policy and principle.” (A/65/373, 120)

What is apparent but unsaid is that “coordination and consistency” is used in addition to other purposes to limit any accountability or any awards on the part of the SG to a staff member while at the same time securing the maximum from the staff member to the SG.

“...the [Management Evaluation] Unit and the Under-Secretary-General for Management provide mutual support in the area of managerial accountability. The Under-Secretary-General supports the Unit by ensuring that managers respond to requests for comments on management evaluations adequately and in a timely manner. In this regard, compliance with requests for comments on management evaluations has recently been included in senior managers’ compacts between the Secretary-General and heads of departments and offices. The Unit assists the Under-Secretary-General to ensure managerial accountability in the Secretariat by maintaining records on the timeliness and adequacy of managers’ responses to requests for management evaluation and by regularly raising issues on management practice that arise from an analysis of its caseload.” (A/65/373, para 150)

This paragraph suggests the mutual support and exchanges are explicit refutations of the GA Resolution establishing the MEU as “independent”. There is little operational understanding or practice of the concept of managerial accountability and the requirements for it.

As an example of accountability, the SG reported the following: “In 2012, in connection with two management evaluation requests that resulted in settlement, the settlement proposal and accountability review were brought to the attention of the decision makers and their supervisors in writing and their signature was requested acknowledging their review of the matter. The fact that a managerial decision is being reversed is itself an accountability measure, which is noted by the manager and the head of his/her office and serves as a lesson learned.” (A/68/697, 64) The possibility of consequences seems never to have been discussed.

“The Secretary-General notes that a number of entities with an independent status have been established pursuant to General Assembly resolutions. These entities include the **Ombudsman, the Office of Internal Oversight Services, the Ethics Office and the Office of Administration of Justice**. The issue of the competence of the Dispute Tribunal over acts or omissions by these independent entities raises difficult questions.” (A/65/373, para. 213)

6. Administrative Decisions: The UNDT

Eviscerating the Redesign Panel’s central recommendations, the GA and the SG made the appeals process captive to the “administrative decision” by means of its inclusion as a fundamental component of the Tribunal Statutes. This represented the elevation of law over justice and was a key component in assuring the SG a very significant control over the appeals process and enabling the flight from accountability:

The Dispute Tribunal Statute:

“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.”

Even when argued in appeals before the UNDT and the UNAT, these Tribunals preferred to follow the guidance of the MEU and the OHRM/ALS by rejecting the key decisions of Andronov as arguments and not addressing them, instead preferring to repeat the one definition of administrative decision, also in Andronov. The ignoring of the decisions of the Administrative Tribunal in Andronov should be quite untenable especially as the UNDT and the UNAT give no reasons in fact or law for ignoring the fundamental issues and the Administrative Tribunal decision underlying them. This rather single-minded adherence to simply the “definition” of the administrative decision ignores the many nuances of the term and finds no basis or foundation in judicial wisdom. This results from a rather out-sized influence by the SG and the GA.

The Organization finds itself in the lamentable position that the GA, the SG and the Tribunals have abandoned high judicial principle in favor of their insistence on quibbling over whether the final administrative decision has yet been taken...a process that assures the erosion of justice, fairness and equity. This is related to the refusal to include to international human rights standards while including SRRs, SGBs and AIs.

This is a major reason this author is recommending an in-depth investigation and analysis of cases rejected for lack of administrative decision to enable a perception of the appeals and the decisions that they spawned. This author has found so many issues raised in the appeals that have then been totally ignored by the Tribunals. The ignoring or the misstatement of these issues lends a bad taste to the decisions and does a major disservice to the interests of justice and to the Organization.

The UNDT and the UNAT must now continue with the old, narrow, restrictive, approach with their focus on the administrative decision that gave the administration greatest latitude to flee from accountability. As a result, the SG and the UNDT have carved out many important bodies of administrative actions that they have unjustly found not to be administrative decisions and therefore non-competent to address. This has denied justice on a significant scale. Performance evaluation reports, departmental recommendations and others could be labelled “recommendations” but which in every real sense constituted decisions. Other examples have included actions which were not announced to the staff member, such as departmental recommendations, and so, were effectively concealed from him or her. Then, following the announcements of the promotions or transfers, the reasons given, including legitimate and illegitimate ones, have been held to be confidential and were not disclosed. There is, therefore, nothing to appeal except the fact of promotion or not and since nobody is ever entitled to a promotion regardless of merit, with the exercise of confidentiality, there is little or no prospect of the appellant being able to establish the presentation of false and misleading information. Thus, is the offending manager shielded and the Applicant is denied any managerial accountability.

