Submission

by

Peter Anthony Gallo

Attorney-at-Law

to the

United Nations Internal Justice Council

New York
21 May 2019

I am a practising attorney admitted in three countries. As such I believe I have a professional and fiduciary duty to offer the best possible advice to clients and potential clients, and to manage their expectations with a realistic assessments of their legal options.I offer that advice based on the facts available to me, my knowledge of the pertinent legal system and my own experience of that system.

When I was a UN staff member myself, I was compelled to file a case in the UNDT because it was the only available means of addressing a serious professional issue that the UN either did not understand or was indifferent to. As matters progressed, it became increasingly apparent that trusting in the UN "justice" system had been a serious error of judgement on my part; the Tribunal was not just unable to address the fundamental problem, it was *uninterested* in addressing the implications of the evidence.[1]

With regard to the United Nations, therefore, I now routinely give UN staff members two fundamental pieces of advice:

(First) ***Never to jeopardize their own career in the UN system by reporting 'possible misconduct' as is required under the UN Staff Regulations and Rules,*** *and*

(Second) ***Never to jeopardize their own career in the UN system - or their physical and mental health - by challenging any administrative decision through the UN "justice" system***.

That advice is based on a 35-year international career in law as well as investigating fraud and corruption, culminating in my own personal experience of the UN "justice" system and thereafter

---

[1] Article 9(2) of the UNDT Statute allows the judge to decide a case without a hearing, and thus avoid public disclosure of facts that would be embarrassing to the Administration.

advising a large number of other staff members on disciplinary and legal issues in the UN. I have given numerous interviews to the print media and on television, I have been quoted extensively, even appeared in an animated documentary film and now testified twice before US Congressional Committees on the corruption in the UN.

I have lost count of the number of examples of misconduct, criminality or corruption brought to my attention - and the occasions when UN senior officials have simply lied - so nothing was done about it.

At no time, however, either when I was a staff member or at any time since, has the UN been able to dispute the facts or challenge me on the merits of anything I have ever said.

There is a conclusion to be drawn from that observation.

My reasons for now giving the dissuasive advice that I do include the following:

Mismanagement, Collusion and Prejudicial Abuses of Power

The purpose of the UN "justice" system is patently unrelated to any concept of justice. It is instead a mechanism designed, and used by the Department of Management, to defend mismanagement and to protect corrupt individuals and to punish staff members prepared to speak out against misconduct within the Organization.

The *Belkhabbaz* series of UNDT judgements[2] provide a sobering lesson for all staff members, particularly because the Applicant in that case happened to be an OSLA lawyer with a sound record of representing staff members) and that is that the UN considers it quite acceptable to prejudice a staff member for having recourse to the UN "justice" system to challenge unlawful decisions.

It is worth quoting from UNDT/2018/071 where the Judge states:

> "*Absent any indication of an abuse of procedure by the Applicant, the Tribunal could not be more concerned and shocked that senior officials of OSLA, OAJ and the MEU, the three offices at the heart of the UN internal justice system and for which the principal raison d'être is to ensure that staff members have access to justice, all took the view that the Applicant's legitimate exercise of her legal rights could justify her separation from service*."[3]

That, in one sentence, sums up why the UN "justice" system is nothing more than a sham and cannot be trusted by the ordinary staff member.

That the UNAT would then blithely overturn such a finding and "unwrite" these findings to exonerate all those concerned comes as no surprise and is simply more evidence of the same.

If the UN "justice" system fails to protect a staff member who is penalized for being put in a position

---

2 2103/UNDT/045, 2015/UNDT/046, 2015/UNDT/046, UNDT/2018/071

3 *Belkhabbaz (UNDT/2018/071)* Para 265.

where they are compelled to have recourse to that "justice" system; *what real purpose does it serve?*

The culture at the senior levels in the UN is one of mutual support and patronage. They will protect each other because they all owe their positions to their own failings having been covered up in the past, and that extends to doing favors for others on the basis of their "loyalties" not the facts before them.

The result is that with promotions or with disciplinary matters, the story is the same: it does not matter what the staff member has *done*, the decision will be made based on who that staff member *knows*. Managerial authority is routinely abused and corruption thrives because bad and unethical decisions will always be dressed up with the cloak of respectability afforded by the ability (whether justified or not) to claim that *the proper procedure was followed.*

The UN - and the Management Evaluation Unit in particular - is willfully blind to the fact that just because a decision may not be technically "unlawful" does *not* mean (1) that it is managerially sound (2) that it meets any standard of "reasonableness" nor (3) that it was made in good faith.

It is not uncommon for staff members to be put in a position where they will be certain to fail, for no reason other than to justify a poor annual appraisal that will harm their career.

