

**The United Nations' Internal Administration of Justice:
The Management Evaluation Unit (MEU)**

Winston Sims

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1. The New Formal System for the Administration of Justice

Possibly as a signal of the low level of esteem in which the system for the administration of Justice is held, the administration does not seem to be in agreement with itself even as to the basic components of the formal system for the internal administration of justice in the UN. It offers no reasons for its rather wild "mood swings" and internal inconsistencies. Suffice it to say that the lack of consistency reflects the varying positions the Respondent takes in the appeals process: the Humpty-Dumpty approach: "...it means just what I choose it to mean, neither more nor less."

A. Perhaps the most inclusive description of the new formal system for the administration of justice includes: i) the Management Evaluation Unit (MEU) in the Office of the Under-Secretary-General for Management (USGM); ii) the United Nations Dispute Tribunal (UNDT); iii) the United Nations Appeals Tribunal (UNAT); iv) the Office of Staff Legal Assistance (OSLA), v) Office of Human Resources Management, Administrative Legal Section, (OHRM/ALS), vi) Office of Legal Affairs/General Legal Division, (OLA/GLD); vii) the Office of the Executive Director of the Office of Administration of Justice (p. 17) viii) the Registries . (A/65/373, A/70/188)

These were perhaps the only two instances that three of the four basic components of the SG's legal representation were identified as being elements of the formal system for the administration of justice.

B. On the other hand, the descriptive booklet prepared for staff: The Guide to Resolving Disputes, Administration of Justice in the United Nations, (June 2009), described the new formal system for the administration of justice as comprising: the Management Evaluation Unit, the UNDT, the UNAT, the Office of Staff Legal Assistance, the Office for the Administration of Justice and the Internal Justice Council.

C. The most exclusive and limited version reports that "The Secretariat's internal justice system is comprised of three components on the formal side: the management evaluation process, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal." (A/68/697, 62)

From the above confused and inconsistent descriptions of the formal system, there are only 3 elements common to all of these: the UN Dispute Tribunal (UNDT), UN Appeals Tribunal (UNAT) and the Management Evaluation Unit (MEU).

Of course the Tribunals are part of the system for the administration of justice. But what is the Management Evaluation Unit? It was established by the GA as an "independent" and "impartial" resource to evaluate adverse administrative decisions under appeal to see if the decision was proper. But wasn't that, after all, the role of the UNDT? The UNDT Statute established that a staff member seeking relief from the adverse administrative decision first had to request a management evaluation. In the absence of such a request, the Tribunal could have no jurisdiction and there could be no appeal.

Therefore staff may have thought the MEU would offer an independent and impartial assessment of the administrative decision in the context of the Organization's policies and the Tribunals' jurisprudence. If so, they certainly did not get that. Rather, the GA and the SG intended that any request for a management evaluation would be an evaluation by management and for management's interests.

The MEU is one of the more important components of the SG's four legal resources. As will be seen, the MEU functions in close collaboration with the other three legal services available to the SG: the Office of Human Resources Management / Administrative Legal Services (OHRM/ALS), the Office of Legal Affairs / General Legal Division (OLA/GLD) and the senior legal advisers to the Offices and Departments. All four are fundamental to the formal system. More importantly, all four are fundamental to the SG's continuing the "egregious inequality of arms" in relation to the staff's legal resources as cited by the Redesign Panel.

There is but one legal resource for the staff, the Office of Staff Legal Affairs (OSLA), and it was mentioned in three of these descriptions. While the MEU is mandated to undertake the management evaluation, a prerequisite for an appeal, the staff legal resource has no analogous or countervailing responsibility.

In addition to these, there have been only two mentions of the Office for the Administration of Justice (OAJ), the Internal Justice Council (IJC) and the Registries.

The General Assembly in its Resolution (GA/RES/62/228) decided "... to establish the Office of Administration of Justice, comprising the Office of the Executive Director and the Office of Staff Legal Assistance, as well as the Registries for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

Since the Office of Administration of Justice (OAJ) is responsible for "coordinating" the functioning of the new internal justice system, it would appear to be a key element of the formal system for the internal administration of justice. The Office for the Administration of Justice (OAJ) in its annual activity reports presents information on the UNDT, UNAT, the Registries, the OSLA, and the Office of the Executive Director of the OAJ. It does not even mention the MEU. From this can be seen the general **inclusion** of legal representation for staff and the general **exclusion** of legal representation for the SG: the MEU, the OHRM/ALS, the OLA/GLD and the senior legal advisers for the Offices and Departments and the Registries.

Why, if the MEU is established by the GA as the "Independent" and "impartial" gateway to the UNDT does the OAJ, which coordinates the new system, not even recognize the SG's legal resources and has no mandate with respect to them? This lack of symmetry on the part of the OAJ generates fundamental questions as to the SG's and the GA's commitment to independence, equity, integrity and to correcting the egregious inequality of arms.

This immediately suggests inconsistencies; variable perspectives on the strengths and weaknesses of the system for the administration of justice; a desire to shelter the extent and nature of the SG's legal and analytical resources from public awareness and scrutiny; the lack of an established, inclusive, legal definition for the services included in the administration of justice; and an inequitable and discriminatory approach to the institutional structures for the administration of justice and a desire to ensure scrutiny of the staff's legal resources. Does this suggest the SG's legal resources might be above the law, outside the law or, at the very least, have much less to do with justice? The OAJ, moreover, does not appear to have ever called for the legal resources available to the Secretary-General at every stage of an appeal to be included in its mandate.

The OAJ should, in the interest of equity and symmetry, be mandated to oversee and coordinate the legal representation for the SG: the MEU, the OHRM/ALS, the OLA/GLD and the senior legal advisers for the Offices and Departments. in addition to that for staff, the OSLA.

2. Responsibility For Management Evaluation?

The GA decided "... to establish an independent Management Evaluation Unit in the Office of the Under-Secretary-General for Management, with one Chief of Unit (P-5), two Legal Officers (P-4) and three Administrative Assistants (General Service (Other level)) and general temporary assistance equivalent to one P-4 Legal Officer position;" (A/RES/62/228)

The GA emphasized its intent with respect to: "... the need to have in place a process for management evaluation that is efficient, effective and impartial;" (A/RES/62/228, 50) It also reaffirmed "...the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted;" (A/RES/62/228, 51)

While the establishment of the MEU itself is legislatively achieved under the terms of A/RES/62/228, the MEU's Terms of Reference related to its competencies and its processes and procedures do not seem to have been established legislatively. There seems to be no legislative endorsement of the MEU's Terms of Reference which were established administratively. The Terms of Reference assert that "the Management Evaluation Unit (MEU) is an independent unit established in the Office of the Under-Secretary-General for Management pursuant to General Assembly Resolution 62/228: Administration of Justice in the United Nations and to the provisional staff rules 11.2 and 11.3."

This permits a certain administrative poetic license. It is the administration that asserts the Terms of Reference are established pursuant to the GA's legislative intentions and decisions. It seems it is not the legislature that has decided it has established the administration's Terms of Reference.

3. Is Management Evaluation Important?

From the standpoint of the staff member who believes s/he has been the subject of an adverse administrative decision, the request for management evaluation is of critical importance.

The Staff Rules expressly stipulate: "A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment ... (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision. (Staff Rule 11.2)

Despite its importance, there seems to be no legislated definition of management evaluation. The importance of the request is underscored in the UNDT Statute where in the absence of a request to the MEU for a management evaluation, there can be no appeal to the UNDT; the UNDT can have no jurisdiction. There can be no access to the judicial process in the absence of this administrative process.

4. The MEU, its Mandate

An administratively derived definition of management evaluation as well as its basic purposes are set forth in the MEU's Terms of Reference:

2.1 "To conduct a prompt management evaluation of a contested administrative decision to determine whether it complies with the Organization's applicable regulations, rules and policies and to assist the Under-Secretary-General for Management to provide the individual requesting the review (the "requestor") with a written, reasoned response regarding the outcome of the management

evaluation.” (MEU Terms of Reference, Mandate)

2.2 “To recommend to the Under-Secretary-General for Management an appropriate course of action to be taken to ensure that the requestor’s terms of employment are observed and that an appropriate remedy is obtained in the event that a management evaluation concludes that a contested administrative decision has been taken in violation of the applicable regulations, rules and policies.”

2.3 “To assist the Under-Secretary-General for Management to strengthen managerial accountability by ensuring managers’ compliance with their responsibilities in the management of human and financial resources of the organization.

2.4 “To conduct a prompt evaluation of a request for the suspension of the implementation of an administrative decision to separate a staff member until the management evaluation has been completed and the staff member has received notification of its outcome.”

The Terms of Reference confirm that the basic purpose of the MEU is to assist the Under-Secretary-General for Management by undertaking a management evaluation of the administrative decision and the managers’ compliance with their responsibilities. The management evaluation is not of the staff member or of the appeal being presented. No clear processes or procedures seem to have been established as to what would be included or excluded.

It would seem reasonable that success indicators might have been established related to these objectives so as to permit some quantitative or qualitative indication as to the extent to which these had been achieved.

The MEU’s Terms of Reference are as notable for mentioning its important tasks as they are for those that are not mentioned:

- 1) There is no mention of the many steps or procedures related to the MEU’s “upholding”, “partially upholding”, “rejecting”, etc. the administrative decisions undertaken in its management review.
- 2) There is no mention of criteria other than legal as bases for reaching recommendations.
- 3) There is also no mention of the dimensions and extent of the authority for the MEU’s extensive collaboration with the OHRM/ALS and the OLA/GLD in undertaking the analyses of the UN’s legislative mandates, personnel policies and the Tribunals’ jurisprudence in preparation for the SG’s representation and their testimony before the UNDT and the UNAT.

5. The MEU: Its Jurisdiction

“The [Redesign] Panel recommended that the formal justice system should have jurisdiction over “... complaints alleging compliance with terms of appointment, conditions of employment or the duties of an international organization to its staff, **whether or not there has been a formal decision;**” (A/61/205, para. 77 (a)) (Emphasis added.), “It will also allow for complaints with respect to conduct that is inconsistent with the duties of the Organization to its staff or that infringes their individual rights.” (A/61/205, 78)

This was to presage a battle over those issues that may be appealed. Both the Redesign Panel and the UN Administrative Tribunal (UNAT, Andronov, 1157) believed staff should be able to appeal administrative conduct as well as decisions. The GA and the SG, on the other hand, fought that and decided they would not support the proposal for the UNDT to have jurisdiction over administrative conduct but to limit appeals to administrative decisions.

The Secretary-General, however, agreed “... with the recommendation of the Staff-Management

Coordination Committee [SMCC] that the formal system of justice should have jurisdiction over applications alleging non-compliance with the terms of appointment or the conditions of employment.” (A/61/758, 23)

But then, significantly narrowing the Panel’s and SMCC’s recommendations: “**The Secretary-General understands that such allegations would be based on either an express or implied administrative decision.**” (A/61/758, 23) (Emphasis added.) Ensuring yet more opportunities for interpretation and for the exercise of discretion, defining this understanding appears to have been avoided.

The findings of the MEU may involve determinations as to deadlines, administrative decisions, reversed decisions, discretionary contact with the offending manager, coordination with the OHRM/ALS re: holding managers accountable, numbers of requests reversed by managers, amounts saved, costs of corporate accountability, numbers of offending actions not appealable, decisions complying with applicable Staff Regulations and Rules (SRRs), Secretary-General’s Bulletins (SGBs), and Administrative Instructions (AIs).

The ambiguity and lack of clarity as to what exactly comprises the formal system for the administration of justice, have resulted in a lack of clarity and consistency with respect to the management evaluation process.

6. Representation by the MEU, OHRM/ALS and the OLA/GLD

Much of the work of the MEU is shaped by its role as one of the major legal resources available to the SG. The MEU works not in isolation but in close collaboration with the OHRM/ALS and the OLA/GLD in laying the groundwork for staff and management appeals to the UNDT and the UNAT.

The “... Secretary-General is represented before the Dispute Tribunal by the Administrative Law Section in the Office of Human Resources Management for matters brought by staff serving in the Secretariat and certain other United Nations entities, as well as by legal and human resources staff at the United Nations Office at Nairobi, UNEP, UN-Habitat, the United Nations Office at Geneva and the United Nations Office at Vienna....”(A/69/227, 6)

This does not mean the views of the MEU before the UNDT are ignored, far from it. The MEU is critical to the operation of the formal part of the system for the administration of justice. In the absence of an applicant’s request for a management evaluation, the UNDT can have no jurisdiction.

“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)

Although the MEU is the most recent addition to the SG’s administrative legal corps, not mentioned have been any assurances of redundancy and duplication of effort.

There appears to be little if any Organizational literature on these interactions. Is the OLA/GLD, as might be expected, the principal voice? Who determines priorities assigned to cases? Strategic priorities?

Since both the OHRM/ALS and the OLA/GLD collaborate in the preparation of the MEU’s decisions, these provide the fundamental basis for the SG’s arguments before the UNDT and the UNAT. In practice, the decisions of the MEU are rarely altered or contradicted by the OHRM/ALS.

The decisions of the MEU, therefore, represent the core thinking of the Secretary General with respect to the issues in any particular appeal. Its views are generated jointly with the UN's elite legal corps: the OHRM/ALS and the OLA/GLD (A/65/373, 120) They therefore set forth the foundational arguments on behalf of the OHRM with respect to any personnel policies in the Staff Regulations and Rules, the Secretary-General's Bulletins and the Administrative Instructions.

As such, the MEU is certainly not independent. Nor can it claim to be impartial. The MEU, with its responsibilities to the USGM, is certainly not an advocate for staff members or their interests. At the same time, it presents the basic arguments to be incorporated by the OHRM in addressing the staff member's appeal to the UNDT and subsequently into the Respondent's position to be presented by the OLA/GLD in the event of the SG's appeal to the UNAT. Yet none of this is seen by the Office of the Administration of Justice as part of the formal system for the administration of justice. This can only be disingenuous.

To the contrary, the OAJ sees all of the staff legal resources as aspects of the formal system for the administration of justice but none of the SG's legal resources. This is a further reflection on questions as to the independence and integrity of the system.

There seem to be no formal statements as to the role of the MEU before the UNDT. The views of the MEU may be presented directly or indirectly. Regardless, the MEU's views and decisions play a key role. They are formed and expressed in the context of its relationship with the OHRM/ALS and the OLA/GLD. This is by way of ensuring "consistency" and uniformity of views and arguments of the administration. These views may or may not be related to an analysis of the adverse administrative decision in the context of organizational policies and procedures. It may be a political analysis or a legal analysis of the administrative decisions. Or, as is the case, at times, legal arguments are marshaled to justify a political decision. It is, generally speaking, not possible, for the SG to argue in favor of a point before the UNDT and against the same point before the UNAT or vice versa. Thus, consistency is critical since both the OHRM/ALS and the OLA/GLD collaborate in the preparation of the MEU's decisions. These provide the basis for the SG's arguments before the UNDT and the UNAT.

The mechanisms by which a fair and impartial review are to take place do not seem to be known. Since the decisions of the MEU are reached jointly with the involvement of the OHRM/ALS, the OLA/GLD and with the senior legal advisers to the Offices and Departments, and therefore represent the essence of the SG's position, can it be said that the review is "impartial"? Could any other formulation be more "partial"?

"In addition, the Division [OLA/GLD] reviews and analyses each and every judgement of the Dispute Tribunal and the Appeals Tribunal, thereby developing a comprehensive view of the jurisprudence in the administration of justice system. The Division draws on this analysis when it provides legal advice during the early stages of a claim advanced by a staff member, well before such a claim has progressed to litigation." (A/68/346, 107) This is yet another indication of how the OLA/GLD works closely with the MEU and the OHRM/ALS during the early stages of negotiation and legal representation to the UNDT.