The thorough and essential discussion of administrative actions in Andronov has been ignored while the single paragraph on an administrative decision has been used to dismiss a significant number of key cases.

An independent audit of the “independent” agencies could determine the nature, purpose and extent of their interaction with various parties. How does an “independent” agency operate? How does it NOT operate? What criteria must be adhered to to ensure independence? How is the program budget set? How is the work program set? How are candidates determined? How are staffing decisions made? Who appoints? Who promotes? To whom are the officers accountable?

7. Individual Accountability

7.1 Individual Accountability: Redesign Panel's Arguments

The General Assembly had long evidenced concern as to the failure on the part of the S-G to hold staff members accountable for their misdeeds. The General Assembly, having been aware of the lack of individual accountability had to make the extraordinary request that "...the Secretary-General and the executive heads ... take the disciplinary actions necessary in cases of proven fraud and to enhance the **individual accountability** of United Nations personnel, including through stronger managerial control...." (Financial reports and audited financial statements, and reports of the Board of Auditors," General Assembly resolution 51/225 of 16 May 1997. (Emphasis added.)

Aware of the limited accountability of managers and senior officials under the previous system, the Redesign Panel placed much more emphasis on the accountability of individual managers and not on corporate accountability that shields them. It held 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)

More specifically, with respect to individual accountability the Redesign Panel found: "**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) (Emphasis added.)

This is quite consistent with the definition of individual accountability as holding oneself accountable put forth earlier.

The Redesign Panel's penetrating insight as to the nature of the UN's dysfunctional managerial culture may be seen in its antipathy for its conflicting standards of accountability: "In order to achieve an effective change in management culture and to properly address the prevailing perception that the present system shields managers from accountability, the Redesign Panel [proposed] that **they personally answer for their acts and decisions** and that the formal justice system **entertain applications for the enforcement of individual financial accountability.** Moreover, United Nations Dispute Tribunal judges should refer appropriate cases to the Secretary-General for possible action to enforce accountability." (A/61/205, para. 121) (Emphasis added.)

This seems to have been one of the earliest Redesign Panel proposals to have been choked off. The prospect of shielding managers is a powerful one that is seen to happen far too frequently.

The avoidance of managerial accountability may be seen in a complex set of strategies including: i) avoiding an operational definition and description of managerial accountability; ii) denial of: personal answering for acts and decisions, managers' responsibility for securing legal counsel and liability or consequences for their errant acts and decisions; iii) addressing appeals to the SG instead of to the organization; iv) limiting Tribunal decisions to breaches of SRRs, SGBs, AIs rather than breaches of international human rights instruments; v) the marshaling of the SG's legal resources for appeals including the MEU, the OHRM/ALS, the OLA/GLD and the senior legal advisors for offices and departments and yet excluding them as instruments of the formal system for the administration of justice; vi) avoiding calling attention to the extent of these resources and avoiding their reporting to the GA; vii) rejecting the Administrative Tribunal decision 1157 in the Andronov case in which it cited the inappropriateness of the reliance on the administrative decision as the primary requirement for an appeal.

The Redesign Panel noted a significant defect the UN's administrative law model: there is no simple procedure by which to obtain a remedy unless and until there is a formal decision.²³ / (23 To overcome this problem, the rules of some specialized agencies and the ILOAT Statute have provisions deeming a negative decision to have been taken if notification of a decision has not been made within a specified

time. There is no equivalent provision within the UNAT Statute. However, UNAT has recently held that it has jurisdiction with respect to “implied” decisions. UNAT Judgement No. 1157, Andronov.) (A/61/205, para. 70)

The Respondent, however, has held fast to the requirement of an administrative decision using the following definition in Andronov from the former UN Administrative Tribunal: “There is no dispute as to what an “administrative decision” is. It is acceptable by all administrative law systems, that 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 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. They are not necessarily written, as otherwise the legal protection of the employees would risk being weakened in instances where the Administration takes decisions without resorting to written formalities. These unwritten decisions are commonly referred to, within administrative law systems, as implied administrative decisions”.