> My own disagreement with the UN arose because the Organization insisted that OIOS management was under no obligation to provide answers to questions I raised when they alleged I had '*performance shortcomings*' under ST/AI/2010/5. Quite apart from it making no sense that any staff member should not have the right to know what he is alleged to have done wrong; the obvious solution would have been for OIOS to just answer my questions on a *voluntary* basis. The only plausible explanation for their refusal to do so was that they simply *could not do so* – and if they could, that invalidated the attempt to impose the PIP in the first place, something the Department of Management was very anxious not to address.

The UN's reaction to the child sex abuse scandal in the Central African Republic in 2015 is the perfect illustration of a collective inability to manage a situation. It did not occur to any of the six cabinet-level officials who were involve in the decision to pursue Mr. Anders Kompass for "*leaking confidential information*" that he may have had a moral, far less a legal, justification for taking the action that he did, or that that included preventing the further sexual abuse of children; *something that the general public would expect the UN to do*.

The conclusion of the Deschamps Enquiry was that Carman Lapointe, the Under-Secretary-General of Oversight, had abused her authority. It was clear to me she had been doing so for years. Had the UN "justice" system served as any sort of deterrent, a number of previous decisions she had made would have been corrected and there would at least have been a possibility that she understood her obligations. As things turned out; it is apparent that for almost five years, she had relied on the UN's

practice of mutual support and patronage; so her own failings had been covered up in the past, in exchange for overlooking the shortcomings in others.

This is the essence of corruption in the UN.

Management of the Organization also demonstrates an arrogance that over-rides the Rule of Law, something that further demonstrates the disdain they have for the UN "justice" system, and when staff are critical of their Organization of their disregard for their own rules or their own principles; the staff do not have the same freedoms as are contained in the Universal Declaration of Human Rights.

> On 1 April 2015, then Deputy-Secretary-General Jan Eliasson signed a letter to me, communicating the decision to impose a for the misconduct of 'harassment' for a comment on a whiteboard that nobody other than the complainant (Michael Dudley despite the fact he denied actually having *complained* about it), even saw - making a satirical reference to a finding of fact in a UNDT judgement. In it, he relayed the opinion that commenting on a matter that had an impact on the credibility of my own office and therefor my own career, was *not* protected as *freedom of opinion and expression* under Article 19 of the Universal Declaration of Human Rights, because – quote - "*this freedom is subject to reasonable restrictions, including the requirement to act in accordance with the United Nations Staff Regulations and Staff Rules*."
>
> The UN Staff Regulations and Rules are merely administrative rules without the force of criminal law; a scenario that should be compared to Julian Assange of 'Wikileaks', who knowingly disregarded US criminal law, jeopardized US national security and put lives in danger, but was defended by the UN Special Rapporteur for Freedom of Opinion and Expression Frank LaRue, who described him as a "*martyr for free speech*", saying he should not face legal accountability for any information he had published.

If the UN "justice" system fails afford to UN staff members at least the same protections as the Organization claims must be be granted to every other persons on the surface of this planet; *what real purpose does it serve?*

The UNDT and challengeable "Administrative Decisions"

The UN's peculiar definition of an 'administrative decision' has clearly been designed to limit the staff member's ability to challenge *any* decision and thus emasculate the Tribunal.

Restricted by this limited jurisdiction, UNDT judges can (and do) simply ignore all the evidence of peripheral misconduct and take a blinkered approach to the matter in hand.

In fairness to them however, given (1) the Respondent's almost unrestricted ability to appeal any judgement, (2) the clear bias shown by the UNAT and (3) the Secretary-General's unwillingness to take action on referrals for accountability; the UNDT judges have little power to do otherwise.

That may excuse their impotence, but it is a serious indictment of the "justice" system as a whole.

In disciplinary cases, there is evidence of material evidence being systematically withheld from the decision-maker and the Tribunal, so the staff member is denied access to potentially exculpatory evidence, or documents that would prove serious procedural irregularities on the part of OIOS.

Staff members are expected to challenge decisions without the right to demand access to all of the necessary documentation, and there is no accountability should documents be withheld.

Moreover, in cases where the UNDT returned a judgement in favor of the staff member; in justifying their decision to appeal to the UNAT; I know of evidence of that decision being made on the basis of ulterior motives, falsehoods and selective misrepresentations of the facts.

It is also curious to note that the UNDT judges are sometimes reluctant to identify miscreant staff members by name. Some judges publish Orders and some do not. Such selective reticence and inconsistency does nothing to uphold the standards supposedly expected of staff members. On the contrary, it protects the corrupt, and is hardly a transparent system that instills confidence in the ordinary staff member.