The GA recognized that "...that the introduction of the new system of administration of justice should, *inter alia*, have a positive impact on staff-management relations and improve the performance of both staff and managers"; (A/RES/61/261) If the MEU were to operate in such a way as to try to achieve those objectives in an independent and impartial mode, wouldn't it have involved the staff and the OSLA in its functioning along with the OHRM/ALS? If it were the intent that the reviews were truly impartial, would there have been any objection to involving the OSLA and the staff? As will be seen, the legal reviews undertaken by the OHRM/ALS and the OLA/GLD do not appear to have been shared with the staff's legal resources, including the Office of Staff Legal Assistance, a key component of the formal system for the administration of justice. Such reviews enjoy the potential to foster a better understanding of ways to undertake or to forego appeals, thereby saving money. As will be seen, there does not appear to have been any sharing of "lessons learned". All of this suggests much more of an adversarial process than the GA had in mind. In these ways its purposes are being thwarted.

“By 30 June 2013, 87 per cent of the cases considered by the Dispute Tribunal upon staff member applications following management evaluation confirmed, confirmed on different grounds, or partly confirmed the recommendation of the Management Evaluation Unit.” (A/68/346, 29)

This also confirms the representation by the MEU before the UNDT or, at least, the presentation of the MEU's arguments. In the absence of the MEU's representation or the presentation of its own arguments, the UNDT could not have been said to have supported, accepted, or rejected the MEU's views.

Also, at times, the respondent (OHRM/ALS) has testified as to fact on behalf of the MEU. How could this be allowed? (See Appeal of UNDT/2011/105, Para. 6) In the absence of the MEU, might that not have been hearsay.?

7. The MEU: Is It Independent?

The GA established the MEU politically and legislatively when it decided “... to establish an **independent** Management Evaluation Unit in the Office of the Under-Secretary-General for Management with one Chief of Unit (P-5)...” (A/RES/62/228, 52) (Emphasis added.)

The Management Evaluation Unit's Terms of Reference states that it is “...an independent unit established in the Office of the Under-Secretary General for Management...” (1)

Of great importance is that having used the word “independent“, there has been no further guidance or elaboration as to its meaning. There is nothing as to the importance of the word or how it might be operationalized. We do not know its characteristics; we do not know whether we are moving closer to it or farther away. The frequency of the UN's use of “independent” only hints at its importance. As such, “independent” is one of the most frequently used and under-invested terms in the UN lexicon.

It should be clear that the intent may have been to establish an independent unit, rather than that its work should be independent. In fact, neither was achieved. This seems to reflect a careless, if not reckless, use of the word “independent”.

Establishing an independent MEU in the bosom of the administration, the office of the USGM, is an oxymoron and presents an inherent contradiction. It was precisely the linkages between the OHRM, which had performed the previous administrative reviews, and the USGM to which the OHRM reported that the GA had perceived to be a conflict of interest. That perception of conflict of interest was only to be magnified since the MEU, now being located in the OUSGM, would report directly to the USGM. But it would be the MEU's intimate working relationship with the OHRM/ALS and the OLA/GLD which would cement the lack of independence and the conflict of interest.

The Management Evaluation process has been knitted together administratively with the SG's primary legal resources to ensure “consistency”. These include the MEU itself, the OHRM/ALS for appeals to the UNDT, the OLA/GLD for appeals to the UNAT and the senior legal officers for the Offices and Departments. Since the analyses by the MEU draws from the work of the OHRM/ALS and the OLA/GLD, it simply cannot be claimed that the MEU operates independently from those whose decisions are subject to management evaluation. To the contrary, it appears the MEU works hand-in-glove with those decision-makers whose decisions are subject to management evaluation, a significant conflict of interest.

The distance between the decision of the General Assembly regarding the MEU's independence and its implementation is impressive. It seems ludicrous that the GA would stress the importance of the impartiality and the independence of the MEU and then oversee the utter distortion of its own expressed purposes.

With the bringing to bear of all four significant legal resources on behalf of the SG, it would seem the management evaluation would ensure an almost exhaustively defensive posture. There would be few leaves left unturned. Could there be any realistic expectation that independence, impartiality and disinterestedness would prevail?

It seems strange, to say the least, that in order to promote efficiency, effectiveness, independence, impartiality and the exhausting of administrative remedies before formal proceedings are instituted, there is no place in the management evaluation process for the single legal resource for staff: the OSLA. Its involvement could certainly contribute to an atmosphere of effectiveness and impartiality. Could the inclusion of the major legal resources for the SG but excluding the sole legal resource for the staff be other than discriminatory or, worse, disingenuous?

There is no further elaboration as to the implications, responsibilities and requirements of an "independent" office.

The element of independence is of paramount importance. It is contended here and in previous papers that the independence of the UN's system for the administration of justice has been seriously compromised and this has seriously compromised the work of the unit. This has resulted in a possibly unparalleled reach by management into the most delicate processes of the system for the administration of justice and that this is precisely the intention.

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.

The GA has asked the SG to "...clarify the role of the Department of Management of the Secretariat in the evaluation process, in order to ensure the appropriate independence of the Management Evaluation Unit, and to report thereon to the General Assembly at its sixty-fifth session;" (A/RES/63/253) (May 17, 2009) This effort appears to have been stillborn.

8. The MEU and Receivability

While the MEU is directed to prepare a timely reply that is to be shared with the staff member, only the request for management evaluation is required for the adverse administrative decision to be appealed. The MEU, of course, can give any thought to any altering of the adverse administrative decision it believes appropriate. A response is directed in terms of time and is to be shared with the staff member but is not an element of receivability from the perspective of the tribunal. Once the request has been made, the appeal may proceed. The Tribunal, of course, may have other questions related to *ratione personae*, *ratione materiae* or *ratione temporis*.

Since the basic mandates of the MEU are administrative, and its basic competencies, processes and procedures are established administratively for the benefit of the administration, the question has to be raised as to the purpose of receivability.

According to the UN's own glossary for its internal justice system the meaning of receivability is, as elsewhere in the world, pretty straightforward.

Receivability: "Fit for acceptance by a legal body. Examples of cases that are not receivable include those not submitted within relevant time limits where no exceptional circumstances for the late submission exist, or cases that are not within the jurisdiction of the relevant legal body to consider." (UN Internal Justice System, Glossary)

While the MEU has been legislatively established, its basic tasks and functions have been administratively determined. The MEU is an administrative body, not a legal body, as defined in the UN's glossary.

The purposes, objectives and limitations of receivability with respect to the MEU do not seem to be set forth anywhere. This casts further doubt on the legitimacy of any determinations of receivability by the MEU. What are the significances and the implicit and explicit values of the MEU's finding of receivability or non-receivability for the MEU? For the staff member? For the manager?

Where the MEU argues a position, it may be estopped from then subsequently taking the opposite position before the UNDT. If an appeal is found by the MEU to be non-receivable, does this mean the SG has foregone his/her opportunity to answer the appeal? If not, why not?

The MEU is not a "legal body" but an administrative body addressing administrative issues on behalf of the administration. For the purposes of the SG, it has important legal functions especially as they are carried out in tandem with the OHRM/ALS and the OLA/GLD. Should the MEU find a request to be not receivable is that yet another layer of administrative decision that could, itself, be appealed?

As the purposes of "receivability" have not been clarified, it is not known how this concept is applied to an appeal or to the adverse administrative decision in question or to the manager who took the decision. Or is the concept employed in order to introduce elements of confusion, doubt, uncertainty and ambiguity in the minds of the staff members?

The MEU is required to submit the results of its analyses to the staff member requesting the management evaluation.

It would appear the MEU enjoys no authority for findings of receivability, other than for *rationes temporis* and *personae*. By taking on additional elements, does it seem to be the case that the MEU wishes to project an appearance of being a legal body? It seems the MEU wishes to signal that under certain circumstances it can or will receive a request for management evaluation and under other circumstances it will not.

Receivability being related to competence of a legal body, in this case, the competence has been determined administratively, not legislatively. And the MEU is not a legal body. That calls into question the legitimacy of its claims as to competence. The appropriateness of the MEU to arrive at decisions regarding receivability is complicated by its lack of authority, by its lack of independence and its not being a legal body.

The second measure taken is a *prima facie* determination as to whether the request for management evaluation is receivable or not.

The Terms of Reference for the MEU appear to have been established not by the GA but by the SG. The MEU has established its own administrative "receivability" structure. The Terms of Reference set forth the competence of the MEU in terms of *ratione materiae*, (V, 5) *ratione personae* (V, 6) and *rationes temporis*. (V, 7) "Upon receipt of a request for management evaluation, the MEU shall first determine the receivability of such request in accordance with the [three] parameters...above." (8.1)

These are administrative determinations by the MEU, a body established for a determination of the administration's interests, as set forth in accordance with the Terms of Reference, themselves administratively established. This suggests the findings of the MEU with respect to receivability are to serve management, hardly independent and impartial.

Of course, the MEU could reach its conclusion regarding receivability of an appeal based on what it believes the tribunal would do and for the same reasons. While this may be done, there is also the prospect that the MEU is signaling to the tribunal how it would like the tribunal to rule. No, this is not always done but it has been done as may be seen in Case Study No. 1.

The use of these criteria by the MEU all suggest the MEU may be seeking to apply the same judicial criteria as the tribunal, and possibly to project the appearance of being a legal body and giving the impression that its administrative finding of non-receivability is of the same value and standing as that of the tribunal, and even seeking to pre-empt the tribunal's decision.

Thus, the MEU may have little or no authority to determine the receivability of requests. Regardless, in 2014, the Management Evaluation Unit received 1,541 requests for management evaluation, of these, 768, or 50%, were found to be non-receivable requests. (A/70/187, 19, table 1)

What were the reasons for such a huge number of findings of non-receivability? Had a finding of non-receivability become a "success indicator" for the MEU? What were the applicants told by the MEU? What did the MEU understand to be the meaning of so many findings of non-receivability? What limitations were created? What opportunities were created? What happened to these cases? We are not told. Were they ignored? Did these applicants have counsel? From the OSLA? From where? What were they advised? Did it appear that the MEU, by its finding, sought to pre-empt the finding rightly belonging to a legal body, the UNDT? Did any applicants think that following a finding of non-receivability there was nothing further they could do? Did they think their issue or appeal was being rejected? What proportion did nothing further? Of those that did take their appeal to the UNDT, how many did the UNDT also find to be non-receivable? What did the UNDT have to say about the MEU finding on non-receivability? What did the OAJ have to say about such a number in terms of how the system was working?

What lessons were learned from the non-receivables?

Receivability in this context seems to be a construct of questionable usefulness. It seems to have little of the same binding power as would a similar decision by the UNDT. A real question is the value of an MEU finding of irreceivability for either staff or management. Management will still do as it wishes.

In undertaking an analysis of the Organization's Staff Regulations and Rules, SGBs and AIs and the relevant jurisprudence, the administration has the advantage here in terms of the very professional and high-powered legal resources of the MEU, the OHRM/ALS, the OLA/GLD and the senior legal advisers to the Offices and Departments. The administration has access to their legal analysts who review each and every Tribunal decision, prepare Lessons Learned and access to forms of partnership between the Respondent and the Tribunals which may reduce the staff member's prospects or eliminate them entirely. None of these latter are shared with staff. These are important structural and policy barriers for aggravating the egregious inequality of arms.

Despite these vast advantages, the MEU found it necessary to perjure itself in the context of Case Study No. 1.

Misrepresenting a staff member's chances for success through receivability could cause the staff member to withdraw his/her appeal, or cause the staff member to re-commit to the appeal. Since the MEU is not an advocate for the staff, its strategic thinking is not revealed to the staff. On the other hand, could the MEU be other than fully committed to the SG?

Management could encourage a staff member to "settle", by convincing a staff member that settling involves far less time, cost and aggravation; that rather than no compensation, the staff member might receive a small compensation; that some form of contract renewal might be possible; with a settlement, the relationships with the supervisor and prospects for future advancement might be enhanced.

The meaning of all this for the staff member is not exactly clear. Decisions of the MEU are often viewed by staff with skepticism. For the manager, however, the MEU is one of the most significant resources since that is the instrument by which the manager is shielded from the responsibility of having to answer directly to the staff members' complaint.

If a majority of upheld and non-receivable decisions were never appealed, were they just dropped by the staff? If so, why? What does this say as to the prospects for settlement? Could they have reduced appeals even further?

Is this a reflection of i) the power of the SG's legal teams? ii) staff perceptions as to futility and the lack of even-handedness? iii) low staff morale? iv) staff perceptions as to the likelihood of a just resolution? v) staff perceptions as to the realization of accountability?

A finding of non-receivability by the MEU would seem to be designed to confuse and bewilder the staff member who has no familiarity with Organization policy into thinking that, analogous to a finding of non-receivability by the UNDT, that s/he no longer has any recourse. Could the misguiding of staff possibly be a reason for the failure to follow through with an appeal?

9. The MEU and Accountability

Mandates for accountability appear to exist in abundance.

The General Assembly "Stresses the importance of establishing adequate accountability measures for managers to ensure their timely response to management evaluation requests; (A/RES/62/228, 55)

The Redesign Panel recommended managers be the first to reply to appeals of their adverse administrative decisions. Instead this responsibility is that of the MEU, not the managers. How this ensures timely response by the manager and higher levels of accountability is not made clear.

Another key aspect of the system for the administration of justice was set forth by the GA in the same resolution in which it: "Emphasizes the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations;" A/RES/62/228, 56)

This is briefly mentioned in the MEU's Terms of Reference: "To assist the Under-Secretary-General for Management to strengthen managerial accountability by ensuring managers' compliance with their responsibilities in the management of human and financial resources of the organization. (MEU Terms of Reference, Mandate 2.3)

The MEU's lack of independence, impartiality and its intimate relationship with the SG's principal legal resources are far more important than its ability to be objective and disinterested. Under those circumstances is there any real expectation that the MEU would be in a good position to determine forms of accountability.

9.1 The MEU: What Is Accountability?

Following numerous unsuccessful requests by the GA to the SG to produce a definition of accountability,

the GA decided: "Accountability is the obligation of the Secretariat and the staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honoring their commitments, without qualification or exception." (A/RES/64/259)

Commitments are usually seen to include obligations and responsibilities incurred under Staff Regulations, Rules and other administrative issuances. The real barriers, however, are: What does answerable mean? Who asks the questions? Who answers? What questions are asked? What if no answers are forthcoming?

Rather than seek to elaborate on this definition of accountability, the SG has identified ways by which s/he would achieve this administratively:

"The Secretary-General has various ways in which to take concrete measures to realize accountability as a result of management evaluation requests and judgements of the Dispute and Appeals Tribunals, including:

"(a) To modify or change the impugned decision where it has been determined that the manager has improperly exercised his or her delegated authority when making that decision, thereby withdrawing the decision-making authority of the manager for that particular decision".

This could be fairly straight forward but leaves unclear any accountability for the decision having been taken in the first place. In this example of corporate accountability, the MEU accepts accountability on behalf of the manager. There is no indication of the manager being accountable. Did these measures indicate the level or rank of the managers? As noted elsewhere, there appear to be no operational definitions or descriptions as to improper decisions, improper exercise of authority, modifications of decisions, reversals of decisions, return to the *status quo ante*,

"(b) To speak to the manager at issue concerning the contested decision, explaining why the decision was improper and discussing lessons learned;"

This seems a light touch as it does not call for accountability on the part of the manager.

"(c) To refer a case for investigation, where it has been determined that the improper exercise of delegated authority by the manager might rise to the level of possible misconduct."

This seems to suggest that the work of the SG's three main legal resources might not have been sufficient to determine the facts.

"(d) To reflect, in the performance evaluation of the manager, failure by a manager to comply in a timely manner with requests from the Management Evaluation Unit for comments or explanations relating to decisions taken by the manager;

As may be seen (A/69/227, 186) (A/70/187, 148), this item (d) would be dropped from this list. This reflects a weakening of corporate accountability measures. It can only reinforce the impression that a key form of accountability, a reflection in the manager's performance reports and the requirement that the offending manager be held to be accountable for his/her actions and to respond to requests by the MEU for explanations was just too much for the SG. So this was dropped. Beyond that, not only is the offending manager not to be requested to respond to any charges, the simple "accountability" measure of reflecting the failure to respond in a timely manner will not be cited in the performance evaluation.