Regardless, “there is no official definition of ‘administrative decision’ at the United Nations. To interpret the meaning of the term, it is necessary to analyse the staff regulations and rules, the Statute of the Administrative Tribunal and the Tribunal’s jurisprudence.” (JIU/REP/2000/1, 38) “An ‘administrative decision’ within the meaning of Staff Regulation 11.1 is a decision by the Administration concerning a staff member’s terms of appointment, including all pertinent regulations and rules, which must be communicated to the staff member in writing and which must apply personally to him or her, thus causing imminent and actual effects on the staff member’s terms of appointment.” (JIU/REP/2000/1, 42)

The Redesign Panel was quite clear that the Administration had persisted in adhering to the concept of the administrative decision and giving the narrowest, most restrictive and formalistic interpretation to the concept of the administrative decision. Not only had the administration fervently embraced the reliance on concept of the administrative decision, but the GA insisted the Tribunal also follow this policy, set forth as it is in the UNDT Statute, Article 2, (1) (a), (b).

The Andronov case (UNAT, No. 1157) is instructive because of the logic of the UN Administrative Tribunal and the flat-out rejection by both the GA and the SG of this logic and its principles.

In the case of Andronov, “[t]he **[Administrative] Tribunal believes that the legal and judicial system of the United Nations must be interpreted as a comprehensive system, without lacunae and failures, so that the final objective, which is the protection of staff members against alleged non-observance of their contracts of employment, is guaranteed. The Tribunal furthermore finds that the Administration has to act fairly vis-à-vis its employees, their procedural rights and legal protection, and to do everything in its power to make sure that every employee gets full legal and judicial protection.**” (Emphasis added.)

“Consequently, the Tribunal determines that, in cases where the Administration believes that there is no specific administrative decision to be challenged in proceedings before the JAB, the rules should be interpreted by the Administration so as to ensure that legal and judicial protection are provided.” (Emphasis added.)

The requirement for the identification of an administrative decision gives the appearance of access to the judicial process while, in reality, enabling its denial in far too many instances.

The continued focus on an administrative decision as constituting the boundaries of legitimate involvement of the Tribunals, only a small part of which has emerged from Andronov (UNAT, No.1157) is intellectually, ethically, legally and judicially unjust. To continue the pretense of the SG, and the UNDT that

the one quoted paragraph of what an administrative decision is and that it constitutes justice is untenable. It ignores the far stronger elements of justice identified by the UNAT in its earlier paragraphs.

7.3 Individual Accountability: The Redesign Panel: Filing of an Appeal

The Panel held that “[u]nder the proposed system, proceedings should be commenced by a staff member by filing a complaint against the Organization or fund or programme by which he or she is employed.” (A/61/205, 88)

“The complaint should identify the **decision or conduct** that is challenged, the person responsible for it, the date or dates on which it occurred and, in the case of injury or loss, the date on which it was first suffered. Additionally, it should state the grounds of complaint and the relief claimed. The complaint should be forwarded by the Dispute Tribunal to the person whose **decision or conduct** is at issue and also to the appropriate designated legal representative of the Organization or fund or programme. The person whose **decision or conduct** is in question should personally file an answer to the complaint within 30 days. There should not be more than one further pleading by each side after the answer is filed, and unless mediation is sought, the time for filing those pleadings should not exceed 21 days.” (A/61/205, 89) (Emphasis added.)

The emphasis on “decision or conduct” was of paramount importance. The intent of the Redesign Panel was to shift the focus of accountability away from those instances in which there may have been no written decision and towards the manager who had taken the offending decision or action, and away from the SG. It sought to ensure the accountability of managers through their engagement with defending their own decisions or actions and to eliminate the anonymous process whereby those who had taken the decisions or actions were not immediately involved.

7.4 Individual Accountability: The Imbalance in the Numbers of Staff and Management Cases Accepted and Rejected.

For the UNAT in 2013, of the 99 appeals related to UNDT judgements, 62 were filed by staff and 37 by the SG. While we would like to think there is no hanky-panky involved, 73% of appeals by staff and only 16% of the SG’s appeals were rejected by the UNAT. While only 27% of appeals by staff were approved in full or part, a whopping 84% of the SG’s appeals were approved in full or part. (A/69/227, 81) This record of inequity has raised serious questions as to whether the system for the internal administration of justice has not become a system for the internal administration of **injustice**. The SG has suggested the differences may be due to the quality of legal assistance. If true, it is further evidence, if any be needed, of the continuing gross inequality of arms identified by the Redesign Panel. Far more than mere inequity in the access to legal counsel, these figures would seem to highlight the extent to which many of the elements of the system for the internal administration of justice favored by the SG may have exceeded his expectations. More importantly, they also suggest a sinister and close partnership between the Tribunals and the Respondent and a seriously compromised independence on the part of the Tribunals.