UN Appeals Tribunal

The UNAT is probably the biggest single obstruction to the case of "justice" in what the UN calls a "justice" system, rendering the UNDT nothing more than a preliminary hurdle in a system where my statistics show staff members have only a 30% chance of success anyway.

The UN "justice" system is not a two-tier system. The frequency and the ease with which the Organization appeals unfavorable decisions shows it is a two-*stage* system. The Organization does not consider the findings of fact in a UNDT Judgment to be binding until the UNAT has issued a judgement on the matter – even before any appeal is even filed.

It is also the Organization's deliberate policy to file appeals on the 60th day of the appealable period, so as to prevent the staff member filing a cross-appeal; prolonging the process for as long as possible with all the associated stress for the staff member.

I look forward to a plausible explanation of how it is humanly possible that when the UNAT is required to consider an appeal filed by the Administration against a judgement wherein a UNDT judge found in favor of the *staff member*; the UNAT judges find that the UNDT made serious errors of fact or law in **93%** of all cases. On the other hand, when these *same* UNDT judges find for the *Administration* and the staff member choses to appeal, the UNAT finds they made serious errors of fact or law in only about **2%** of cases. These figures are unbelievable but official.[4]

---

4 Figure VI on page 15 of the OAJ Annual Report (A/73/217) dated 23 July 2018.

In explaining that peculiar imbalance, one has to consider specific examples of their judicial wisdom; such as in *Wasserstrom* where, by a majority decision with one dissenting opinion) they knowingly made a complete mockery of ST/SGB/2005/21 and undermined UN Staff Regulation 1.2(c).[5]

By deciding cases on the strength of the documents alone, the UNAT can also very conveniently fail to address grounds for appeal raised by the Applicant while also overturning UNDT judgements on matters that were never appealed in the first place.

There is some irony in a "justice" system where most of the staff involved in its administration seem to believe their role is act as a a judge, while the Appellate judges seem to believe they can act is though appointed by Divine Right, unconstrained by such minor inconveniences as the facts or the law….

I cannot criticize any staff member for having no faith in such a system and even less respect for the Judges who sit on it.

The UN also chooses to believe that the UNAT holds almost magical powers with regard to evidence; in reversing a UNDT judgement, the embarrassing facts of that case are deemed to just disappear.

The *Nguyen-Kropp & Postica (2013/UNDT/176)* judgement demonstrated the extent of the misconduct and corruption in OIOS management; so the Organization relied on the UNAT to render those facts invisible.

The ordinary UN staff member is therefore expected to believe that OIOS can and will investigate complaints of misconduct fairly and impartially, overlooking the fact that an OIOS/ID Deputy Director admitted to retaliating against two OIOS investigators for no reason other than malice. Ordinary UN staff members are expected not to be even slightly concerned that about the impartiality of OIOS investigators who will clear their own boss of *evidence tampering* on the basis of contrived logic that simply 'fails to pass the sniff test.' These facts are not "facts" for accountability purposes.

Senior management of the Organization is fully aware of the extent of the corruption and the ineptitude in OIOS but it is important to them that the individuals responsible for it be protected (and anyone not prepared to go along with the culture be dismissed.) The reason for this is because the corruption in OIOS ensures that corruption anywhere else will be overlooked. To this end, the "justice" system plays an important role; if UNDT cases cannot be settled before embarrassing facts are published; the UNAT can be relied upon to overturn them and render them not "facts".

---

[5] Two other aspects of the Wasserstrom affair remain curious; (1) Wasserstrom applied for 'whistleblower protection' after he reported financial corruption on a massive scale. To the best of my knowledge, that corruption was never fully investigated, but it was clear that the UN was prepared to go to great lengths to retaliate against him, and destroy his reputation, for having reported it. (2) Wasserstrom challenged the Ethics Office decision because the OIOS report was contradicted by information in its own annexes; and no action was taken against any of the investigators responsible for the investigator's patent "performance shortcoming".

The implication here is a very obvious one; *that the UNAT judges must have been carefully selected because the Organization knew in advance that they (even more that the UNDT judges) could be relied upon to rubber-stamp anything their employers put in front of them.*

The same appears to be the case for the current UUSG/OIOS, who appears to flaunt the UN Staff Regulations and Rules herself despite having a responsibility to hold others to account.

I understand this is how the legal system works in North Korea too.

Abuses of Discretion in the investigation of reports of 'Possible Misconduct'

In disciplinary matters, there is no independent oversight over the decision of whether or not a complaint of possible misconduct should be investigated or how it should be handled.