"(e) To place a note on the official status file of the manager at issue taking note of the improper decision, subject to the provisions of ST/AI/292 on filing of adverse material in personnel records;" This has little to do with accountability on the part of the manager. There is no indication of the manager holding him or

herself accountable.

“(f) To introduce specific performance evaluation objectives for the manager, where it has been determined that the contested decision was taken as a result of poor management;

“(g) To require a manager to attend training in light of the taking of an improper decision;”

This is another indication of a manager being held accountable rather than assuming accountability for one’s actions.

“(h) To decide that the performance of a manager specifically be assessed in view of the poor administrative decision that was reversed.” (Old: A/67/265, 156)(New: A/69/227, 186, A/70/187, 148)

In addition, the Terms of Reference also establish a number of ways for “...assisting the USG/DM to strengthen managerial accountability....” calling on the MEU to:

- 9.1 Maintain records of all requests for management evaluation received from requestors;
- 9.2 Maintain records concerning the promptness and comprehensiveness of information received for decision-makers;
- 9.3 Provide the records to the USG/DM on a monthly basis, to assist in monitoring compliance.
- 9.4 Identify trends and patterns arising from such records that indicate systematic managerial problem areas.
- 9.5 Provide the OUSG with a qualitative analysis of judgments rendered by the UNDT and the United Nations Appeals Tribunal to identify systemic problems relative to management performance and accountability.

It should be of deep concern that none of the above measures appears to seek the engagement of managers with respect to their decisions or their responsibilities, specifically, the extent to which his or her decision comports with Organization policy, especially Staff Regulations and Rules, Secretary-General’s Bulletins and Administrative Instructions; his or her own professional and personal responsibilities; professional and personal impacts on the individual staff member; impacts on the work of the administrative unit and the Organization.

None of the above call on the manager who undertook the adverse administrative decision: to reply to the appeal of the decision; to accept full responsibility for and to own the decision and its consequences; to accept responsibility for the financial consequences of having to defend his/her actions; to accept responsibility for awards, if any, to the applicant; to participate with staff in the drafting of Lessons Learned; to participate with the applicant in negotiating any reversals or settlements; the identification of remedies; to engage with the applicant in the process of re-establishing the *status quo ante*.

The above, says nothing about policies, personal commitment to accountability, 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”.

The concept of integrity is chief among those values with respect to which commitment and responsibility are critical. “ 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.**” Staff Regulation 1.2(b)(Emphasis added.) Having been set forth as policy, these become foundations and standards for accountability.”

If these values are not being cultivated, what is being cultivated? 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.

10. The MEU's Focus on Accountability

The Redesign Panel proposed: "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)

Instead, the GA and the SG saw the MEU as a means for by-passing that process to ensure a higher level of control by SG in the interests of "consistency". It is the MEU that takes the first of the Respondent's actions with respect to a request for management evaluation. There is no statutory requirement that the managers having taken the adverse decisions are to be engaged at any point, much less to assume responsibility for their decisions and to answer for them. Should they be so involved, it would be pursuant to a discretionary decision.

"The Secretary-General supports the [Redesign] Panel's proposal to abolish the current process of administrative review prior to action in the formal justice system (ibid., para. 158). **However, he endorses the [Staff Management Coordinating] Committee's recommendation to replace this review with a properly resourced and strengthened management evaluation function as a first step in the formal justice system. This 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.** The Committee agreed to review this management evaluation function one year after the new system of administration of justice has been fully implemented." (A/61/758, 29)(Emphasis added.)

The distinction between administrative review and management evaluation was to prove to be as artificial and lacking in substance as it sounded. The administrative review had certainly offered every opportunity to identify and rectify any mistakes with respect to administrative decisions. This, however, appears to have been rarely taken.

The MEU's Terms of Reference do not elaborate on the norms, standards, criteria, processes, procedures to be drawn into play in determining the need for accountability. How would accountability be achieved once the need for it had been determined? How might that accountability impact on the manager? The staff member?

The GA further stressed: "... the importance of establishing adequate accountability measures for managers to ensure their timely response to management evaluation requests;" (A/RES/62/228, 55)

As will be seen below, it appears this intention has been largely abandoned. Now it is the MEU that has the responsibility to receive and respond to appeals thereby often largely sidetracking, if not ignoring, the views and the motives of the offending manager, thereby obviating the most direct route to the individual accountability of the manager. There is no statutory requirement for the offending manager(s) to respond to the appeal although s/he might be invited to do so by the MEU.

As noted above, the GA also emphasized "... the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations;" (A/RES/

62/228, 56) This laudable objective was made almost unattainable by the structures and policies created.

It is time to abandon the pretense that the MEU can be independent and impartial, while reporting to the USGM and while teamed with the OHRM/ALS and the OLA/GLD to assure the strongest possible defensive posture for the SG before the UNDT and the UNAT. Can the MEU hold individual managers accountable? Of course. Will it? Yes, although infrequently and depending on the standards applied. Is there any indication the MEU can effectively reverse decisions? That it can effect significant savings? What would happen with respect to the practice that resulted in the disciplinary measures taken against staff outnumbering those against managers by 513 to 2?

11. The MEU: Corporate Accountability and Financial Accountability

As noted above, corporate accountability includes the filing of the application against the SG, not the manager who undertook the adverse administrative decision. The manager may be sidetracked, removed or engaged in this process depending on the discretion of the MEU. The manager's legal counsel, if any, will be provided by the MEU, the OHRM/ALS, the OLA/GLD and the senior legal advisers for the Offices and the Departments. This, in effect, gives the manager the effective right to high powered legal protection. Awards, if any due from the manager to the staff member are paid by the UN.

Thus the manager is far removed from individual accountability.

Possibly the most simplistic view of accountability was the most widely distributed: "Making an official report of misconduct ensures accountability and appropriate conduct." (The Roadmap) Wow! That was easy!! Why do we even need a system for the administration of justice?

That such a facile, shallow and misleading statement could actually be published by the UN's responsible officers in its "award winning" guide to the administration of justice, might itself be the subject of disciplinary action. There really should be no place in the Organization for such views written in such simplistic and misleading terms. To try to convince staff members that that is actually the case is a monumental disservice.

"Under Staff Rule 10.1, staff can be held financially accountable for losses suffered by the Organization only when misconduct has been established. The high bar for imposing personal financial accountability arises from the Organization's clear distinction between instances where a financial loss suffered by the Organization results from an inadvertent error, oversight or simple negligence, and instances where a financial loss results from gross negligence. In the former instances, any deficiencies are addressed through performance management mechanisms, such as the ones listed above. The latter instances involve negligence of a very high degree involving an extreme and wilful or reckless failure to act as a reasonable person in applying or in failing to apply the regulations and rules of the Organization. **To date, no such cases have been identified.**" (A/70/187, 150)(Emphasis added.)

This is not so astonishing as it should be. The Organization, basically, has defined away personal financial accountability. It no longer seems to exist. This simply means there have been no instances of financial accountability....a high bar indeed: an absolute avoidance of financial accountability as confirmed by the the Volker report on the oil-for-food scandal. With a complete absence of financial accountability, why should anyone have any expectation of accountability in any other area?

This perspective on financial loss also seems to preclude any consideration of the cost of legal resources, investigations and other Organizational investments in addressing adverse administrative decisions.

12. The MEU: Consequences:

The GA and management appear to never have publicly associated the high numbers of adverse administrative decisions with: the lack of constraints on managerial behaviors; the conveying of personnel authority in the absence of sufficient training for managers; the lack of review and prevention of adverse administrative decisions; the lack of deterrence effects; the subsidizing of managers' costs for counsel; subsidizing costs for compensation of those harmed by the decisions; and the lack of real consequences for managers' uninformed and ill-tempered behaviors. One should be able to expect consequences commensurate with the seriousness of the errant administrative decisions.

As an example of the consequences: "In all cases where decisions are reversed or settled, the Management Evaluation Unit explains to the decision maker the legal analysis for the recommendation. 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." That these should be considered as consequences is truly a travesty.

As will be seen, the ACABQ recommended that in cases where the adverse administrative decisions did NOT conform to Organization policy a "settlement" could be sought. (A/68/346, 32. Emphasis added.) What is the message here? Decisions should or should not conform to policy? Even in the absence of any conformity with policy, there should be negotiations over settlements? There need not be any reversals of administrative decisions? There should be as few reversals as possible? There should be as many settlements as possible?

"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." (Third Progress Report on Accountability System, A/68/697, 64)

Under such a regime, as pallid as it is and, given the level of concealment regarding such matters, and the lack of engagement with staff regarding "Lessons Learned", is it any wonder that deterrence might be a nullity.

Where settled or reversed, the contested decision could not go forth to the UNDT for appeal.

There appear to be no assurances of equitable treatment of managers and staff members. To judge from figures on disciplinary process staff are treated far more harshly than managers. (See p.42)

13. The MEU: Accountability and Consequences for Managers;

There appear to be no clear guidelines regarding accountability for managers. This is not an oversight. If it were not for cases presented, usually by staff members, to the MEU it may be safe to say there would be little in the way of consequences or accountability.

"The Management Evaluation Unit may make accountability recommendations with regard to requests which are settled, and sometimes also with regard to requests in which an administrative decision is deemed not receivable or upheld, but the decision maker otherwise caused potential risks for the Organization. In 2013, of the 933 requests for management evaluation, the Unit made 12 accountability recommendations [or 1.3%]. In terms of accountability, the Unit made the following recommendations in 2013:

- (a) Taking of performance management training (2 cases);
- (b) Ordering a desk officer to comment on the delay in handling entitlement and disability claims; the response is under review (1 case);

- (c) Referring to a settlement in a manager's performance evaluation (2 cases); (.002 %)
- (d) Investigating a manager's conduct (2 cases);
- (e) Cautioning managers of specific managerial risks (3 cases);
- (f) Ordering review of faulty administrative procedures (2 cases)." (A/69/227, 187. Emphasis added.)

That most of these could be seen as accountability measures would display a fundamental misunderstanding of accountability as defined by the GA.

In such instances, does the MEU, where requests have been settled, act in a purely administrative capacity as policemen for administrators? Or in a quasi-judicial capacity? Does this pre-empt the role of the UNDT? And where requests have not been settled?

In the absence of actual quotations or details of the cases, it can be said that, as recommendations, these are fairly underwhelming. We are told little of the consequences or outcomes. Were any of these ever followed? There appears to be little or no indication of the situations which gave rise to these recommendations: we are not provided with a systematic analysis of the initial adverse administrative decision, any associated administrative conducts, the claims by the staff member, the reply of the MEU as to "receivability", "uphold", "partially uphold", "reverse", etc., recommendations as to possible involvement of the informal sector, the appeals to the UNDT and the decisions of the UNDT. The MEU, being composed of the core of the SG's legal defense teams, would seem to be a questionable candidate for claims of independence and impartiality. Had it been the case that the MEU was indeed independent and impartial, its results would have been of great interest. The publication of Lessons Learned, with staff engagement, could contribute to a greater sense of confidence in the work of the MEU.

Sadly, there appears to be no record relating the specific details as to the analyses and the results.

There seems to be no information as to cases in which the MEU found non-receivability and then the appeal was taken to the UNDT. Did the UNDT also find there to be no basis in policy for the adverse administrative decision? Other findings? In addition, there seems to be no data regarding cases in which the UNDT had found there to be no basis in policy for the decision. What steps might have been decided by the UNDT in the interests of accountability?

14. Financial Consequences

14.1. Compensation

Of the above measures to realize accountability, there appear to be none that carry any financial consequences so as to compensate either the Organization or the staff member against financial losses whether resulting from management evaluation actions or requests and judgements as a result of the Dispute and Appeals Tribunals decisions. Whether in the form of direct payments due a staff member or the legal costs derived from the SG's premier legal defense teams, it is safe to say that all appeals have negative financial implications for the SG and the GA. It should be clear that the 11 "settlements" arrived at in 2013 for a total of \$166,707.10, "...thereby avoiding further litigation and eliminating any further exposure to potential awards of damages.." (A/69/227, 37) represent but a small fraction of the true costs to the SG and the GA.

It may bear repeating, as noted above, under Staff Rule 10.1, staff can be held individually accountable for financial losses suffered by the Organization "...only when misconduct has been established. The high bar for imposing personal financial accountability arises from the Organization's clear distinction between instances where a financial loss suffered by the Organization results from an inadvertent error, oversight or simple negligence, and instances where a financial loss results from gross negligence. In the former instances, any deficiencies are addressed through performance management mechanisms, such as the

ones listed above. The latter instances involve negligence of a very high degree involving an extreme and wilful or reckless failure to act as a reasonable person in applying or in failing to apply the regulations and rules of the Organization. **To date, no such cases have been identified.**" (A/70/187, 150)

As noted, this amounts to financial accountability being defined away. If managers are not to be held accountable, and only staff members are, it should be realized the putative concern by the GA for achieving economies is basically fictitious.

At heart, it is difficult to find an effective interest in reduction of financial costs or any measures to achieve financial accountability.

15. Financial Loss:

15.1 Financial Accountability of individual Staff

Paragraph 30 of the report of the Advisory Committee, paragraph 8 of resolution [61/261](#) , and paragraph 42 of its resolution 68/254, requested the Secretary-General to present to the General Assembly at its sixty-ninth session proposals with reference to the accountability of all individuals where violations of the Organization's rules and procedures have led to financial loss; (A/RES/68/254) (A/69/227, 185)

As noted above in section 9.1, in A/67/265, 156, the SG identified a number of steps "a" - "h", he has used to realize accountability as a result of management evaluation requests.

Now, in only a partial reply to the GA, the SG, in both A/69/227, 186, and A/70/187, 148, recounted the same measures, except this time he had deleted "(d)", one of the key components in any administration of accountability. Clearly the GA had not made much progress.

Frustrated, the GA in paragraph 48 of its resolution 69/203, requested the Secretary-General to present proposals with reference to the accountability of all individuals where violations of the Organization's rules and procedures have led to financial loss.

15.2. Accountability of Managers

MEU

"As part of its overall efforts to strengthen accountability, the Organization has closely monitored the outcomes of cases since the establishment of the new internal system of justice. At the management evaluation stage, the Organization has taken a varied approach to accountability, resulting in concrete steps to realize accountability, including (a)-(g). (A/70/187, 148)

As noted above, little has been revealed to convey a sense of confidence in these steps.

UNDT

UNDT Statute Article 10(8) 8. "The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability."

For example, in 2014, the UNDT made four referrals for accountability under art. 10.8 of the UNDT Statute. However, in three, the UNAT found that the UNDT erred in making a referral for accountability to the Secretary-General under article 10.8 of its Statute. (Eighth Activity Report, Office of Administration of Justice, 1 January - 31 December 2014)

There is no explicit identification of how accountability might be achieved if at all when a matter is referred to the SG for accountability by a Tribunal. This area appears to be one of avoidance of reporting to the extent possible. At no point is there any indication as to what happens with referrals. Were they received? Studied? Processed? Results? Implementation? Dismissal of Tribunal decisions? Dismissal of the referral? Accountability by whom? Accountability to whom? Do referrals under 108(8) become a legal and managerial black hole?

“In paragraph 41 of resolution 66/237, the General Assembly requested the Secretary-General to submit information on the concrete measures taken to enforce accountability in cases where contested decisions have resulted in awards of compensation to staff.” (A/67/265, 155)

It appears the GA expressed no interest in revoking one of the tenets of corporate accountability which permitted the Organization to cover those awards of compensation to the staff on behalf of the offending manager.