It is the case that the SG has not triumphed merely with respect to having pre-empted only one or two elements of the system for the administration of justice, but rather many of the most important elements of the entire system.

Most importantly, doubt has also been cast on the UN’s wisdom of its strategy of dismissing some of the most important of the Redesign Panel’s recommendations regarding the integrity of the appeals process, including administrative decisions, administrative review (the MEU), the Registries, the UNDT, the UNAT

and equality of arms. This extends as well to the process by which the justices are selected, with the special involvement of OHRM.

Second. This writer maintains there is a fundamental inequity and injustice when, as one may see from the SG's own reports: the vast imbalances between the UNAT disposition to favor appeals by the Secretary-General and to disfavor appeals by staff. These make clear the huge impact of legal and unjust avenues to the unbinding of "binding" decisions.

Third, the SG has suggested this significant and persistent imbalance is accidental with no evidence to support such a conclusion. As will be seen in a number of case studies, the Tribunals often embrace the views and the language of the MEU, the OHRM/ALU and the OLA/GLD as their own.

Fourth, as will be noted, the SRR provide only for individual accountability while, to the contrary, the Tribunal Statutes rely importantly on corporate accountability. This structural contradiction discriminates and skews the justice system in favor of the management and disfavors the staff. It ensures there is little or no accountability for the individual manager but only for the individual staff member and no justice for either.

Fifth, former Staff Rule 112.3 provided: "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 decision." (ST/SGB/2002/1) It would seem that the Tribunal itself could have directed the Secretary-General to implement the provisions of Staff Rule 112.3. It had done so with respect to other provisions for the Staff Rules involving allowances and entitlements. But the former Administrative Tribunal declined to decide that individual accountability was appropriate in three cases in particular. Instead it merely recommended that the Secretary-General "give consideration" to the application of 112.3. In so doing, the Tribunals seem to have exercised a pattern of discrimination as to those articles of the SRR it would decide should be enforced by directing the SG to do so and those it would merely "refer" to the SG. In such cases the timidity of the Tribunal may constitute a barrier to a binding decision.

Sixth, Article 10(8) of its Statute reads: "The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations...for possible action to enforce accountability." This suggests it is only with respect to the enforcement of that accountability that the Dispute and Appeals Tribunals are constrained in their ability to order individual accountability.

It appears that an individual may be held accountable only if, following referral to the Secretary-General, the Secretary-General wants him or her to be held accountable and not if the Secretary-General does not want him or her to be, despite the provisions of the Staff Rules and Regulations. Sadly, there is an increasing body of cases suggesting the SG does not believe Tribunal decisions should be binding on him and, in fact, are not. With no authority for such discretion, this seems to be one more example of an avoidance of accountability.

Those responsible for adverse administrative actions do not assume responsibility and the SG is as directly involved as ever in the litigation, decision-making and avoidance of accountability.

7.5 Individual Accountability: Disciplinary Process

As may be seen below, the disciplinary process has ensured that individual accountability is largely confined to staff members and is only rarely applied with respect to managers. Those at the D-1, D-2, ASG and USG levels are rarely if ever held to be "accountable" and almost never subject to disciplinary actions for their administrative decisions, as may be seen below in the annual reports on Practice of the Secretary-General in Disciplinary Matters and Cases of Criminal Behaviour:

Period	Staff Members	Managers	Source
1 July 2014 to 30 June 2015	64	0	ST/IC/2015/22
1 July 2013 to 30 June 2014	38	0	ST/IC/2014/26
1 July 2012 to 30 June 2013	43	0	ST/IC/2013/29
1 July 2011 to 30 June 2012	49	0	ST/IC/2012/19
1 July 2010 to 30 June 2011	107	0	ST/IC/2011/20
1 July 2009 – 30 June 2010	29	5 officials	ST/IC/2010/26
1 July 2008- 30 June 2009	50	0	ST/IC/2009/30
1 July 2007-30 June 2008	36	1 manager	ST/IC/2008/41
1 July 2006-30 June 2007	28	0	ST/IC/2007/47
1 July 2005-30 June 2006	16	1 manager	ST/IC/2006/48
1 January 2004-30 June 2005	24	0	ST/IC/2005/51
2002-2003	29	0	ST/IC/2004/28

(Staff members at the P-2 rank and above are also called “officials”.)