It is no coincidence that the woman appointed (without any competitive selection process) to be head of Conduct and Discipline function was the wife of an controversial OIOS Deputy-Director who – despite being manifestly unqualified for the post and having a string of mismanaged investigations on his record – the Organization was most anxious to promote. This gave a husband and wife team (both of whom were appointed under suspicious circumstances) the ability to filter most of the misconduct complaints that were received; ensuring that many could be disregarded if they might be embarrassing to senior managers they wished to protect. In return of course, those senior managers would be expected to repay these favors when required.

This is the essence of corruption in the UN.

When complaints of possible misconduct are received, OIOS has unfettered discretion on how (if at all) these should be investigated. This allows for many to be dismissed as merely "management issues" rather than misconduct, while investigating others that cannot reasonably be described as misconduct – and the "justice" system does not allow for those decisions to be reviewed, no matter now suspicious or untenable they may be.

This discretion is exercised to investigate some complaints and not others – because the Organization wants some staff members to be disciplined and others protected.

> In my own case, OIOS refused to take any action following a complaint I had to make following the UNDT judgement in *Nguyen-Kropp & Postica* about another OIOS investigator's perjury when testifying – but immediately ordered that I be investigated – even seeking to have *me* suspended in advance of the investigation - for a comment about the judges findings of fact in that case, after they had been reported in the international press.

Complaints received by OIOS are frequently referred to other departments to be investigated - often the department that has a clear vested interest in *not* finding misconduct – and the UN "justice" system

offers no remedy for staff members who find themselves being investigated (often by other staff with no investigative training or experience and who have a clear conflict of interests) under circumstances clearly indicative of prejudice.

I joined OIOS as an investigator with 18 years experience in corporate and financial investigations, mostly in corrupt Third World jurisdictions including China. I was never assigned any cases that were really commensurate with my expertise, but what I saw happening was that any complaints that alleged, or even alluded to, corruption in the UN's interaction with the corporate sector were very often dismissed as "management issues" and never investigated as corruption.

> After I left the Organization, the prosecution of two UN diplomats by the US Federal authorities in New York revealed that at the same time as OIOS was desperately trying to destroy my reputation and get rid of me, a senior UN staff member was implicated in corruption and money laundering. I later acquired a piece of evidence that indicates OIOS - *including specifically the ASG/OIOS David Kanja* - deliberately sabotaged the investigation in order that the subject could be allowed to retire before any disciplinary action had to be taken against him, and that is precisely what happened.
>
> It is difficult to believe those actions were simply a coincidence, particularly as the investigation (1) was managed by my former supervisor, who has a suspicious record of closing cases and who was promoted despite being responsible for mismanaging investigations that had to be settled before embarrassing facts were exposed in the UNDT and (2) the subject of that investigation worked for Catherine Pollard, who had been complicit in both the harassment that I experienced (*and which the UN Dispute Tribunal would not address)* and orchestrated the unwarranted and bad faith investigation of the former Investigations Director.

Where this abuse of the discretion to act on complaints is most egregious, however, relates to the manner in which 'Sexual Exploitation and Abuse' complaints are filtered[6], often by the Conduct and Discipline Units in field missions[7] - but as the decision to initiate (or not initiate) a misconduct has been deemed to be a *preliminary step* and not an "administrative decision" within the meaning of the UNDT statute; the UNDT is powerless to intervene. Staff involved in assessing reports of misconduct are therefore safe from criticism if they are *overly enthusiastic* in dismissing complaints from victims.

The difference between a *preliminary step* and an a*dministrative decision*, however, opens the door for the most egregious - if "legal" - harassment of staff members for illicit motives. A staff member can be

---

6 By the wife of an OIOS Deputy Director who clearly enjoys the protection of senior management despite a history of misconduct, ineptitude and unethical conduct that the Administrative Law Section regularly cover up.

7 Peter A Gallo. '**Neither Protection nor New**; Why the UN's policies on 'Sexual Exploitation and Abuse' are guaranteed to be ineffective.' ISBN-10: 1642542547 / ISBN-13: 9781642542547 Available online at: http://thebp.site/165757

put under investigation for something he was patently not responsible for,[8] possibly placed on Administrative Leave[9] removed from his post and subjected to a lengthy, expensive and pointless investigation, with all the stress that that will cause, until he is ultimately cleared of any wrongdoing, or given a minor censure for something insignificant. Then, only at the very end of the process is there is an "administrative decision" he can challenge before the UNDT – if he is even willing to prolong his ordeal by challenging the decision that cleared him of misconduct!

The effect – and indeed the intention - of such a strategy, of course, is to cause harm to the subject's career, possibly going on for several years, secure in the knowledge that no part of it can be challenged until the very final "administrative decision."

It is a basic principal of Administrative Law in most advanced democratic jurisdictions that any challenge to a government decision must be made as soon as possible; the UN revels in doing the very opposite – regardless of the financial implications.