In undertaking its management evaluations or in implementing of tribunal decisions, the MEU and the UNDT have a number of common options available to them. “The Secretary-General has various ways in which to take concrete measures to realize accountability as a result of management evaluation requests and judgements of the Dispute and Appeals Tribunals, including a new and old draft:

As noted in section 9.1, page 12, the SG has concrete measures for realizing accountability as a result of management evaluation requests and judgements of the Dispute and Appeals Tribunals, and where violations of rules and procedures have led to financial loss. Steps “a” - “h”, following the removal of a key accountability measure, step “d”, they are now listed as “a” - “g”. (A/70/187, 148)

“In 2014, the Management Evaluation Unit made some of the above-mentioned recommendations in 12 cases following requests for management evaluation. In all requests, the matter was analyzed individually in order to establish whether there was a managerial failure and, if so, how serious it was, whether there was “intent” and what the appropriate accountability measures would be.” (A/70/187, 149)

What measures were taken to realize accountability as a result of tribunal requests? As a result of egregious conduct? How are these measures related to losses of significant sums? Are these measures likely to recover significant sums of money? Do these include losses related to the fees for legal representation? How much in funds is retrieved from staff members each year? From managers? How do these relate to the consequences visited upon staff members? While the GA seeks to achieve self-funding on the part of the staff legal resources, why does it not seek to achieve the same on the part of the SG’s legal resources?

“In 2014, the Management Evaluation Unit made some of the above-mentioned recommendations in 12 cases following requests for management evaluation. In all requests, the matter was analysed individually in order to establish whether there was a managerial failure and, if so, how serious it was, whether there was “intent” and what the appropriate accountability measures would be.” (A/70/187, 149)

There seems to be no information as to what body or bodies take such decisions. There appears to be no accounting for Tribunal requests.

As seen above, Individual accountability with relation to the functioning of the MEU is very much in question. Questions have been raised as to the MEU’s ability to provide an “independent” and “impartial” perspective as called for by the GA. Since the MEU is a key component, along with the OHRM/ALS and the OLA/GLD, of the SG’s legal resources, and given that all of these are involved in preparing the MEU’s response to the request for management evaluation, all are involved in preparing the SG’s formal responses to staff appeals to the UNDT or the UNAT, and all are involved in undertaking the SG’s appeals

to the UNAT, the SG is in a prime position to present his interests in the most vigorous manner.

Evidence clearly demonstrates the proportions of appeals accepted by the UNAT from the SG far exceeded those accepted from staff. Conversely, proportions of those appeals by staff rejected by the UNAT far exceed those rejected from the SG. The SG has attributed this imbalance to the higher quality of its legal representation. What does this say as to the acceptance and avoidance of accountability?

As noted elsewhere, the very significant investment in the system for the administration of justice and even aside from the low rates of reversals and settlements, the costs to the administration of the adverse administrative decisions are quite significant.

We are not treated to definitions of the various types of costs and losses. Among them might be direct and indirect costs and losses such as goods and services misappropriated; costs associated with detection, investigation or certification of loss; denial of benefits and entitlements; costs associated with loss of due process, impact on individual staff member, indignation, loss of motivation; erosion of morale of other staff in the unit; costs of request for management evaluation; costs of counsel of MEU, OHRM/ALS and OLA/GLD in undertaking the management evaluation and costs of appeal going forth to the UNDT and the UNAT. This cannot possibly be an exhaustive list of financial losses to the Organization.

The Organization, by defining away personal financial accountability assures the absence of financial responsibility by managers for their actions and, most importantly, eliminates any deterrent effects. This, in the long run, could ensure the most significant levels of waste of all resources.

It is also hard to see how such accountability measures as those listed from (a) - (h), later reduced to (a) - (g), provide important deterrent effects to help establish a cleaner managerial environment.

Related to payments as awarded by Tribunals, but also to far more that goes to comprise accountability, it has been the case that the Dispute Tribunal could refer appropriate cases to the Secretary-General for possible action to enforce accountability. (A/67/265, 3) In 2011, the Dispute Tribunal referred one such case. (A/69/227)

Here, it should be noted, the SG does not appear to differentiate between measures taken pursuant to judicial, or tribunal, decisions and administrative or MEU decisions. Might this be a seeking to achieve a further blurring of the lines surrounding the MEU to make it appear that many of its actions and its powers are analogous to those of the UNDT?

This author is not aware of operational definitions of: "improperly exercised or delegated authority", "possible misconduct", "poor administrative decision" and "to hold to internal account officials whose conduct has been egregious." (A/66/158, 50).

This author is also unaware of the extent to which such terms have been used by the MEU in its management reviews. With what frequency has the MEU used such terms in its responses? Or found such conditions?

It would seem that few of these measures even rise to the level of finger wagging.

16. The MEU: Efficient, Effective and Impartial?

The General Assembly: "Emphasizes the need to have in place a process for management evaluation that is efficient, effective and **impartial**; (A/RES/62/228, 50) (Emphasis added.)

It "[r]eaffirms the importance of the general principle of exhausting administrative remedies before formal

proceedings are instituted; (A/RES/62/228, 51)

Among the main objectives of the MEU as set forth in the Terms of Reference are: “To facilitate an efficient, effective and **impartial process** for management evaluation of contested administrative decisions, designed to give management an opportunity to correct itself when necessary, and to exhaust administrative remedies before formal judicial proceedings are instituted.” (3.1) (Emphasis added.)

It is also: “to ascertain that administrative decisions are made in accordance with relevant resolutions, staff and financial regulations, rules, policies and procedures of the Organization.” (3.2)

If one were to expect that a management evaluation would be an “impartial” evaluation as emphasized by the GA, this would lead to profound disappointment. The evaluation, conducted as it would be in collaboration with the OHRM/ALS and the OLA/GLD to ensure the SG’s strongest appeals to the UNDT and the UNAT respectively, should that be necessary, would not be for independent and impartial purposes of assessing the relevance and legitimacy of the administrative decisions in the context of the Staff Regulations and Rules, SGBs, AIs and jurisprudence. It could hardly be for more partial purposes. It would be an evaluation of administrative decisions and interests by management and for management’s own purposes. As noted above, none of the SG’s legal resources are seen by the **Office for the Administration of Justice** to be a part of the formal system for the administration of justice, it is not clear, therefore, how there could be any claim of independence or impartiality.

This would not be a marked departure from the previous role of the OHRM in undertaking the administrative review as called for under the previous system involving the Joint Appeals Boards and the United Nations Administrative Tribunal. This had been found by the Redesign Panel to be worthy of being abolished.

Reflecting the lack of commitment to “independent” and “impartial” processes is the failure to develop definitions as to how these terms are to be operationalized. As with any managerial undertaking, there must be monitoring and oversight. In the absence of any definitions or guidelines, it becomes impossible to assess or appraise the extent to which these objectives are being addressed and met as well as progress towards or away from these objectives.

17. The MEU: its Competence

Although it is the responsibility of the MEU to review requests for management evaluations, there seem to be no legislatively established provisions for findings of competence other than for *ratione temporis* and *ratione personae*.

The procedures established by management for the MEU’s Terms of Reference appear to be designed to mimic those used by the UNDT so as to convey the impression that the MEU is a legal body rather than simply another level of administrative review. Because these procedures were administratively established and not legislatively established, it could place the MEU in direct conflict with the UNDT and the UNAT in the exercise of their functions, among which are determinations as to their competence with respect to appeals.

Language used includes the MEU’s competence to “receive a request”, “evaluate a request”, “recommending acceptance or rejection” and “review a request”. What is left unclear is the relevance or importance of such steps since MEU decisions regarding these matters do not constrain the applicant’s access to the tribunal. That is not to say there are not other opportunities that are not foreclosed.

Following a request for management evaluation from a staff member, the MEU may find it has or has no competence *ratione materiae*, *ratione personae* or *ratione temporis* to exercise its jurisdiction. Assuming

the requirements for submission to the UNDT are met, other findings of the MEU should not affect the competence of the UNDT.

For example, the MEU's administratively established Terms of Reference identify its competence *ratione materiae*:

"The competence of the MEU extends to the evaluation of contested administrative decisions relative to contracts of employment or terms of appointment including all relevant regulations, rules and administrative issuance." (5.1)

"The competence of the MEU extends to recommending whether to accept or reject requests for suspension of action of decisions relative to separation from service pending the completion of management evaluation, when the decision has not yet been implemented, appears *prima facie* to be unlawful; in cases of particular urgency and where implementation would cause irreparable harm to the requestor's rights." (5.2) This would obviously be an important administrative request, one which deserves a considered response prior to its proceeding to a tribunal.

"The MEU has no competence to conduct an evaluation of the following:

"a) A request for management evaluation of a contested administrative decision that does not explicitly or implicitly indicate the existence of such an administrative decision"

"(b) A contested administrative decision taken pursuant to advice obtained by technical bodies such as the Advisory Board on Compensations Claims (ABCC); the Classification Appeals Committee (CAC), a medical board or similar bodies as determined by the Secretary-General."

"(c) A contested decision to impose a disciplinary or a non-disciplinary measure pursuant to provisional staff rule 10.2 following the completion of a disciplinary process." (5.3)

Competence *ratione personae*:

The MEU is competent to review a request submitted by:

"a) A staff member or former staff member of the Secretariat;"

"b) A person submitting a claim in the name of an incapacitated or deceased staff member of the Secretariat."

"c)...."

7. Competence *ratione temporis*:

7.1 The MEU is competent to receive a request for a management evaluation of an administrative decision sent to the Secretary-General within 60 days from the date on which the requestor received notification of the administrative decision."

"7.2 The deadline specified in 7.1 may be suspended pending efforts for informal resolution conducted by the Office of the Ombudsman."

While there appears to be no explicit legislative statement of the MEU's competence, this does not seem to have hampered the MEU in establishing a number of procedures some of which relate to its Terms of Reference and some of which do not.

The earlier administrative review of an administrative decision prior to any appeal, which then became management evaluation, certainly permitted executive heads to hold managers accountable and they always had that course of action open to them. Only rarely, however, did management ever implement it. Even with the creation of the Management Evaluation Unit (MEU) the complaint could very well have been forwarded to the manager who had undertaken the questionable decision and request or demand that a reply be crafted. There seem to be little, if any, public record of such a practice.

The cosmetic name-change from administrative review to management evaluation of an administrative decision would be quite sufficient for the appearance but not the substance of change. The mandatory review process was diverted from the OHRM which reported directly to the USGM to the MEU which is currently directly under the USGM. This step has been and continues to be a prerequisite for the filing of an appeal. In the absence of a request for the management evaluation, the UNDT would have no jurisdiction.

In theory, the SG's views would have been perfectly compatible with the concept of individual accountability with the manager answering for his/her actions. But that had not been the case and was not to be.

“The startup phase of the new tribunals was reminiscent of the early years of the former UNAT, sixty years earlier with a similar reaction of the executive branch defending its wide discretionary powers by attempting to curtail the powers of the new tribunals, and the same concerns of the legislative branch about the financial implications of the new systems and its judgements.” (The Internal Justice of the United Nations, Abdelaziz Megzari, p. 468.)

Given the characteristics of the MEU, namely its reporting to the USGM, its principal purpose as the frontline defense of the SG along with the OHRM/ALS and the OLA/GLD, its lack of legislatively established procedures and guidelines, it is not positioned to be independent or impartial as intended by the GA.

18. MEU Terms Of Reference: Core Functions

The core functions of the Unit do not appear to have been established by the GA. The exercise of these functions, include:

“(a) Conducting prompt management evaluations of contested administrative decisions relating to contracts of employment or terms and conditions of appointment and determine whether they comply with the Organization’s applicable regulations, rules and policies; (Management Evaluation Unit (MEU), Terms of Reference) (A/65/373, para. 6) This is a much narrower context than if fundamental human rights were also to be included.

“(b) Providing the Administrative Law Unit / OHRM (OHRM/ALS) with a reasoned assessment whether a request for suspension of the implementation of a decision to separate a staff member pending before the United Nations Dispute Tribunal meets the requisite criteria for suspension ... and when such requests are submitted directly to the MEU providing the Under-Secretary-General for Management with a reasoned recommendation in respect thereof.” (MEU, Terms of Reference, 4.2)

“(c) Proposing appropriate remedies to the Under-Secretary-General for Management in case of administrative decision(s) taken in violation of such regulations, rules, policies, and procedures and, as appropriate, proposing alternative means of settling disputes between requestors and the Administration. (MEU, Terms of Reference, 4.3)

“(d) assist[ing] the Under-Secretary-General for Management to provide staff members requesting management evaluation with a prompt and reasoned response regarding the outcome of the evaluation; and (A/65/373, para. 6) Why should this be of interest to staff? What staff interests are affected? How is this done?

These make clear the importance of the MEU to assisting the highest levels of management.

While not expressly called for in its Terms of Reference, the MEU has evolved a system for its assessment as to the extent to which the contested administrative decisions relate to contracts of employment or terms and conditions of appointment and determine whether they comply with the Organization's applicable regulations, rules and policies. This has yielded quasi-judicial findings of little or no importance for staff appeals indicating its "upholding", "partially upholding" and "rejecting" the validity of the administrative decisions. These terms can be used to suggest the pre-emption of the authority of the Tribunals.

19. MEU: Non-Legislated Statements of Purpose

While not explicitly identified as success indicators, the following certainly appear to be among the MEU's primary indicators of achievement:

"Management evaluation, which constitutes the mandatory first step of the formal system of administration of justice 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, para. 3)(Emphasis aded.)

"Through such management evaluations the Administration has the **opportunity to correct decisions** involving **managerial error** to **prevent unnecessary litigation** before the Dispute Tribunal, and to bring about **significant cost savings.**" (A/65/373, para. 6) (Emphasis added.)

"The management evaluation process provides the Administration with the **opportunity to prevent unnecessary litigation** before the Dispute Tribunal, resulting in **significant cost savings** to the Organization. Approximately 36 per cent of cases received and closed by the Unit in 2010 were settled through informal resolution efforts either by the Unit itself, by the Office of the Ombudsman or through bilateral negotiations between the Administration and the staff members." (A/66/275, 7)(Emphasis added.)

"The Management Evaluation Unit of the Department of Management at Headquarters ... conducts a first review of a contested decision. This step is designed to give management a **chance to correct an improper decision** or to **provide a remedy** in cases where **the decision has been flawed**, thereby **reducing the number of cases that proceed** to the Dispute Tribunal." (A/69/227, para. 5) (Emphasis added.)

"The management evaluation process provides the Administration with the **opportunity to prevent unnecessary litigation** and to **collect lessons learned for decision makers** in order to **reduce costs** through better and more consistent decision-making." (A/70/187, 16)

This latter marks a very significant change in the role of the MEU. Its source is unclear. Was there a GA resolution to the effect? Was there an SGB to that effect? Is the MEU no longer involved with identifying and correcting improper administrative decisions; and achieving significant cost savings?

These non-legislated statements of purpose do not even appear in the MEU Terms of Reference. This raises questions as to: i) why these are not legislated statements of purpose; ii) whether these are truly fundamental purposes of the MEU or iii) why these terms are not described or defined in operational terms, iv) why, because of their importance, they are not cited as indicators of achievement or success, v) whether they are merely placed in the cited reports to the GA for popular consumption and so as to secure funding for the MEU.

20. MEU: Success Indicators:

What indicators are used by the MEU to signal its most positive, successful achievements? The MEU does not appear to have formally identified any “success” indicators. There are a number of factors related to its missions from which it might be inferred that, with their achievement, some success had been realized.

Among these are: a) Opportunities; b) Managerial Errors; c) Identifying and Correcting Improper Decisions; d) Acceptable remedies or “provide a remedy”; e) Removal from litigation; and f) Significant cost savings.

On the other hand, it must be asked how valid could “success indicators” be where the MEU had felt compelled to perjure its testimony and to exert extensive, powerful and, ultimately, such successful and effective influence over the UNDT and the UNAT to support its perjured testimony? See Case Study 1. (UNDT-2011-105)

Of the administrative decisions “upheld” how many were appealed to the UNDT and were supported / not supported by the UNDT?