The Administration’s reports show that discipline over a twelve and a half year period was applied to 513 staff members but to only 2 managers, and 5 “officials” who may be presumed in many cases to have known or ought to have known what had been going on. Could it really be the case that so few managers were involved in misconduct or that of their staff?

This “Practice of the Secretary-General” sends a clear message to these and all other officials: “disciplinary measures” can result in effective immunity for managers which too often leads to impunity. It is clear there would seem to be little in the way of disincentives to dissuade managers from any misconduct.

This raises questions as to the extent to which the justice system is harnessed or avoided in addressing disciplinary matters. There seem to be few disciplinary cases that make it to the Tribunals.

Perhaps this should be the next major frontier: investigating the uses and misuses of “discipline” and the processes and procedures associated with it. Certainly the SG’s figures provide little confidence that objectivity is afoot in the land. The figures on the disciplinary actions would suggest a skewed, less objective inclination to investigate, pursue facts or to examine disinterestedly prospects of managerial incompetence and misdeeds. Furthermore, it confirms that accountability will be visited primarily if not exclusively on the lower-ranking while managers may expect to avoid any substantive investigation or to be absolved. At the same time, there seems to be little emphasis on institutional learning of means to avoid the same or similar incidents in the future. All of this facilitates the avoidance of managerial accountability.

The failure to hold managers accountable sends a clear signal that deterrence is not at work here. This gives all the appearance of a corruptible, incorrigible “old boys network”, except that it now includes women

8. Corporate Accountability

8.1 The Redesign Panel: Shielding of managers

Officials often go to any length to avoid being the subject of investigations or undertaking them to resolve charges of misconduct, or assessing penalties, instead preferring that these be done by the Tribunals.

The SG rejected the Redesign Panel's recommendation that the SG's not be involved in litigation and that he be seen as the guardian of the integrity of the internal justice system. Thus, the GA and the SG breathed new life into corporate accountability, characterized by little or no explicit statutory involvement of the errant managers whose adverse administrative actions were being appealed.

Three principal characteristics of corporate accountability as they apply to errant managers are: i) the Organization's provision of free legal counsel to answer the appeal on behalf of the errant manager, ii) should the manager need counsel during the appeal process. (This is assured by the MEU, the OHRM/ALS and the OLA/GLD.) and iii) the Secretary-General, not the errant manager, paying any amounts found to be due to an appellant because of the actions of the errant manager. (UNDT Statute, Articles 2 and 10)

Amounts found by the Tribunals to be due to the staff members may be only a small part of the financial implications for the Organization in any particular case. Almost every case, whether "won" or "lost" by the Organization, may involve significant financial losses for the Organization, mostly in the form of legal costs. These costs must enter into any calculation of financial losses.

Management perceptions as to 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; it involves little if any pain; there are no awkward decisions; higher-level officials are not called on to decide the fate of the offender; the decisions are usually left to the Tribunal. There are few if any financial implications for the guilty 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 especially as they do not raise the issue of deterrence.

Decisions may be ascribed to a single manager or to multiple managers as in the case of a group or collective decision by the OIOS, Ethics Office, OHRM, etc. The signer of the letter is the official taking the decision.

Awards to an Applicant or penalties assessed against management by the United Nations Tribunals have been paid by the United Nations as an organization, if at all. Such awards are far too frequently subject to appeals by the SG to the Appeals Tribunal who often seeks significant reductions if not their elimination. This is the heart of U.N. corporate accountability. Such awards and penalties are rarely, if ever, assessed to the official against whose administrative decision the Tribunal has found. In other words, the Organization, rather than the manager, financially compensates the staff member for any wrongs found by the Tribunals to have been committed against him or her. The payment by the Organization of any awards to the Applicant is often seen as a subsidy to the offender for his or her misdeeds and might well even be seen as a reward.

Where there really is no individual accountability by managers, there really is no accountability. This goes to the heart of the UN's avoidance of accountability.