The waste of money is unconscionable.

Abuses of Discretion in Disciplinary Decisions

A higher level of filtering, after OIOS or any other office has completed their investigation, lies with the now USG of Management Strategy, Policy & Compliance who makes the decision to charge the individual. That role was previously carried out by the ASG/OHRM – such as Catherine Pollard, whose relationship with certain controversial individuals in OIOS was referred to in *Stefanovic*[10] though this was of course covered up by an out-of-court settlement and no further action taken to address the obvious collusion.

I am aware of OIOS investigations into financial corruption, specifically in extorting money from applicants for local staff vacancies, resulting in the subjects simply being *admonished* by the ASG/OHRM. This sends a very clear and obvious signal to the guilty.

At the same time, where the same decision-maker wants to support a colleague rid themselves of a perfectly loyal and hard working staff member on the basis of a flawed decision-making process, they will do so.

The decision to terminate the staff member in *Aahooja (UNDT/2019/033)* – for example, was patently not based on clear and convincing evidence of anything. The decision to defend the Application, however, implicates UNICEF's legal counsel in what is obviously a very questionable course of action.

---

8 e.g the ASG/OHRM's bad faith investigation of Mr. Stefanovic referred to in *UNDT Order No. 185 (NY/2015)*

9 See *von der Schulenburg (UNDT/NBI/2013/014)*

10 *Ibid.*

I am also concerned about the recent judgement in *Mohamed (UNDT/2019/047)* which is unclear, but could be interpreted as an attempt by the judge to exclude evidence of motive. The Administration has also recently started arguing that misconduct is dependent on *intent* – which is a convenient excuse to take no action against an individual who they wish to protect.

If evidence of an illicit motive on the part of the decision-maker is to be excluded from judicial review, decisions clearly made in bad faith could be considered perfectly legitimate, thus rendering the entire "justice" system even more pointless than it is at present.

'Whistleblower Protection' and the Ethics Office

The lengths to which the UN Ethics Office will go to exclude an application for 'Protection against Retaliation' simply beggar belief. The result is that the system is guaranteed to fail the staff member who finds himself in need of that protection.

The Organizations patent unwillingness to actually protect 'whistleblowers' can be seen in how, after the UNAT completely undermined ST/SGB/2005/21 in *Wasserstrom*. It took the Secretary-General more than 18 months to update the flawed policy that could have been remedied in less than 48 hours with a short Bulletin amending ST/SGB/2005/21 such that the Ethics Office requests for the protection of a staff member were *binding* on the Secretary-General.

Instead, the Administration produced ST/SGB/2017/2 – a policy carefully designed to be no more effective than the one it replaced - and which has made absolutely no difference to the staff members experiencing the most obvious retaliation anyway.

I am told that the UNDT will hold a hearing in UNDT/GVA/2018/099 – *Reilly* – in early June 2019. This arose out of Ms. Reilly having reported her superior in OHCHR for misconduct in March 2013, when he was exposing Chinese human rights activists to serious and foreseeable risk of imprisonment and other harm by passing their names to the Chinese Government. That was *six years ago*.

I am also informed that OIOS/ID has effectively abdicated their responsibilities to investigate retaliation under ST/SGB/2017/2 by simply assuming the subject to provide some evidence of his innocence so they can close the case and reduce the average time taken for these investigations.

The fate of staff members who offend UN senior management by exposing corruption is a foregone conclusion; ***there is nothing to be gained by my encouraging staff members to report misconduct***.

The Secretary-General simply does not act on complaints against senior staff members. One can only assume that he relies on the advice of his senior staff, who are indebted to so many others that they are obliged to protect them, lest information about their own past shortcomings be exposed. In addition to failing to act on referrals for accountability by UNDT judges; complaints against senior officials in sensitive posts, based on information in the public domain, are also routinely ignored, as was the case

when I was asked to submit a complaint about the possible misconduct by the current Investigation Director following the judgement in Nouinou (2018/UNDT/070).

I also know from my own experience in OIOS that there is a clear correlation between "personal loyalties" and promotion, and an inverse correlation between promotion and proven ineptitude. Senior Management is very well aware of this, but does nothing because they are protected by the corrupt individuals who benefit from maintaining this hostile working environment.

The prospects for OIOS staff members who demonstrate any degree of personal integrity are discouraging, as are the implications for the credibility of the office.

The situation, clearly known to the Department of Management Strategy, Policy and Compliance, does **not** instill confidence but instead explains why the ordinary staff member would be foolish to trust in OIOS being willing or able to investigate retaliation either competently or impartially.