Where improper decisions are involved, management may be aware of them...or maybe not. A staff member’s appeal certainly calls their attention to such decisions.

Ironically, the MEU is administration and one purpose is to give administration a chance to correct an improper administrative decision. How independent can that be? How impartial can that be? But even when a decision is found to be inconsistent with applicable policies and procedures, it may renege on its mission and not correct the decision. The real issue becomes political: is management’s improper decision welcomed or un-welcomed by management?

Success indicators, however, are not discussed and are not being discussed. The data, if collected, is not presented. It does seem clear from the data that is presented, there are few such cases where improper decisions are corrected.

As argued before the GA, a major mission, if not its principal mission, would be 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, 29)

Management is always free to correct its improper decisions. But does it? Correcting improper decisions or providing remedies in the event of flawed decisions should always be undertaken. It should be kept in mind that any reversal has the potential for embarrassment. This would be all the more so since the OHRM is expected to be disinterested and objective in the application and implementation of its basic personnel policies: the Staff Regulation and Rules (SRRs), Secretary-General’s Bulletins (SGBs) and Administrative Instructions (AIs).

Since both the OHRM and the MEU report directly to the USGM, the MEU cannot escape the impression on the part of many staff that it is less than objective and disinterested in its functioning. The impression is all the more confirmed knowing that, contrary to the GA resolution establishing the MEU as “independent”, a thoroughly impartial and independent body is not available to undertake an initial objective review of administrative decisions and conduct. Often the MEU, teamed up with the OHRM/ALS and the OLA/GLD, presented a vigorous legal justification by the SG’s chief legal resources for the decision.

Could it be that one criterion for success would be the upholding of something the SG wanted upheld? How might that be related to the administration of justice? To accountability?

20.1. “Opportunity”

The language is always so equivocal. The MEU merely has the “opportunity” or “chance” to identify and correct “managerial error” or “improper” decisions so as to “prevent unnecessary litigation” and thereby to achieve “significant cost savings”.

These statements highlight the administration’s discretionary powers. The emphasis on “opportunity” signifies considerable discretion on the part of the administration. Opportunities do not have to be perceived, followed or pursued. The language is important. It stresses only the “opportunity” that is available to the management. It is no more directive than that. It signifies a road the Administration might take or not to reach its most fundamental of purposes. There are no requirements placed on the administration. On the other hand, these are opportunities the administration has always had.

It is astonishing that the MEU is not “called upon” and does not “have the responsibility” to undertake these tasks all of which could achieve a reduction in the numbers of adverse administrative decisions and appeals as well as to achieve settlements and cost savings. As importantly, such steps could address and reduce important sources of poor staff morale which could also achieve improvements in staff productivity and cost savings.

More bluntly, management is not given the mandate to correct improper decisions such as: “It shall correct improper decisions.” “It shall nullify the improper decisions.” This might clear the hallways of deliberately improper decisions. (UNDT-2011-105)

Instead, the administration takes decisions, which one might expect to have been vetted in the first instance, then, when their appropriateness is called into question, they are vetted by yet another layer of the administration’s legal resources. Is this duplication really necessary? Does it not signal incompetence or untrustworthiness at some level? Of course it does. But that is not the question. The question is how to optimize the avoidance of accountability?

Nor is it asked why a truly independent body has not been established to undertake these management evaluations rather than the MEU which is in every respect a function of and is responsible to the administration’s legal defense teams.

These statements focus on a number of issues, all of which may be assessed in terms of the successes realized. Among these issues are “opportunities”, “a chance”, “managerial errors”, “correct improper decisions”, “provide a remedy”, “prevent unnecessary litigation”, “achieve significant cost savings”. However, not a single one is identified, elaborated, or even reported on.

There appear to be no reports on such key opportunities. How are they defined or described? How might they be enhanced and enriched? How might they be frustrated? Indeed, have there been any? Or has the current situation come about as it enables the avoidance of accountability by the MEU in the performance of its functions?

If the MEU is to persist in time, it is proposed the language be altered to read: “...the Administration is called upon and has a responsibility to prevent inappropriate administrative decisions and unnecessary litigation...”

20.2. Flawed Administrative Decisions Involving Managerial Error:

For those wishing to file an appeal, the mandatory first step in the formal system in non-disciplinary matters is requesting management evaluation. Having been attributed such importance by the SG, it is incongruous that there is neither identification of nor reporting on managerial errors or flawed or improper

decisions whether as success indicators or as failures.

Operational definitions, detailed reports, and frequency distribution as to flawed decisions are unknown. Are such decisions avoidable? If so, how? Steps that might be taken to avoid or prevent them? Supervision? Levels of approval? Are they celebrated? Lamented? The nature of such decisions? Pressures to retain such decisions? Advantages and dilemmas posed by such decisions? Decisions that have then been rescinded? Managerial accountability? Returns to the *status quo ante*? Is that really possible?

Often the correcting of managerial errors implies the formulation of substitute decisions. Does this affect only a single staff member or a number of staff members? As no managerial errors are identified, no issues related to their correction are noted.

Nor is there any relating of the discussions that should take place on these issues within the Secretariat as well as within the GA and its 6th Committee.

20.3. Correcting Improper Decisions

Since for all intents and purposes, the USGM to whom the MEU reports, is the SG, does the lack of information come as any surprise? This, however, does not address the correcting of the administrative decision once a faulty one has been found. Again, we are not treated to the many dimensions of this matter. The etiology of such decisions? Details? Frequency? How much of the thinking or analysis of the MEU is shared with the staff member? How is the staff member's personal or professional embarrassment handled? The managers? Compensation?

20.4. Remedies

Remedies are mentioned but not analyzed. There seem to be no definitions or descriptions. Intent? Purposes? Remedies for what? When is a remedy appropriate? When not? Who implements a remedy? Role of the staff member in negotiations? Is a settlement a remedy? The role of remedies in settlements? How is the ability of the Organization to control a staff member's future a remedy? Is a return to the *status quo ante* a remedy? Does a remedy include the staff member's feeling that s/he is lucky to have escaped the full wrath of the Organization? Are these set forth as policies or as individual practices? Or neither? The resulting ambiguity also contributes to confusion, uncertainty and to the exercise of discretion or indiscretion.

20.5 Settlements

"Settled" does not appear to be officially defined which also contributes to the atmosphere of ambiguity. Again, the administration seemingly cultivates ambiguity to a new level so as to ensure the exercise of discretion or indiscretion in decision-making.

It seems to refer to an agreement between the MEU and the staff member which results in the withdrawal of the appeal often in exchange for an agreement that certain steps will not be taken against the staff member and/or that certain benefits will accrue to him or her. But what are the parameters within which that settlement is to be reached? This is a powerful step that can remove the case from the legal realm into the political realm and from any prospect that it will come before the Tribunals. Little is known publicly of any steps taken to restore conditions to the *status quo ante*. This leads to an important loss/ lack of transparency.

The notion of a "settlement" suggests negotiations regarding: i) a reversal of the adverse administrative decision with compensation for personal and professional damage; ii) a reduction in the adversity or harshness of the administrative decision, or iii) a withdrawal of the adverse administrative decision. This

says nothing of the same adverse administrative decision taken against other staff members. But since there seems to be no official definition of “settlement”, who is to know what is meant? It would seem to be fairly easy to intuit the meaning. But how useful would that be? Aside from a definition, there appear to be no statements of principles undergirding a “settlement”. More ambiguity. Since the SG makes the rules, almost anything can be represented as a rule. This can be seen to be more of the Humpty Dumpty approach.

The MEU may acquire its greatest influence from that handed to it by staff. Largely because of its findings, staff might be inclined to negotiate with the MEU to achieve a settlement or to withdraw their appeals.

“The Advisory Committee on Administrative and Budgetary Questions [ACABQ] has stated that every effort should be made to resolve cases before staff members resort to litigation and that the management evaluation function is an important opportunity to do so (A/65/557, para. 16). **In cases where the Management Evaluation Unit takes the view that the contested decision does not comport with the internal laws of the Organization, and the Under-Secretary-General for Management endorses consideration of a settlement, the Unit seeks to facilitate resolution of the request.** The experience of the Unit is that such resolution involves extensive communication with the staff member and the decision maker and frequently exceeds the statutory time frame.” (A/68/346, 32) (Emphasis added.)

Where adverse administrative decisions are without foundation in policy and practice, the ACABQ is recommending discussions take place with a view to a “settlement”? A “settlement” with whom?? Indeed! The Organization is to undertake yet another long drawn out process at huge expense where something is to be negotiated by the all powerful with the powerless? That is outrageous. The ACABQ is not really interested in saving money.

A settlement, of course, could give legal effect to this approach and the avoidance of accountability instead of having the SG address his own unsavory administrative decisions.

Where the administrative decision does not even comport with the UN’s own policies, why should there be any negotiation or settlement at all? What prevents an immediate reversal of the decision so as to effect its immediate withdrawal and offer an apology and/or compensation to return conditions to the *status quo ante*? A principal barrier would be the necessity of accepting accountability, explicit or imputed, for the issue.

Most importantly, the ACABQ ignores the best avenue for saving money; it does not seem to address the prospect of preventing unwarranted adverse administrative decisions in the first place. Prevention would be greatly facilitated by managers having the responsibility to provide the first replies to requests; their having to secure their own access to legal counsel; in many cases, as with staff, having to pay for such counsel, and for the offending manager to have to personally compensate the staff member for any amounts awarded by the Tribunal.

Far from preventing adverse administrative decisions, the present system could be said to actually encourage the issuing of invalid and adverse administrative decisions by rewarding and subsidizing those responsible for them. Indeed, given the above statement by the ACABQ, it would seem that perhaps maximum costs, bad faith and low morale are to be cultivated. How is the manager to be involved in a settlement? What happens to accountability?

The MEU, in the negotiations to achieve a settlement, may be propelled by its awareness that an administrative decision is NOT supported by policy or jurisprudence. If so, is that knowledge shared with the staff member? What information is provided by the MEU regarding its analysis to the staff member prior to negotiations for a settlement?

What motivation does the MEU have to be honest and forthright with the staff member? Or is there any

misrepresentation? Might it be the case that the MEU's findings of non-support could actually be misrepresented to the staff member as being supportive of the administrative decision and then used against the staff member to encourage him or her to "settle" for less than s/he would otherwise be entitled?

As distasteful as such a suggestion might be, it is prompted by this counsel's experience that the MEU falsely testified before the UNDT saying that a request for management evaluation had not been made when it had and the incorporation by the UNDT of that perjury into its own decision. (See Case Study No. 1)

This begs a great deal more information on "settlements" including detailed investigations of the roles of accountability, operational definitions; practices; past cases; MEU findings and its findings as presented to the staff member; "settlement" offers by the MEU; "settlements" achieved; differences between the *status quo ante* and the settled state and lessons learned.

We are told of the MEU which is neither independent nor impartial: "In all settled requests, including where monetary compensation was paid, the matter was analysed individually in order to establish whether there was a managerial failure and, if so, how serious it was, whether there was "intent", and what the appropriate accountability measures would be. Having a single approach with automatic sanctioning of decision makers in the event of a genuine mistake would not have been appropriate, nor could it be expected to more effectively reduce the number of mistakes than could be achieved through the **use of learning and development measures**. Out of the settlements reached in 2013, six settled entitlements or amounts which were otherwise due to the staff members; in four settlements compensation was paid." (A/69/227, 188)

It is important to keep in mind that in making an application, the MEU will request the staff member's basis for reaching the conclusion that the administrative decision was improper. While this, of course, does not have to be provided, this will often go to the heart of the staff member's prospective appeal. Should this appear to be weak, the MEU could decide there was nothing improper with the administrative decision in the first place.

Management, however, has the burden of proof to establish the merits or propriety of the administrative action, its *bona fides* as established in the context of staff regulations, rules and administrative issuances; and, in addition, jurisprudence. The MEU, in tandem with the OHRM/ALS and the OLA/GLD, could be in a powerful position to politically affect outcomes either prior to or following hearings and Tribunal decisions. The degree to which this is realized is a matter for discretion or indiscretion.

Would it be appropriate to assume most such settlements would be in primarily in the SG's favor? This raises the distasteful question as to whether certain adverse administrative decisions might be contrived to secure the SG's advantage in some cases. There are very significant incentives to cut costs at every opportunity. Are there any incentives to ensure the payment of amounts justly arrived at?

One implication of the above is that when an administrative decision was found by the MEU to go against policy, the Organization might well incur a "loss" and the staff member might "win" an appeal before the UNDT. Think of the ease of negotiation where the MEU knows how weak its own hand is and the staff member is not informed of how strong his/her hand is. Does anyone think this would redound to the benefit of the staff member?

Wouldn't there be a greater probability of settlement, meaning a withdrawal of the appeal, and a removal from prospects for litigation where the administrative decision did comport with the policies, that is, where there was a significant prospect that the Tribunal would find in favor of the SG and against the staff member?

What proportion of adverse administrative decisions are worth the very high legal costs of defending?

Of major importance is that there is no indication that all such findings of the MEU have been or are to be made known to anyone, most especially, the staff member. This suggests the staff member might simply be kept in the dark, an approach fraught with ethical implications.

In one case, my client had been separated from the UN. The administration had never referred to the “real” reason. When shown the jurisprudence, three cases in which the Tribunal had ruled against similar actions of the administration, the administration had a heightened positive interest in resolving the matter.

The MEU always has in its favor the fact that, quite aside from the merits of an appeal, or the lack thereof, the SG has the power to determine so much of the staff member’s future. More than likely, the MEU could continue the negotiation process until it had extracted at least something from the staff member so as to create a “no loss or no cost” situation for the SG.

20.6 Withdrawals

An applicant may withdraw the application for a number of reasons: the staff member, unlike management, has no right to legal resources and so possibly cannot afford the legal resources to pursue his or her appeal or to defend against an appeal by the SG; the staff member has been convinced the Tribunal would not rule in his/her favor; the SG can offer a settlement which achieves the withdrawal of the appeal; the SG can influence, if not control, the staff member’s future in the Organization.

The voluntary withdrawal of an adverse administrative decision by the offending manager seems to be unknown.

20.7. Reversals of Improper Decisions

For 2012, the total of 971, 46 administrative decisions had been “reversed” for a total of 4.7%. (Third Progress Report on Accountability System, A/68/697, 63, Table 1) (Emphasis added.)

For 2013, of 933 requests to the MEU, no administrative decisions were reversed. (A/69/227, 32, Table A) (Emphasis added.)

For 2014, of 1,541 requests for management evaluation 84 or 5.4% of all requests in 2014 were “reversed”. (see A/70/187, 11, table 1)

Of all 3,445 requests for 2012, 2013 and 2014, there was a total of 130 administrative decisions reversed, or 3.8% of the total number of requests.

There is no analysis as to the numbers, proportions and reasons for those administrative decisions that had been reversed by the MEU.

Settlements and reversals are among the two principal avenues by which litigation might be avoided. Could these results be said to reflect significant successes for the MEU? Hardly. Again, this cannot help but raise important questions as to the effectiveness of the MEU in achieving its primary missions and, therefore, its cost effectiveness.

With such low percentages of cases having been reversed, it might be said that this is an insignificant portion of its work.

These figures imply determinations that some administrative decisions involved managerial errors and were found to have been flawed or improper and therefore required reversing.

The only thing quieter than the Organizational literature on flawed or improper decisions is steps taken to

reverse or correct these decisions. These would inevitably raise questions as to the kinds of corrections: in terms of pay scales; compensation; benefits; supervisors; restoration to *status quo ante*; colleagues; humiliation or embarrassment; loyalties; reassignment; prospects for promotion; personal status file. These are not known to have been addressed.

There is little or no information as to the reversals other than numbers. Why? On what grounds? Their impact on policy or policy interpretation? Notification to staff? Restoration to *status quo ante*? Was restoration always possible? if not, why not? Compensation of any kind?