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

This results in far higher costs to the UN in terms of legal defense of officials and the subsidizing of the awards made to staff members. When the General Assembly seeks to reduce the financial implications of the system for the internal administration of justice, this is the place to start.

The lack of action by the Secretary-General with respect to any referral for accountability by a Tribunal should be seen as deliberate rejection and a refusal to be held accountable. Far from setting the best “tone at the top”, this firmly establishes an object lesson for staff as to how and why they too should avoid any accountability. This, of course, does little more than to establish the lowest common denominator as the example for the organization.

Except in the Statutes of the Tribunals, there are no provisions in the SRR, the SGBs and the A/Is to compel the administration to pay the corporate amounts due.

8.2 Corporate Accountability: Departmental Recommendations:

When a manager has decided to extensively, repeatedly and deliberately misrepresent a staff member’s facts, qualifications and experience, through the provision of false information and when true and accurate information is a prerequisite to the decisions of the Central Review Board, the Tribunals have decided this does not constitute an administrative decision. (UNDT-2010-111, 2011-UNAT-173) This author maintains this malignant process constitutes a decision to disable the legitimate functioning of the Review Board. Such a transparent attempt to manipulate the Board’s selection decision is little other than open contempt for the legitimate Organizational purposes for which the Board was established. More importantly, it places the manager’s decisions out of reach by any Organizational legal process.; it suggests the Tribunals’ affirmation of this process; the legitimate process is ignored, the manager is shielded, the Organization is shielded and this becomes one more element in the avoidance of accountability. Yet, because the process corresponds to the requirements of the relevant SGB or AI, it has all the appearance of legality. At the same time it is obviously unjust. Finally, it is the staff member, not the manager, who has the burden of proof to establish the existence of these conditions.

The drafting of inaccurate and spurious Departmental Recommendations for promotions transcends alarming misconduct. In one single Departmental Recommendation the supervisor: i) misdated the staff member’s date-on-entry so as to establish a lesser seniority; ii) deleted languages which the staff member uses; iii) omitted mention of hardship mission experience for which the staff member received stellar evaluations; iv) deliberately misstated the staff member’s performance evaluation report, as well as v) competence, vi) integrity; vii) experience, viii) seniority in grade; ix) professional qualifications; x) achievements; xi) supervisory abilities, xii) leadership abilities; and xiii) mobility in hardship duty stations. None of this was made known to the Departmental Review Board or the staff member

The Dispute Tribunal, in full support of the Respondent, decided: “While staff members are entitled to request the quashing of decisions not to appoint them to a post for which they have applied and, at that time, to criticise the future supervisor’s recommendation, that recommendation is only a preliminary to the administrative decision not to appoint them and therefore has no direct legal consequence for their terms of appointment.” (UNDT-2010-111, 18) (2011-UNAT-173)

Had the Dispute Tribunal wished to demean and delegitimize the Review Board’s functioning and its mandate and dismiss the Administrative Instruction (ST/AI/1999/8) that establishes the policy and processes created to applications for promotions could it have done so more effectively?

“There is no right of appeal with respect to an appraisal [PAS] rating, although a staff member may appeal a subsequent administrative decision based on a rating made after proceedings before a rebuttal panel.” (A/61/205, 63, footnote 20)

There is a catalogue of ways, however, by which offending managers may take actions against staff members in the absence of a formal administrative decision. Another example may be seen when a staff

member undertakes difficult and hazardous missions and, on return, even in the context of routine activities, much less departmental recommendations and performance appraisals, an outstanding, life-saving service is completely ignored, or worse, denied.

It is precisely the focus on the “administrative decision” that deprives staff and the Organization of managerial accountability. Given the wide range of strategies cultivated by management for circumventing the “decision” component of the administrative decision, in many cases it has been able to achieve its objectives in the absence of a decision. This is a key element in enabling the avoidance of accountability.