The Office of Staff Legal Affairs

OSLA operates on the fiction that lawyers employed by the UN, and whose career development is dependent upon having the support of senior UN legal staff, will jeopardize their own careers by aggressively pursuing cases brought by staff members against senior UN managers.

OSLA lawyers are accountable to the Organization, not their own clients.

Moreover, the route to advancement in their careers lies in other legal roles in the UN "justice" system – so there is a revolving door system whereby staff move from defending staff members to defending the decisions of management; a career path that might be compromised should any lawyer be too diligent in upholding the rights of the staff member against abuses by management.

The unethical conduct of the previous unit chief Mr. Brian Gorlick is illustrative of how this raises serious questions as to the whether or not the ordinary staff member can have any confidence in advice from OSLA lawyers. Gorlick was relying on his "opposition" in ALS to defend him from one of his own staff members having challenged his own ill-motivated managerial actions. It is difficult to deny the possibility that with that in mind, he would have an incentive to curry favor with the Department that he had to rely on to protect his own career, even if that involved actions to the detriment of the staff members whose interests he was obliged uphold.

> I met with Mr. Gorlick myself in March 2013 and concluded – based on my own experience of practising law and advising clients – that his objective was only to persuade me that there was nothing even suspicious about the action OIOS was taking against me at that time, despite the fact OIOS could not support the decision with an explanation.
>
> Of course, at that time, I did not know about his own vendetta against Ms. Oummih,

> and that he was using equally unethical tactics to try to get rid of her. It is now clear that he patently had a conflict of interests at that time. He was not interested in OSLA having to argue a case that could establish a precedent that would then very quickly be used against him personally.

I have since been approached by a number of UN staff members who have told me that OSLA refused to represent them and were dismissive of their complaints, including one case where the staff member has reason to believe that a senior manager contacted OSLA and specifically requested that they do not assist him.

Another individual was concerned that Gorlick refused to represent them in a matter involving OIOS, but at the same time asking for copies of all the documents they had in their possession. One can only perceive that this was motivated by a desire to *share* them with the manager responsible for the decision they wished to challenge.

The facts in the *Oummih* / *Belkhabbaz* judgements suggest that OSLA would always be unwilling to take on abuse of authority cases for fear of what it could mean for Gorlick personally.

If the OAJ was seriously committed to providing impartial legal advice to staff members, Gorlick would have been removed from his position in OSLA, or at least be required to recuse himself from any cases involving harassment under ST/SGB/2008/5 while the cases against him where still pending, but that was never done. Moreover, no efforts have been made to determine how many other staff members approached OSLA for legal advice after suffering harassment by their managers, only to be told they had no case.

One can only conclude that the UN has no interest in reviewing all the other decisions Gorlick made

What is possibly the most astonishing feature of OSLA, however, is the arrogance with which they hail one of the *Belkhabbaz* judgements as a *success* - as if they can claim the credit for addressing this staff member's grievance - on their own website! The Applicant in *Belkhabbaz* was herself an OSLA lawyer who was treated in the most unfair and unethical manner by the OSLA Unit Chief – whose misconduct was protected by the OAJ and the MEU.

Such collusion in the "justice" system is the essence of corruption in the UN.

If OSLA seriously expect staff members to believe they provided a professional service to Ms. Belkhabbaz; one can only wonder as to their definition of a *disservice*.

The MEU

The MEU serves no useful legal or managerial purpose. They do not consider the possibility of a decision being procedurally correct but to be so unreasonable as to be indefensible or constitute *misfeasance.* That the MEU even offers financial compensation to applicants in order to uphold

patently unlawful decision is evidence of the inherent paradox of the Department of Management . (now Management Strategy, Policy & Compliance) existing to defend mismanagement; their strategy being a policy of condoning non-compliance.

How this is compatible with the concept of all UN staff being required to *uphold the highest standards of efficiency, competence and integrity*[11] *i*s not entirely clear.

> I sent an evaluation request to the MEU when I was a staff member. They failed to respond within 30 days, but on the 29th day reverted to me to ask for more time and – being prepared to deal with the MEU in good faith – I agreed. The MEU came back to me on at least five subsequent occasions, always explaining they needed more time, and I always consented, believing (naively) that they might resolve the issue.
>
> They eventually responded after 153 days claiming the matter was not receivable by them. Why they could not have recognized this when they first received the request could never be explained.
>
> The Tribunal then dismissed my UNDT Application on the grounds that it was time-barred, despite the fact the delays were at the request of the MEU. The Organization was therefore allowed to benefit from what was either misrepresentation or negligence on the part of the MEU.

The MEU's uselessness has even been confirmed in *Kalashnik (2017-UNAT-803)* para 25,where is was held that they are, in fact, under not even obliged to respond to a management evaluation.