Therefore, it would seem the MEU is somewhat unsuccessful at its principal mission. Such a performance, somewhat lacking in merit, could hardly justify the rejection of the Redesign Panel recommendation to eliminate the administrative review process altogether.

20.8 Preventing Unnecessary Litigation

After the prevention of unnecessary adverse administrative decisions, the prevention of unnecessary litigation should perhaps be the central purposes of the Organization and the MEU because of their potential impact on reducing the financial implications of the system for the internal administration of justice. However, there are no legislative mandates directing these to be the central purposes of the MEU.

The GA and the SG, having rejected many of the key proposals by the Redesign Panel, have few policies, procedures and structures oriented towards the prevention of litigation or damage control.

Basic assumptions are that all adverse administrative decisions are appropriate until proven by the staff member to be otherwise. The burden of proof therefore falls on the staff member. This is inappropriate. The Organization has no independent structural capacity or incentive to review its adverse administrative decisions. The MEU, the OHRM/ALS and the OLA/GLD and their direct lines of responsibility to the USGM cannot be seen to discharge this function. They also serve a prosecutorial function.

Structurally, managers and their supervisors can be said to be held minimally accountable since they are not statutorily required to answer for their actions; they do not have to seek counsel in the event of an appeal; they are not required to compensate their counsel; are not called on to pay the amount awarded to plaintiffs; they do not seem to be involved in the reversal of administrative decisions or to propose how to return to the *status quo ante*. and there are limited consequences. There are, in effect, no structural disincentives or deterrence. To the contrary, there is every incentive. Managers are effectively shielded. This is a shameful performance.

To the extent the SG's four legal resources are harnessed to the necessity of having to prepare defenses for the administrative decisions under appeal, to that extent significant costs are already involved. To the extent they can be "released" from these tasks, savings may be realized. To the extent the Tribunals, their Registries and other staff do not become engaged in staff appeals and any subsequent appeals by the SG, additional very significant expenses can be avoided. Nowhere do these seem to be reported.

An independent analysis of the avenues used by the administration to prevent or discourage "unnecessary" litigation should be quite revealing.

20.9. Achieving Significant Cost Savings

Rather than achieving significant cost savings, the current system seems to be **fine-tuned to incur the greatest expenses**. How?

- there seems to be no emphasis on the **prevention of adverse administrative decisions**. As noted in the previous section, managers are largely shielded from engagement in the resolution process.

- there seems to be no legislative mandate directing that a principal purpose is to achieve significant cost savings. In the absence of such a mandate, this is discretionary.

- there seems to be no consideration or analyses as to the **frequency of adverse administrative decisions** by managers if they were to have these responsibilities.

- the current system enables adverse administrative decisions to proceed until constrained by the staff member with the **burden of proof placed on the staff member**; as noted elsewhere the staff member is considered guilty until proven innocent and, at times, even after having been proven innocent. (A. Kompass)

- the current system **enables requests for management evaluation to go to the MEU with the early, if not immediate, involvement of the OHRM/ALS, the OLA/GLD and the senior legal officers for the Departments and Offices. Could there be a more costly process?**

It will be recalled that the SG postulated that the reversal of applications for appeal by the MEU would save significant sums. **Not only have there been so few reversals but the SG has at no time suggested that any savings had actually been achieved in this way and certainly none commensurate with the additional costs of the functioning of the MEU. It must be asked whether in fact it is costing far more than it is saving. Its own figures suggest the latter. If a primary purpose is to achieve significant cost savings, it cannot be said to have been successful.**

This last sentence recalls the Redesign Panel's making clear that the administrative review function should be abolished and the OHRM/ALS should focus on its legal responsibilities to management.

While it is true, the MEU does have an opportunity to correct an improper decision, it also tends to gloss over the fact that errors of fact and law may be fostered, created or sustained by the MEU itself. In this sense, the first opportunity to review an appeal is also a first opportunity to establish the tone and direction of the SG's response to the appeal.

21. The MEU: Its Analysis

As the offending manager has no responsibility to answer to the complaint regarding an adverse administrative decision, the MEU receives the application, assigns its own counsel, compensates that counsel and, in the process, works closely with OHRM/ALS and the OLA/GLD in drafting the response. That response will address a number of factors. Engagement of the offending manager(s) is discretionary.

The reply from the MEU, on the other hand, might convey some aspects of its analyses as to decisions upheld, partially upheld, reversed. Or it might suggest a settlement.

The MEU undertakes, at best, a quasi-judicial role in its analysis of the elements of each request for management evaluation and the likely appeal that might follow.

In theory, a simple request for a management evaluation of an administrative decision should be quite adequate. But in practice, the MEU will also request to learn as much of the Applicant's' legal thinking behind the request as possible. It wants to get a head start by analyzing not only the administrative decision but some of the likely arguments that might be used against it.

The role of the MEU is muddled by a number of factors: it is a creature of the GA; it serves the USGM; it serves the managers even when the administrative decision is largely or completely without merit; it offers managers legal counsel for free; although it suggests it offers services for staff, it cannot be an

independent, impartial and disinterested party.

The MEU analysis estimates the extent to which it could “uphold”, “partially uphold”, “reverse”, “settle”, “close” or find the contested administrative decision to be “non-receivable”. These decisions are not mutually exclusive. Nor are they called for, described or mandated anywhere in the MEU’s own Terms of Reference, although they significantly impact the actions of the MEU. Each term would suggest a range of understandings. But not being informed as to the meanings or the range of meaning of these terms, we are not informed as to the contribution of each to the MEU’s success. While there appear to be no operational definitions of these terms, that does not prevent the MEU from initiating negotiations with the appealing staff member.

Not being defined, these terms are important aspects of the carefully cultivated sense of ambiguity of the management evaluation process. Possibly because of the ambiguity of its mission, the MEU does not seem to have postulated any success indicators. The greater the ambiguity, the greater the range of discretion.

The MEU, on the basis of its evaluations, might refer a case to either the informal or formal resolution process.

Yet it is in the context of such decisions that the MEU can exercise optimal discretionary decision-making power and quasi-judicial authority.

MEU Decision	2010	2011	2012
Upheld	107(84)	499 (97)	239 (95)
Partially Upheld	2 (1.5)	2 (0)	2 (1)
Reversed	16 (3)	11(2)	10 (4)
Other	2 (1.5)	3 (1)	0 (0)
Total	127 (100)	515 (100)	251 (100)

Figures for 2010 do not include figures for 2009. Figures in parentheses are percentages of the total. (A/68/697, 63)

21.1. The MEU: “Upheld”,

Where the MEU finds the administrative decision is entirely or largely consonant with Organizational policies and practices it might decide it is to be “upheld”. The MEU is under no mandate to do so.

The meaning of such a finding has never been made clear. Is the MEU assuming the role of the UNDT? Is it anticipating the decision of the UNDT? What are the meanings of the MEU decisions for the staff member? Is the decision used to influence the staff member? In what ways? What are its meanings for management? Does it suggest clear sailing for the manager having taken the decision?

What proportion of the decisions found to be “upheld” by the MEU are then upheld by the UNDT? Instead of an answer to that question, we are told: “As at 31 December 2010, in 83 per cent of the cases considered by the Dispute Tribunal following management evaluation, the Tribunal’s disposition of the case was the same as that recommended by the Management Evaluation Unit.” (A/66/275, 12)

This makes clear that, contrary to some representations that the SG is represented by the OHRM/ALS before the UNDT, the SG is also very much represented by the MEU.

“...the percentage of contested administrative decisions that were upheld by management evaluation reviews increased from 84 per cent in 2010 to 97 per cent in 2011 and remained high at 95 per cent in 2012.” (A/68/697, 63)

“In conformity with the decision of the General Assembly to establish, inter alia, a transparent system of administration of justice (resolution 61/261, para. 4), where the Management Evaluation Unit has recommended that a contested administrative decision be upheld, a written reasoned response is sent to the staff member concerned setting out the basis for the management evaluation, including the facts of the case, a summary of the comments on the case provided by the decision maker, the applicable rules and jurisprudence of the Organization, an explanation of the reasons why the Unit considered that the contested decision comported with the applicable rules and jurisprudence, and the final decision of the Secretary-General.” (A/66/275, 9)

But what proportion of the MEU’s findings are shared with the staff member when the MEU finds “partially upheld” or “reversed”?

It is of interest that even where the administrative decision does seem to comport with the laws and the policies of the Organization, there does not appear to be any emphasis on the importance of the MEU achieving a resolution in such a case. It might seem the staff member could be more amenable to a resolution if s/he is convinced s/he would not have a significant prospect before the UNDT.

With its ostensible focus on reducing the numbers of cases going to litigation, the MEU is free to engage in suggestion, persuasion, arm-twisting, cajoling, enticing and suggestions of a range of future outcomes that might never have occurred to the staff member.

21.2. The MEU: “Partially upheld”,

Where the MEU finds the administrative decision is only partially consonant with Organizational policies and practices it may decide the decision is to be “partially upheld”. Again, there appear to be no operational definitions or guidelines related to this process. How is such a finding determined? Boundaries? Is this fully communicated to the staff member?

Again, this would also appear to offer possibilities for resolution. But there does not seem to be any literature on that. What are the purposes and meanings of such findings? What are the meanings of the MEU decisions for the staff member? Is the decision used to influence the staff member? The manager? In what ways?

Should the MEU find the administrative decision is not fully consistent with Organizational policies and practices it may decide the decision is to be supported or reversed. Which is it? We are not informed. Again, the lack of clear definitions or guidelines may be designed to ensure maximum ambiguity and to ensure the SG’s optimal discretion in decision making.

What is the “no-cost, no-loss” approach? The UN is really quite open to entertaining adverse administrative decisions that do not conform to policy and practice, especially where such an action is likely to have few or no negative financial implications for the Organization as with demotions, terminations, freezes, etc.. This does not apply to those instances where the Organization seeks to recoup its funds where a staff member has not faithfully reported and accounted for such as travel allowances, education grants, etc. Indeed, where a demotion or termination is at hand, the Organization may calculate the absence of the staff member will pay for itself in “x” months. This is quite aside from the manager’s possible delight in securing the absence of that staff member.

But where the staff member wins an appeal and it is clear s/he has been wronged, the Organization often finds compensation as determined by the UNDT to be inappropriately excessive. In such cases, the SG may appeal the UNDT decision to the UNAT seeking a reduction or elimination of the UNDT awards. The adverse administrative decision, it is believed, should involve little if any cost for the Organization.

All these questions acquire even greater importance in the context of the situation of Anders Kompass, director of the field operations for the office of the High Commissioner for Human Rights. Having been cleared of all charges by an independent panel created by the SG and, subsequently, by another panel established by the Office of Internal Oversight Services, Mr. Kompass seems to have yet to have received an apology. The UN actually gives new meaning to: “Guilty until proven innocent.” The new perspective may be: “Guilty even after having been proven innocent.”

The above highlights extremely serious cultural, legal, ethical and managerial issues. The UN, quite aside from the manager involved, much of the time, appears to be constitutionally incapable of acknowledging accountability and responsibility.

The application and implementation of an adverse administrative decision is often seen by other managers as a positive. It will rarely come at a cost for the manager in question. This may also often be seen as being at no cost for the Organization. To the contrary, as noted elsewhere, costs to the Organization involve far more than awards, which usually account for the smallest proportion. Even the joint involvement of the MEU, the OHRM/ALS, the OLA/GLD and the legal officers of the offices and departments, legal costs can mount up quickly. Regarding one of my cases, lasting less than one year, I was informed, reliably I believe by a high-level manager, it had cost the Organization in excess of \$500,000.

The no-cost, no-loss approach by the UN may be characterized by its offers of less than the Organization or the staff member believes s/he would receive in front of the Tribunal. This decision can be shaped by the UN’s expertise in the regulations and jurisprudence, its persuasive powers, its power to control the future of the staff member and the example set by the UN in its successfully appealing many awards it deems to be too generous. Perhaps the worst is where the staff member finds him or herself bartering away his or her future.

Finally, there seem to be few data as to Tribunal findings confirming or refuting the MEU’s findings.

The SG, with his power, authority and ability to shape a staff member’s future could make it quite clear to the staff member that a settlement would be far more desirable as s/he would not have anything to gain by pursuing an appeal.

21.3. The MEU: “Reversed”

With 3.8% on average of administrative decisions being reversed, it would appear the MEU is not in a strong position to prevent litigation and to achieve the cost savings of which it speaks.

Where the MEU finds grounds for a reversal, and any definitions or guidelines related to such a finding are unknown, the MEU has a variety of options open to it. In the first instance are those findings communicated to the staff member? It would appear not. The ACABQ, in such cases, tells us: “...**where the Management Evaluation Unit takes the view that the contested decision does not comport with the internal laws of the Organization, and the Under-Secretary-General for Management endorses consideration of a settlement, the Unit seeks to facilitate resolution of the request.**” (A/68/346, 32)

Where an adverse administrative decision is found to not comport with Organizational policy, isn’t the idea of a settlement somewhat repugnant?

Where reasons for a reversal exist, there appears to be little or no talk of dropping the adverse administrative decision and seeking to restore the *status quo ante*. Rather, there is talk of a “settlement”. Why a settlement? What kind of a settlement? One that seeks to compensate the staff member for the stress and tension arising from having been wronged? Is the staff member ever informed s/he was

wronged? A settlement for seeking to re-establish the *status quo ante*? Or a settlement that seeks to further diminish the staff member?

Where a finding of non-conformation has been found, have there been any appeals? If so, why? To what extent has the Tribunal sustained such findings?

Is the perceived adverse administrative decision ever really reversed? Can it be reversed? Can it be nullified? Is there an apology issued to the staff member? To his or her colleagues? Who besides the staff member is ever cognizant of the significant personal and professional damage done by adverse administrative decisions? Who in management takes into account the destruction of integrity, reputation, professional and personal relationships? By what calculus is this very real damage assessed? In fact, it is not.

How is the staff member compensated? Or, if not, is it the case that the staff member is simply made to feel quite grateful to have “escaped” the consequences of the improper adverse administrative decision? Are the staff members’ feelings of having been bullied and abused ever acknowledged? Compensation?

Is there a return to the *status quo ante*? Can there be a return to the *status quo ante*? Could the *status quo ante* ever be achieved? Has the UN ever offered the staff member a form of compensation for the mental and physical anguish to which he or she had been put? If not, is this another aspect of the “no-cost”, “no-loss” approach by the UN?

With the answers to these questions, what can be said about achieving accountability?

22. Outsourcing or Decision Avoidance

The view has been expressed that: “...the justice system had resulted in an “unintended consequence”, namely that management issues were to some extent being outsourced to judges, while managers were becoming preoccupied, not with improving their performance, but with attempting to avoid appeals because of the disruptions caused by litigation”. (**Report of the Internal Justice Council, A/70/188,119**)

The “outsourcing” to the Tribunals seems to have resulted not so much from the system for the administration of justice as it does from the SG’s or the USGM’s keen desire to avoid taking a decision that might go against another manager. This avoidance nourishes a wider eagerness to avoid accountability. Hence the displacement to the Tribunals.

Related to the outsourcing to judges, it was postulated that there are four principal characteristics of corporate accountability as they apply to errant managers. All relate to the relationship between the SG and the Tribunals. They are: i) the filing of the application against the SG, not the offending manager. This, in effect, removes the manager from engagement with the legal “line of fire” with all of its responsibilities; ii) the Organization’s provision of free legal counsel to answer the appeal on behalf of the errant manager, iii) the assurance by the MEU, the OHRM/ALS and the OLA/GLD of counsel to the manager during the appeal process and iv) the Secretary-General, not the errant manager, paying any awards found to be due to an appellant because of the actions of the errant manager. (UNDT Statute, Articles 2 and 10) (Sims, “Administration of Justice: Redesign Panel Themes”)

All of these provide powerful incentives to resort to the Tribunals. By resorting to the Tribunals and having the Tribunals take the sensitive decisions, the SG is able to avoid offending the errant : “...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 and also do not raise the issue of deterrence.” (Sims, “UN Administration of Justice: Redesign Panel Themes and Implementation”)

Contrary to the perception that managers will be held accountable for offending administrative decisions, they are, in effect, disengaged; the administration is relieved where outsourcing to a Tribunal results in a decision or an award so as to relieve it of the responsibility of doing so. The administration’s efforts then focus primarily on the reduction of the usually meagre awards and a corresponding reduction in accountability.