9. Equality of Arms:

9.1 Equality of Arms: Staff Access to Legal Counsel, The Redesign Panel

“The Redesign Panel notes that legal assistance to the management of the Organization is undertaken not by volunteers without legal training, but by a cadre of professional lawyers in the Department of Management and the Office of Legal Affairs. This disparity in legal resources available to the management and staff members has created an egregious inequality of arms in the internal justice system.” (A/61/205, 106)

The Panel proposed: “...guaranteeing “equality of arms”, thus ensuring for all staff members access to professionalized and decentralized legal representation.” (A/61/205. Para. 14)

“A professional Office of Counsel should be established for the United Nations, staffed by persons with legal qualifications — at the minimum, qualifications recognized by the courts of any Member State. They should serve on a full-time basis and be properly resourced. Considering that the Office of Counsel will cover not just the Secretariat but also the funds and programmes, it is proposed that the latter contribute to the resources of the Office.” (A/61/205, 107)

The “Office of Counsel will not preclude voluntary service ... by retired staff members of organizations in the United Nations system who are qualified lawyers, as a back-up to full-time counsel. Nor will it preclude the possibility of recourse to outside counsel either on a pro bono basis or paid for personally by staff members.” (A/61/205, para. 108)

“To avoid conflicts of interest and to ensure independence, the proposed Office of Counsel should be relocated from the Department of Management to the proposed Office for the Administration of Justice (OAJ).” (A/61/205, para. 111)

The OAJ would have among its functions:

“(b) Overall supervision and coordination of registries and the Office of Counsel;”

“(g) Overall responsibility for the management of financial and budgetary matters for the formal justice system and the Office of Counsel, including interface with the General Assembly; (A/61/205, para. 124)

While ensuring the provision of legal counsel for staff, under the proper circumstances, it is still inequitable, asymmetric and discriminatory that the Office of Counsel for staff should be placed under the Office for the Administration of Justice and that the OAJ have no oversight of the very significant legal resources for the SG: the MEU, OHRM/ALU and the OLA/GLD and the senior legal advisers for the Offices and Departments. Indeed, under such asymmetric circumstances, can the OAJ really be said to administer justice?

The Redesign Panel had used the term “inequality of arms”, with the intent of ensuring staff members’ access to professionalized and decentralized legal representation and resources.

This right to equality of arms has been established by multiple international agreements, including Article 14 of the International Covenant on Civil and Political Rights (1966), Article 8 of the American Convention on Human Rights (1969), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and Articles 7 and 26 of the African (Banjul) Charter on Human and Peoples' Rights (1981). The United Nations Human Rights Committee has also asserted (in the *Jansen-Gielen v the Netherlands* and *Aarela and Nakkalajarvi v Finland* cases) a duty of the courts to ensure equality of arms.¹⁵ Toward this end, UN management should guarantee that – at the absolute minimum – it will devote at least the same amount of financial resources to providing legal aid to its staff as it does to providing legal services to management in labor disputes. (Office of Staff Legal Assistance Proposal for the United Nations, Government Accountability Project, Nov. 8, 2007, p. 10)

The Government Accountability Project (GAP) proposed: “Toward this end, UN management should guarantee that it will devote an amount of financial resources for professional legal aid for staff that is – at a minimum – equivalent to the amount provided to fund legal services for management in employment-related disputes. In addition, the UN should commit to deadline, salary and workload parity.” (*Ibid.* p. 3)

It is the case that an asymmetrical and egregious inequality of arms exists not only with respect to legal counsel, but also to investigation, assumption of accountability, the taking of disciplinary measures and the SG's appeal of UNDT decisions as well.

9.2 Equality of Arms: The OHRM/ALS and the OLA/GLD.

While the OSLA offered great promise, the reality turned out to be something less. In part, the egregious inequality of arms exists because of budgets. Addressing its budget, the OLA/GLD set forth a number of arguments as to why it should be increased to accommodate the increased burden of responsibilities it confronts under the new system:

“The impact of the new system on the Division is not solely related to the number of appeals filed with the Appeals Tribunal; the nature of the work undertaken by the Division in this area has also substantially changed. Under the previous system, the Division had a generous time frame (a six-month deadline) to draft responses to the Administrative Tribunal. Generally, these responses were based upon the well-established jurisprudence of that Tribunal, and the Division's work was thus simpler and more manageable. However, under the new administration of justice system, the deadlines for filing and responding to appeals have been shortened to 45 days. Moreover, notwithstanding the 45-day deadline established in the statute of the Appeals Tribunal, the Tribunal shortened the deadline for filing an appeal to 15 days in the case of several interlocutory appeals and imposed a 48-hour deadline for the Secretary-General to respond to a motion for interim measures in which a staff member requested the Appeals Tribunal to order the payment of \$80,000. In addition, the judgements of the Dispute Tribunal have raised new issues that cannot necessarily be addressed by drawing on the jurisprudence of the Administrative Tribunal. The Division is also frequently called upon to provide advice on an urgent basis to the entities representing the Organization before the Dispute Tribunal in advance of its regular hearings. (A/65/373, para. 127)