There is little point in an applicant even waiting for the MEU to respond, or even bothering to read it when they do. Requesting management evaluation serves no purpose and is of no benefit other than to establish the earliest possible date when he can file an application with the Tribunal.

The MEU staff , however, clearly consider their position analogous to that of a judge, in which capacity they emulate the UN Appeals Tribunal in their overriding desire to find against the staff member wherever and whenever possible. Their assertion that it was perfectly acceptable for Ms. Belkhabbaz not to be considered for a post because she was “litigious” is particularly duplicitous.[12]

It is difficult to see what benefit the MEU serves, other than to create employment for the staff of the MEU. It contributes nothing to the cause of “justice” and if it were to be abolished, its disappearance would make absolutely no difference to anything!

---

11 UN Staff Regulation 1.2(b)

12 *Belkhabbaz*. (*UNDT/2018/071)*

Bias against self represented staff members

Unlike in the real world, UNDT judges make little allowance for the fact that a staff member is self represented. As a result, such a staff member, who may have no prior experience in any legal forum, and has no administrative, secretarial or research support, and who also has the demands of a full-time job to deal with – is required to compete with qualified lawyers in the Administrative Law Division who have many years experience of the UN system, *on an equal basis*.

Should the inexperienced staff member make the slightest procedural error, this will of course be fully exploited by the Administration[13] anxious to have the case quashed at any cost and oblivious of the misconduct, the unethical behavior or other iniquities the staff member might be able to prove.

Self-represented staff members can also be subjected to pressure by their line managers precisely at the time they need to be preparing for their UNDT appearances.

This is particularly acute where the Applicant is not a native English speaker. Staff members based in New York but whose mother tongue is French have been denied the right to be heard in French, despite it being an official and working language of the Organization and completely disregarding the General Assembly resolution from February 1946 that gives them such a right.

"Negotiation"

When appearing before any national court or tribunal, counsel are deemed to have the instructions of the client they represent, and their clients are expected to abide any undertakings their counsel may give to the presiding judges. This is not the case in the UN.

It is of concern that the Secretary-General is represented by ALS lawyers who can undertake to discuss a settlement, only to advise the Tribunal a few days later that it has been decided that this particular case was not considered suitable for such a settlement.

This has to be interpreted as an indication of arrogance by ALS and a reliance that their *friends* on the UNAT bench can be relied upon to ensure the case is ultimately decided in favor of the Organization.

When ALS do, however, agree to meet to "negotiate" settlement; they will concede nothing. Their negotiation tactics are what, in other circles, would be described as bullying; threatening the Applicant with dire consequences if they fail to settle but offering no concessions to encourage them to do so.

I am currently representing a client who has two cases pending before the UNDT. On 25 July 2018, I was informed that OIOS had appointed Mr. Christian Saunders (then ASG/Supply Chain Management,

---

[13] The only known occasion when this did not happen, curiously enough, involved OIOS Deputy Director Michael Dudley See UNDT Order No.308 (NY/2010) para 5 – a further indication of collusion?

Department of Operational Support) who the ASG/OIOS claimed: "*will assist us in discussions regarding the informal resolution of these cases.*"

Leaving aside the question of whether active UNDT cases can be "*informally resolved*", or what misconduct has to do with Supply Chain Management; I was prepared to discuss the matter with him if OIOS would just confirm what authority Mr. Saunders had to negotiate on their behalf. Given the flexibility with which ALS made similar undertakings to the Tribunal, I do not consider it unreasonable to know that I am discussing terms of settlement with someone authorized to agree to them.

Almost nine months have passed, Mr Saunders has made absolutely no effort to contact me and OIOS still obstinately refuse to explain what authority he actually has.

> Curiously enough, after I had been falsely and maliciously accused of a "possible assault" and illegal possession of a firearm OIOS – by the same OIOS unit chief incidentally as made a bad faith complaint against the Investigations Director - and when the UN refused to even acknowledge my complaint that this was malicious; this same Unit Chief (who did not dispute the allegations) immediately ran to the same Mr. Christian Saunders for protection.

Saunders appears to have been asked to assist because the ASG/OIOS was either unwilling or unable to do his job and because he is a resource who has been adept at protecting OIOS staff from accountability for their malfeasance in the past.

My position remains unchanged; that I will be happy to meet with anyone authorized to discuss settlement of my client's cases - though I would now also like to know if OIOS can explain why they could not demonstrate ever having acted in good faith!

Misrepresentation of a willingness to negotiate is not uncommon, but it cannot be challenged because it does not constitute an "administrative decision" within the meaning of the UNDT Statute.