23. Accountability as a Source of Displeasure with the Tribunals

A good example of outsourcing and “be careful of what you wish for” may be seen in the following: “A few stakeholders considered that the justice system was becoming too “legalistic” and “interventionist”. They were concerned about the judicial overturning of managerial decisions because of minor procedural faults, which, in their view, did not really affect the substantive outcome of the decision under appeal. This trend could lead to a hesitancy on the part of managers to take tough decisions. It was said that the new system relied too much on lawyers to deal with what were, in essence, managerial issues.” (A/70/188, 27)

“The Internal Justice Council notes that the system of regulations, rules and administrative instructions regulating administrative processes within the Organization is highly complex and replete with complicated procedures that are often hard to understand, including in the many stages of the recruitment process. It is not surprising, therefore, that a judge may find that not all the mandated steps were observed.” (A/70/188, 28)

These complaints from a few stakeholders followed years of pressure successfully exerted by program managers to have the OHRM delegate much of the authority for the recruitment process to the program managers themselves. To save time, the managers, in the absence of adequate training, wanted to make the most fundamental recruiting decisions themselves. They wanted the authority but none of the accountability for their decisions.

Recruiting and assignment decisions were, in fact, tough for the program manager because they knew so little and OHRM knew so much more about the recruitment processes and how to handle them more effectively and efficiently. So now, having the authority to deal with these issues, the program managers are whining that the real issue is not their own lack of skills and abilities. It is now that of lawyers and the tribunals being “legalistic” and “Interventionist”, ignoring the fact that it is not the lawyers and the tribunals who initiate appeals of the managers’ own decisions.

This one more example of the culture of accountability avoidance.

24. MEU: Conflict of Interest

The USGM has the key role with respect to: i) the objective and disinterested management of OHRM and its management oversight of all human resources policies. It is with respect to perceptions as to the flawed application and implementation of these policies that many, if not most, staff appeals are filed and ii) the internal administration of justice; a principal operational expression of that is the MEU being in the office of the USGM, the OHRM reporting to the USGM and the OLA/GLD in a close collaborative role. The roles of the USGM as administrator and as prosecutor and its potential for conflict of interest had been remarked by the GA in its earlier comments (A/59/449, para. 12) but then did nothing to correct that. The SG and the GA appear to want to do nothing to diminish the very powerful role of the USGM in respect of the management and prosecution of the Staff Regulations and Rules.

With the USGM so intimately responsible for the OHRM and the MEU, where does this leave the staff members? Is OHRM there to assist staff with an understanding of Organization policies and their disinterested application? Or to prosecute them? The OHRM/ALS, on the other hand, is fully enabled to offer the highest level of protection to managers in their implementation of OHRM policies.

Even the GA's resolution "Stressing the importance of measures to eliminate any conflicts of interest in the system of administration of justice," seems to have risen to no particular priority. (A/RES/61/261)

The SG's and GA's decisions were opposed to those of the Redesign Panel which called for the abolition of the administrative review function.

In some respects the SG's decisions were flat out opposed to the Redesign Panel's recommendations and in other cases more nuanced. Among those in the former category were:

"In order to ensure that this new function [MEU] is more effective than the administrative review process that it will replace, the Secretary-General endorses the following new measures agreed to by the [SMCC] Committee to strengthen the management evaluation function:

"(a) Staff members shall apply directly to the Secretary-General or the executive head of a separately administered fund or programme for an evaluation of the contested administrative decision;" (A/61/758)

This paragraph made clear the SG, having secured the agreement of the SMCC to his own proposal, of dubious wisdom, decided an application could relate only to: i) an application to the SG and not to the Organization and ii) an administrative decision and not to administrative conduct. This also made clear the determination of the SG and the GA, working through the MEU, to avoid the managers' individual accountability and to ensure the fullest legal coverage for managers at no cost to them.

"(b) All staff members who file a request for management evaluation will receive a reasoned response in 45 days. In order to avoid the perception of conflict of interest, management evaluations will be carried out by a separate unit in the Department of Management. Sufficient resources will be requested in order that the reviews can be conducted during that time period;" (A/61/758)

Thus, the SG and the GA really seemed to believe the appearance of a conflict of interest, much less the substance, could be avoided. This signaled that the GA, the SG and the USGM, having designed it, did not oppose this conflict of interest.

25. Ratio of SG Appeals Accepted to Staff Appeals

"Of the appeals related to Dispute Tribunal judgements, 58 were brought by staff members and 34 were brought on behalf of the Secretary-General.⁵ The ratio of appeals filed by staff members versus those filed on behalf of the Secretary-General remained relatively consistent from 2011 to 2012. Approximately two thirds of the appeals were filed by staff members and one third were filed on behalf of the Secretary-General." (A/68/346, 59)

"Of the 58 appeals [of UNDT decisions] filed by staff members, 48 [83%] were rejected and 10 [17%] were granted in full or in part. Of the 34 appeals filed on behalf of the Secretary-General, 8 [23.5%] were rejected, 26 [76.5%] were granted in full or in part and one case was remanded to the Dispute Tribunal." (A/68/346, 60)

These figures are fundamentally disturbing. The idea that the UNAT rejected 48 (83%) staff appeals and only 8 (23.5%) appeals by the SG certainly begs many questions. Conversely, the UNAT's acceptance of

10 (17%) staff appeals and 26 (76.5%) by the SG is no less disconcerting. When the GA enquired of the SG as to the reasons for these discrepancies, he suggested it was because of his superior legal resources. It seems the SG has found cause for celebration in the warning of the Redesign Panel: “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)

Nine years later, “[t]he ratio of cases filed by staff members compared to those filed on behalf of the Secretary-General changed from 2013 to 2014. In 2013, half of the cases were filed by staff members and half were filed on behalf of the Secretary-General; in 2014, 65 per cent of the cases were filed by staff members and 35 per cent were filed on behalf of the Secretary-General.” (A/70/187, 56)

“Of the 86 cases relating to Dispute Tribunal judgements, 40 were filed by staff members and 46 were filed on behalf of the Secretary-General. Of the 40 appeals filed by staff members, 30 (75 per cent) were rejected, and 8 (20 per cent) were granted in full or in part and 2 (5 per cent) were closed on withdrawal.” (A/70/187, 63)

“Of the 46 appeals filed on behalf of the Secretary-General, 13 (28 per cent) were rejected [by the UNAT] and 33 (72 per cent) were granted in full or in part. In addition, the Appeals Tribunal considered five cross-appeals by staff members and one cross-appeal by the Secretary-General, which it disposed of in the respective judgements.” (A/70/187, 63)

Thus nine years after the conclusions and recommendations of the Redesign Panel, 75% of staff appeals were rejected while only 28% of SG appeals were rejected. 72% of the SG’s appeals were granted in whole or in part while only 20% of staff appeals were granted in whole or in part. (A/70/187, Figures VII and VIII)

These data suggest a fundamental and intolerable inequity that should have precipitated a demand for action by the GA. They may not establish the fact of inequity but they do create an over-powering appearance of such. The proportion of appeals by the SG to the UNAT also suggests a very significant dissatisfaction with the quality of UNDT decisions and a determination to “go after” awards made to the appellants by the UNDT. Such a level can foster a reserve if not fear on the part of the UNDT that its credibility and integrity is so frequently being called into question by the SG. This is a real pressure. Similarly, this creates a pressure on the part of the UNAT to redress the quality of the work of the UNDT. Yet another aspect is the elevated needs by staff for legal counsel and their compensation to address the SG’s appeals. Could it be that with such appeals by the SG staff are driven to such a state of poverty they are not able to afford counsel? And the GA has not yet finished looking to the staff for funds.

25.1. Financing of Staff Legal Counsel

In the GA’s seeking funds from staff, they have not asked staff to sign up to contribute. To the contrary, under this regime the staff are required to contribute to their own legal defense unless they opt out. The burden is placed on the staff to Opt Out. Who has access to those names and the uses to which those names are put are not yet known.

No analogous system for financing managers’ legal costs has been proposed.

25.2. Reductions in awards

“In 11 cases, the Appeals Tribunal vacated both the award of compensation and the specific performance ordered by the Dispute Tribunal. In 16 cases, the Appeals Tribunal vacated or decreased the compensation awarded by the Dispute Tribunal and in 5 cases it vacated the specific performance order of the Dispute Tribunal. In one case, the Appeals Tribunal vacated the specific performance order and awarded compensation where none was awarded by the Dispute Tribunal. In two cases, the Appeals

Tribunal ordered specific performance where none was ordered by the Dispute Tribunal, and in one case it awarded compensation where none was awarded by the Dispute Tribunal. The Appeals Tribunal remanded five cases to the Dispute Tribunal.” (A/70/187, 67)

The imbalances in the numbers of staff and SG appeals accepted by the UNAT were severe enough. But adding to that, the UNAT’s 44 instances of having vacated or decreased compensation and specific performance, while in 3 cases having ordered specific performance or compensation where none had been previously awarded by the UNDT mark a watershed in the relationships between the SG and both tribunals, not to mention between the UNAT and the UNDT.

Does this mark a seeking on the part of the SG a comprehensive “victory” with respect to each and every aspect of the functioning of the internal system for the administration of justice?

The reductions in awards are used by the SG to justify to the GA that he is doing the right, just and most economical thing.

These data also call attention to the previously mentioned “partnership” between the Respondent and the UNDT in which the MEU and the OHRM/ALS perjured themselves by claiming that no request for management evaluation had been made when the request had been fully documented and the UNDT fully participated in and subscribed to the Respondent’s perjury.

This writer believes the deep imbalance in cases accepted and rejected by the UNDT are not seen by the GA and the SG as reflections of its tainted functioning but as possible implicit “success indicators”.

25.3 Perjury and effect of litigating

Case Study 1 also raises many questions as to the integrity of many aspects of statistical reporting, and whether misrepresentation is also the case in reports to the GA. For example, “...it has been estimated that, as at 31 December 2010, where the Unit had taken a view on a contested decision and the case had then proceeded to litigation, the view of the Dispute Tribunal had coincided with that of the Unit in a large majority of cases. Staff therefore may be dissuaded from litigating after the Unit stage”. (A/66/158, 50)

The matter of the staff being dissuaded from litigating may have been more related to the intimate connection even collusion between the Respondent and the Tribunals than because of the legal merits of the Respondent’s arguments.

25.4 MEU’s independent role

“ Furthermore, the work of the Unit provides the Department of Management with an overview of contested management decisions, enabling it to detect and correct systemic problems in administration, and to hold to internal account officials whose conduct has been egregious.” (A/66/158, 50) The definitions and number of “systemic problems in administration” seem to have gone unremarked. Egregious cases, their nature and their disposition seem to be unknown.

If indeed, the conduct of officials involved in the Case Study No. 1 was not egregious, it would, perhaps, have no meaning at all. Is the lack of such reports by the administration taken as evidence that there have been no instances where detection and correction should have taken place?

This would call for a detailed, independent analysis of appeals to include; i) staff appeals related to what factual and legal issues? ii) the appeals as stated by the Applicant? iii) the appeals as restated by the MEU? iv) the decisions made of those appeals by the MEU in terms of “upheld” , “partially upheld”, “reversals” and the UNDT’s decisions? v) the legal foundations for those arguments? vi) reasons for staff appeals of UNDT decisions? vii) awards sought?; viii) awards granted? ix) SG appeals of the awards? and x) arguments against those decisions?

26. “No-Loss”, “No-Cost”

The Redesign panel believed: “The power of the Secretary-General to choose between specific performance and the payment of limited compensation can, and sometimes does, result in inadequate compensation, particularly in cases of wrongful termination or non-renewal of contract. A system that cannot guarantee adequate compensation or other appropriate remedy is fundamentally flawed. More significantly, a system that does not have authority to finally determine rights and appropriate remedies is inconsistent with the rule of law.” (A/61/205, 71)

Almost all adverse administrative decisions, by definition, have negative financial implications against the staff member and often against but at times in favor of the management. These can significantly affect the reluctance of the SG to promote a settlement and for the staff member to accept one.

As noted in section 25, the proportion of SG appeals to the UNAT of UNDT awards to staff members is quite significant. This reveals an important distrust and lack of confidence in the work of the UNDT and a concern that even meagre awards be kept to a minimum. These appeals routinely result in diminishing awards for staff members. (See above: A/70/187, 63, 67)

The SG uses these reductions to demonstrate his vigilance to the GA, rather than demonstrating the integrity of the system for the administration of justice.

Deterrence, accountability and morale all suffer where staff members are required to document or prove his/her losses and then to be compensated for those losses alone, if at all.

The heart of such an experience is that once the decision is taken, the UN shall not experience any loss greater than that. The concept of “loss” usually has two major components: i) loss to the staff member or victim. This can take the form of rights, privileges, allowances and entitlements denied, embarrassment before one’s professional and collegial contacts. Rescission of decision or awards which only rarely will compensate for loss or erosion of trust and respect and loss as included in the operational, especially legal, costs to the organization. ii) The most demonstrable costs are not always the greatest costs. The most demonstrable costs are the awards by the UNDT or the UNAT. The greatest costs are those associated with the functioning of the MEU, OHRM/ALS, the OLA/GLD and the senior legal officers of the Offices and Departments. Ever alert, vigilant and keenly protective of the resources of the Member States, the SG will not hesitate to appeal meagre awards made by the UNDT even where the legal costs of doing so far outweigh the amounts to be retrieved.

Key to the avoidance of financial loss is the avoidance of judicial losses. We have seen: i) how staff legal resources, the OSLA, are an established aspect of the formal system for the administration of justice; ii) how management’s legal resources are not established as part of the formal system despite the fact that the UNDT can have no jurisdiction unless a request to the MEU for management review has been made; iii) how the SG maintains vast legal resources while the staff have no corresponding right or access; iv) how costs for managers’ counsel are paid for by the SG while there is no corresponding assurance for staff; v) the ratio of management cases accepted by the UNAT far exceeds those staff appeals accepted; vi) the ratio of management cases rejected by the UNAT is a small fraction of staff appeals rejected by the UNAT; vii) how the UNAT decreases or overturns UNDT awards or calls for specific performance while only rarely increasing them to staff; viii) how the UNAT, by comparison, almost never increases such awards to staff or calls for specific performance; ix) how awards to staff and against management are paid by the UN; x) how awards against the staff member to the Organization are paid by the individual staff member; xi) how the SG has, over a twelve and a half year period taken disciplinary action against 513 staff members and only 2 managers and 5 “officials”. (See

Footnotes. and Sims, “The UN Administration of Justice: Redesign Panel Themes and Implementation”, 7.5)

By every index, the SG enjoys a commanding presence in resources and outcomes. It isn't even close. There appears to be no index by which the SG and staff appear to have even an approximately equal chance.

Despite that, the SG appears to be so committed to the high-level officials such as ASGs and USGs and to the proposition that such officials shall not lose their cases and their adverse administrative decisions taken against staff members that it had to engage in foul play as documented in Case Study 1.

This ensures a “no-loss” or “no-cost” experience for management where, if the staff member is demoted or fired, and should the staff member not appeal, the Organization perceives it has come out ahead by saving those monies and without having to establish the merits of its actions. If the staff member does appeal, in the unlikely event s/he wins, the UN, other than moral damages, cannot be required to pay any awards greater than the same amounts denied the staff member, the same amounts the Organization would have “saved” had the case not been appealed.