All of these arguments which were applied to the search for increased funding for the OLA/GLD could also be said to apply to the OSLA. Instead, the GA seems to have continued its search for new ways to aggravate, if not eliminate, prospects for “equality of arms”. This principally takes the form of “self-funding” mechanisms for staff legal representation. The GA seems to have passed over any prospects for “self-funding” for errant managers whose actions and decisions were alleged to be in non-compliance with the terms of appointment or the contract of employment.

The administration, in addition, to the MEU, OHRM/ALS and the OLA/GLD, also has access to the Senior Legal Advisers for the Departments and Offices. The SG may rely on these highly-paid and highly professional legal resources and they may be called upon by the administration at any stage to

address staff appeals to UNDT and UNAT as well as to manage the SG's appeals of UNDT decisions and to be involved in mediation efforts for the resolution of conflicts. Meanwhile, the GA is seeking all manner of ways to absolve itself of the responsibility of providing counsel for staff.

The GA seems to want to offset the high costs of all of the Respondent's legal teams by removing funding for the OSLA and calling this the internal system for the administration of justice. The OSLA seems to be the only aspect of the formal system for the administration of justice on which it is waging fiscal war. This approach is guaranteed to foster an even greater asymmetry and inequality of arms. The GA appears not to have asked itself about the very significant decrease in the numbers of staff appeals that would be likely to take place if managers had to pay for defending their own administrative decisions and the amounts to be saved. Worse, at no point does the GA seem to view the administration of justice as an investment: an investment in the integrity of staff and managers, in their morale, and in the Organization. Instead, costs seem to be viewed as unwarranted intrusions and waste.

Because of the G.A. and S-G's, refusal to commit to the creation of the "equality of arms" proposed by the Redesign Panel, staff do not have access to even a small fraction of the SG's budgetary and legal resources. The continued imbalance between resources for legal protection for management and staff is an excellent approach to aggravating the inequality of arms.

Depending on the year, between 1/3rd and 2/3rds of staff pay for their own counsel. This would seem to reflect a lack of full trust and confidence in the OSLA and its purported "independence". Staff believe they must often pay for initial and subsequent appeals and defending against the SG's appeals. In those cases in which the OSLA provided legal assistance, were these paid staff of the Office? Legal counsel paid for by the OSLA? Were the counsels those who volunteered to work for the OSLA?

The Office of Staff Legal Assistance was not established as independent (A/RES/62/228) and yet it is an important component of the system for the administration of justice. It would appear logical that inasmuch as the OSLA is an important component of the system for the administration of justice, so also should be the MEU, the OHRM/ALS and the OLA/GLD. However, these have not been integrated into the formal system for the administration of justice. They have been kept isolated and apart from the system for the administration of justice subject to the sole authority of the SG. These enjoy no oversight by the OAJ. Nor can they be said to be independent. This is yet another contradiction wherein much of the "independent" system for the administration of justice consists of non-independent legal offices and functions.

While there are circumstances under which the OSLA cannot provide legal counsel, so too there should be similar circumstances under which the MEU, the OHRM/ALS and the OLA/GLD cannot. These do not seem to have been given expression in policy. These considerations are all fundamental to maintaining an inequitable, disproportionate, asymmetrical and unbalanced system, especially where there has already been an "egregious inequality of arms".

10. Due Process:

"The Redesign Panel found that the administration of justice in the United Nations is neither professional nor independent...[and]..... The system of administration of justice as it currently stands is extremely slow, underresourced, inefficient and, thus, ultimately ineffective. It fails to meet many basic standards of due process established in international human rights instruments. For all these reasons, staff of the Organization have little or no confidence in the system as it currently exists." (A/61/205, 5)

The SRRs, the SGBs and the A/Is mention due process only in conjunction with disciplinary measures. This, of course, is inadequate. No basic standards of **due process** are elaborated anywhere. Furthermore, the GA has ensured little if any role for international human rights instruments. In fact, it has specified 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.” (A/RES/68/254, 26) It is precisely this context that effectively cripples the role of international human rights instruments. Worse, it sets the Tribunals’ Statutes against the Justices’ Code of Conduct.