Many administrative decisions have more behind them than mere breaches of staff rules and regulations. With few disincentives to taking random adverse administrative decisions against staff, the attenuated awards can actually constitute an incentive, especially if a supervisor's disaffection is factored into the equation. Where such factors as antipathies between the staff member and his/her supervisors are taken into account, putative breaches may actually be sought out and possibly fabricated.

In addition to the SG's displeasure with the UNDT, this would also suggest that staff should not get away with too much, which they might have unless held in check by the SG.

27. Investigation

The issue of receivability, the acute differentials in appeal acceptances and rejections by the UNAT, and the vast inequities between discipline of staff and managers, all suggest the need for independent investigations. If staff are being advised by the MEU that their appeals are not “receivable” and such advice is without meaning in terms of appeals, are they being illegally advised? Could this only be done with other than the intent to limit or reduce the number of cases? A key strategy in association with this is encouraging the Applicant to withdraw the appeal. An appeal withdrawn is no longer an appeal and the administration has no responsibility for it.

The MEU can advise and deeply influence the staff member but not control his or her actions. It can, however, control the actions of the managers, especially with respect to the prevention of errant administrative decisions.

In addition, since the staff member seeking to undertake an appeal is only required to have requested a management evaluation, the response of the MEU, while of interest, cannot preclude the perfection of the appeal.

28. MEU's Strategies

Functionally speaking, the MEU is the first and possibly most important voice for the interests of the management and should not be seen as an advocate for staff. The MEU is not independent and is not impartial. The interests of management may or may not coincide with the interests of the Organization. While some MEU decisions may coincide with staff interests, it would be because of that coincidence,

nothing more. The MEU, placing a premium on a litigious process, has a practice of tailoring its response to place the SG in the most favorable light. This may well involve some practices that are disingenuous. The practice should be seen as being more of a law-based than justice-based perspective.

The Management Evaluation Unit has now incorporated many of the former administrative review strategies to defend the management. Rather than listening to the staff member in a disinterested manner and seeking to address an undesirable situation, the Management Evaluation Unit (MEU) might become exaggeratedly legal. To establish the “strongest” possible position for the MEU and to enable it to avoid accountability by management to the greatest extent, the MEU has formulated arguments that might include: a) denial that the Appellant had requested a review of the decision; b) a denial the MEU had received the document that had been presented for review; c) the deliberate misstatement of the issue the MEU had been requested to review. It has done this also in its own report as well as before the UNDT; this enables the MEU to address its own issue rather than the Applicant’s; d) testifying that the Applicant had not requested an evaluation of the issue that had been requested; e) arguing later that the same issue was not receivable because a review had not been previously requested in a timely manner and now it was too late *ratione temporis*; f) refusal to cite and acknowledge policies put forth by the Applicant as validation in his or her defense and as argument against the Respondent’s actions; g) the deliberate misstatement or denial of factual information, including that from performance reports; h) reaching the narrowest, most limited conclusion as to what an administrative decision is; i) the denial that any administrative decision had ever been taken so there was nothing that could be appealed; j) withholding of any communication conveying that decision so there could be no proof of a decision; k) even if a decision had been taken, the MEU would argue: i) the staff member had no rights that were denied, so the decision could not be appealed; ii) the staff member was not a staff member or no longer a staff member, so the decision could not be appealed; iii) the issue under appeal was a recommendation (including the performance appraisal and departmental recommendation system) and therefore not a decision; iv) the issuing of a slanderous press release giving false information on a staff member while arguing that the issuance of such a slanderous press release involved no administrative decision; l) the ignoring or concealing of reports favorable to the staff member; m) a citing of Tribunal rulings favorable to its arguments while ignoring Tribunal decisions unfavorable to its arguments; n) the formulation of arguments to discredit the arguments of the appellant; o) the quotation of non- or irrelevant jurisprudence; p) the appeal could not be found receivable *ratione temporis*, *ratione materiae* or *ratione personae*; q) the Respondent (the S-G) might make a summary argument in the absence of any reference to substantiating documentation whether policy in the form of facts or of Staff Regulations and Rules, SGBs AIs or other administrative issuances, or in the form of jurisprudence; r) the denial of due process through the refusal to provide documentation and evidence related to the issues under consideration; s) the refusal to provide access to the staff member’s own Official Status File; t) the maintaining of and refusal to grant access to confidential files outlawed by ST/IC/82/77/Rev.1; u) the refusal to address its burden of proof; and v) the abuse of the Departmental Recommendation process through the provision of false information.

In such instances, the Respondent seeks to mislead or deceive the potential or actual applicant into believing that he or she has no case whatsoever and/or has no rights to be defended. Needless to say these strategies are the diametric opposite of the S-G’s commitment to identify any managerial shortcomings. These strategies, often involving the blaming of the victim, are oriented towards the avoidance of addressing any substantive issues, the refusal to: i) listen to the staff member; ii) address any of the situations whether personal or professional; iii) undertake a disinterested, objective investigation or a constructive analysis; iv) see that staff may have been in the right; v) identify the quality and frequency of management errors and vi) identify patterns of mismanagement and abuse of authority. Above all, the avoidance of accountability.

These behaviors are largely if not utterly devoid of any ethical, moral or legitimate basis. Taken together, they represent a nadir in terms of honesty, objectivity, impartiality and integrity. And all of this takes place with the oversight of the Executive Office of the USGM.

There should be an independent audit of the MEU's deliberative and decision-making processes as well as their decisions to determine the extent to which these and other behaviors have manifested themselves.

It is not the intent of this author to suggest that these actions are characteristic of all of the MEU's work. These are only a few of the issues this author has encountered with respect to his clients.

29. Lessons-Learned Guides

The MEU "... also provides support to the Under-Secretary-General in the compilation of the lessons-learned guide for managers and guidance notes that are circulated to all heads of offices and departments, and through them to their managers. The current three lessons-learned guides for managers ... include a review of the jurisprudence of the Dispute and Appeals Tribunals and examine how the judgements interpret and apply the internal laws of the Organization." (A/68/346, 113) "... provide lessons learned for decision makers, resulting in significant cost avoidance to the Organization. (/68/346, 24)

Among the highest Organizational purposes should be the reduction of possibilities for conflict between staff and management. This might best be served by a common, shared understanding of the intent and implementation of applicable policies, regulations and jurisprudence. Why then are these Lessons Learned guides prepared only by and for managers? Why are staff not also engaged so as to benefit from their wisdom and experience? The failure to undertake their preparation jointly further aggravates the inequitable relationship between management and staff. Instead they appear to be designed principally to be used against staff. The tone of the above might appear to suggest the use of such guides as essential aspects of an adversarial process rather than as sources of greater understanding between management and staff so as to resolve and prevent misunderstanding and resultant conflicts.

Worse, it makes the following statements appear to be dissembling: "The Secretary-General consistently makes every effort to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace, in particular a lack of timely and open dialogue in performance evaluation issues between managers and staff members, a lack of full understanding by managers of the internal laws and procedures of the Organization, a lack of clarity of some elements of the laws and the general managerial challenges of making and communicating administrative decisions." (A/68/346, para. 114) The GA gives little indication that such guides might seek to generate shared understandings when shared with staff: either staff unions or the OSLA. Should that be the case, it might indicate there is little in the way of expectation that the lessons learned could have any beneficial impact on the nature or frequencies of staff-management differences.

"... in 2012, the Advisory Committee [ACABQ] was informed that the Management Evaluation Unit recommended nine settlements, relating to managers not applying rules correctly, which resulted in the staff members receiving payments of what they would have been entitled to had the managers applied the rules correctly. The managers and their superiors were informed of the errors in writing and acknowledged receipt of the settlement and related lessons learned. The Advisory Committee affirms the importance of lessons-learned guides on the Tribunals' jurisprudence for managers, and expects that the lessons learned will produce concrete results in managerial actions." (A/68/530)

There appears to be expectation that the lessons learned will produce concrete results in managerial actions (A/68/530) so as to reduce any managers' actions that are primary sources of adverse administrative decisions giving rise to appeals. But this example makes no suggestions as to how Lessons Learned might mitigate the numbers and impact of adverse administrative decisions and whether that was an outcome in these cases. There is no hint of any expectation by the ACABQ that any engagement by staff in the preparation of such guides or that their guidance might have any beneficial

impact on staff management relations.

30. Whistle-blowers and retaliation

The MEU might be requested for a management evaluation of a decision that has taken place long after a whistle-blowing. One of my clients was retaliated against more than eight years following a whistle-blowing. At first, it never occurred to staff member or counsel that it was retaliation for whistle-blowing.

It is difficult to reach any useful views regarding whistle blowing in the UN since whistle blowing had been defined (OIOS, 2001 Investigation Guidelines) but no longer is: that language has been eliminated. Strangely, in the absence of retaliation, policies make clear, there has been no whistleblowing.

“It is the duty of staff members to report any breach of the Organization’s regulations and rules to the officials whose responsibility it is to take appropriate action (ST/SGB/2005/21, para. 1.1). In order to ensure that this system operates effectively, the Secretary-General has developed a scheme to protect those providing such information (whistle-blowers) from retaliation. Various stakeholders stated that this system was under review.” (A/70/188, 137)

The Secretary-General has taken the position that the Ethics Office, to which claims of retaliation must be made, is independent and its recommendations, therefore, are not reviewable by the SG. The foundation documents of the Ethics Office, however, have not established the Ethics Office as independent.

Another structural policy barrier to justice is that reporting, in the absence of retaliation, is not whistle blowing. It is the retaliation by managers that defines and creates the fact of whistle blowing. In the absence of retaliation, there has been no whistle blowing. This, obviously, is nonsense.

It is clear, however, that while staff members have the duty to report breaches of the Organization’s regulations and rules, they do not have the right to do so. This staff right must be established.

The Humpty-Dumpty approach to policy became fully manifest in all its glory with respect to Anders Kompass’ case where the SG decided the head of the Ethics Office was independent and his decisions were not subject to the SG’s authority.

“The Internal Justice Council notes that under the present system the Director of the Ethics Office makes the final decision as to whether retaliation has taken place. However, because of the structure of the Ethics Office, the Appeals Tribunal has decided that the decision of that official, a staff member, is not subject to judicial review. The Council considers that the panel of experts should examine this issue with a view to ensuring that the decisions of the Director of the Ethics Office, like other administrative decisions taken on behalf of the Secretary-General are subject to judicial review. Unless this is done, the Council considers that the effective protection of whistle-blowers will remain seriously compromised.” (A/70/188, 138)

What remains to be documented is any effective protection of whistle-blowers.

31. Recommendations (Partial):

1. The GA should ensure the adoption of a consistent, inclusive definition of the formal system for the administration of justice.

- 2. As the legal resources for staff should be included in that definition, so also should be all of the SG's principal legal resources including the OHRM/ALS, the OLA/GLD and the senior legal advisers for Offices and Departments.**
- 3. The OAJ should, in the interest of equity and symmetry, be independent and mandated also to oversee and coordinate the legal representation of the SG, including the OHRM/ALS, the OLA/GLD and the senior legal advisers for the Offices and Departments, in addition to that for staff, the OSLA.**
- 4. Consistent with the views of the UNAT, Andronov, 1157, and the Redesign Panel, appeals should be permitted of administrative decisions as well as of administrative conduct.**
- 5. Appeals should be filed against the Organization, not the Secretary-General.**
- 6. The GA should establish mandates with respect to an independent, unbiased, impartial legal body, not another administrative body, for any pre-litigation analyses of options and dispositions.**
- 7. The GA should undertake an independent analysis and appraisal of the criteria, purposes, norms and standards as used by the administration's MEU to "review" administrative decisions as well as its deliberative and decision-making processes including its values and mandates.**
- 8. The GA's independent analysis and appraisal should include: the MEU's "independence" and "impartiality", especially a detailed understanding as to the operationalization of their meanings. Also to be included in the independent analysis and appraisal are the purposes, norms, standards and criteria related to adverse administrative decisions regarding "receivability" and "upheld", "partially upheld", "reversed", "withdrawals", "settlements", and to prevent or discourage "unnecessary" litigation should be undertaken. and non-legislated statements of purpose that are now analyzed: the MEU has a) the "opportunity" or "chance" b) to identify and correct "managerial error" or "improper" decisions c) so as to identify or provide acceptable remedies so as to d) "prevent unnecessary litigation" and thereby e) to achieve "significant cost savings".**
- 9. The MEU should not have a role with respect to the appeals process. It is yet another instrument of the SG's administrative apparatus while reporting to the USGM and teamed up with the OHRM/ALS and the OLA/GLD to assure the strongest possible defensive posture for the SG; it also enables yet another layer of administrative decision to be appealed.**
- 10. If the MEU is to continue, its terms of reference, having been approved by the GA, should elaborate in detail the purposes of its core functions including its findings related to "receivability", "upheld", "partially upheld", "reversed" and its non-legislated purposes.**
- 11. The very significant, inexplicable and structural imbalances between SG's appeals to the UNAT accepted and staff appeals accepted, on the one hand, and staff appeals rejected and the SG's appeals rejected, in addition, ensuring disciplinary measures taken against staff outnumber those against managers by 513 to 2 all leave the unmistakable impression of collusion between the SG and the tribunals. These imbalances must be redressed.**
- 12. As managers have the effective right to paid legal counsel, in the interests of equity so also should staff.**
- 13. As awards against managers are paid by the UN, so also should awards against staff where they do not involve personal obligations or fraud.**
- 14. Lessons Learned guides should be prepared with the engagement of staff and their counsels**

and circulated to staff. The conclusion is inescapable that, at present, they are prepared by the MEU for and with managers and to be circulated to managers only. As such these can be used primarily for adversarial purposes against staff.

15. The application of the disciplinary process should not come to be regarded as discriminatory, prejudicial, obscure and opaque because of its almost exclusive focus on staff. In other words, a farce. Institutional structures, policies and procedures are long overdue a complete overhaul to ensure a far more equitable process.

16. Staff members must have more than the duty to report breaches of the Organization's regulations and rules; they must have the right to do so. This staff right to report breaches must be established.

17. The MEU, if it is to continue as an element of the SG's legal team, should be "called upon" and to "have the responsibility" to undertake tasks which could achieve a reduction in the number of appeals, to achieve settlements and cost savings.

18. An independent investigation and managerial analysis should be undertaken regarding the dimensions, nature and extent of the MEU's collaboration with the OHRM/ALS and the OLA/GLD in undertaking the analyses of the UN's legislative mandates, personnel policies and the Tribunals' jurisprudence and their testimony before the UNDT.

19. Far greater specification should be given to settlements and the conditions under which they have been negotiated so as to achieve a clear definition of guidelines so as to reduce ambiguity and the exercise of discretion in decision-making.

20. It is proposed the language be altered to read: "...the Administration is called upon and has a responsibility to prevent inappropriate administrative decisions and unnecessary litigation..."

Footnotes: ST/IC/2015/22, ST/IC/2014/26, ST/IC/2013/29, ST/IC/2012/19, ST/IC/2011/20, ST/IC/2010/26, ST/IC/2009/30, ST/IC/2008/41, ST/IC/2007/47, ST/IC/2006/48, ST/IC/2005/51, ST/IC/2004/28,

ACRONYMS

ACABQ: Advisory Committee on Administrative and Budgetary Questions

GA: General Assembly

IJC: Internal Justice Council

MEU: Management Evaluation Unit

OAJ: Office of Administration of Justice

OHRM: Office of Human Resources Management

OHRM/ALS: Office of Human Resources Management. Administrative Legal Section,

OIOS: Office of Internal Oversight Services

OLA: Office of Legal Affairs

OLA/GLD: Office of Legal Affairs/General Legal Division,

OSLA: Office of Staff Legal Assistance

OUSGM: Office of the Under-Secretary-General for Management

SG: Secretary-General

UNAT: United Nations Appeals Tribunal

UNDT: the United Nations Dispute Tribunal

USGM: Under-Secretary-General for Management