Partiality in the Registry

It became clear to me in the course of pursuing my own case that staff of the Registry collude with the Respondent.

The scheduling of hearings is very suspicious, with staff members having to wait many many months only to have multiple case heard at once, and at the same time as their line managers suddenly give them work to do.

In this regard, the time taken to decide the *Hunt-Matthes* cases must also be considered as prima facie evidence of the UN's institutional unwillingness to bring a matter to a close. In the real world, 'Justice delayed is justice denied' is accepted as a truism, in the UN; 'justice delayed' is OAJ policy, carried out with the hope that the staff member will lose interest in pursuing it or otherwise succumb to family

pressure and simply resign.

Registrars have also been known to make arbitrary decisions trying to ensure submissions from a staff member are not admissible – but while liaising with the Respondent, they will not communicate directly with the Applicant.

Staff members can hardly be expected to believe they are "independent" in any way.

The 'Sin Tax' option

In disciplinary cases where the staff member has been terminated unlawfully, the UN administration is simply vindictive.

Paragraph 5(a) of the UNDT statute requires judges to set an amount of financial compensation that the Organization can pay as an alternative to rescinding a contested administrative decision, but there are no known examples of the Administration preferring to rescind the decision and accept the staff member back, regardless of the financial cost or the proven ineptitude of the decision-maker.

In every sensible legal system in the world, where a citizen can challenge a government decision, where a decision is deemed to be illegal, it does not legally exist and cannot be implemented. The exception is the UN of course, where an unlawful decision can be implemented and must be respected, even though it was deemed to be illegal.

The Secretary-General's policy is clearly to waste the Member States money to uphold any illegal decision by paying this "sin tax."

The "justice" system ensures the staff member can always be made to lose – even if they win in the Tribunal! A recent example of this vindictive practice can be seen in *Aahooja (2019/UNDT/033)*.

Accountability for misconduct exposed by the UNDT

Article 10.8 of the UNDT statute allows judges to refer staff members to the Secretary-General for "accountability".

How those referrals are dealt with by the Secretary-General, however, is simply a joke; which would be amusing if it did not serve as evidence of the Organizations utter contempt for the Tribunal.

The General Assembly has *requested*, in A/Res/71/266 (para 35) that the Secretary-General:

> *"continue to ensure the accountability of managers whose decisions have been established to be grossly negligent, according to the applicable Staff Regulations and Rules of the United Nations, and which have led to litigation and subsequent financial loss....."*

It appears the word "*requested*" in this provision permits the Secretary-General to do nothing of the sort, so in the furtherance of para 45 of that same GA resolution, I look forward to the Council sharing the his views on the UNDT, with reference his record on taking action on those cases where a referral is

made for "accountability" - particularly when considered in the context of such statements as:

> "*We must look at our culture and at our own behavior as individuals. We must strive for a more civil workplace in which every colleague is respected and treated fairly.*
>
> *To this end, we cannot and will not be an Organization that tolerates harassment in any form, sexual or otherwise. We cannot and will not tolerate any abuse of authority or power.*"[14]

Given his failure to follow up on complaints arising from facts exposed in (or by) the Tribunal, and his unwillingness to act on complaints against senior staff, one can easily see how staff members might conclude that the Secretary-General is being either duplicitous or hypocritical.

I shall refrain from expressing an opinion as to which.

There is also some irony in General Assembly "encouraging" the Secretary-General "*to proactively engage in a process to review referrals for accountability*"[15] when this process will be handled by the Office of Legal Affairs – i.e. the same department as appears before the UNAT and, it seems, even directs those judges as to how they should rule, so the wrongdoers evade accountability!

This is the same department as misuses the 1946 Convention on Privileges and Immunities to obstruct criminal investigations into non-UN personnel, and the same department as refuses to answer simple questions about the UN waiving that immunity where sexual exploitation and abuse has been established by a UN investigation.

OLA is part of the problem; not part of the solution.

The Organization's contempt for Article 10.8 of the UNDT Statute reflects their similar indifference to unethical practices by legal counsel from the Administrative Law Division, and the Organization's manifest unwillingness to hold their own counsel accountable for professional misconduct.

In disciplinary cases, ALS lawyers are aware of the OIOS practice of forwarding only a "*verification folder*" in support of their investigation; thus selectively withholding potentially exculpatory evidence from the Program Manager and the Tribunal.

In any other environment this would be considered unethical, prejudicial and probably result in the case against the individual in question being thrown out.

The UN, however, has no moral or ethical problem with it – just as they have no moral or ethical problem protecting the careers of the OIOS staff responsible for misleading the decision-maker in this way, even despite the evidence (brought out by the UNDT) of their misconduct and unethical conduct in other matters.

---

14 Secretary-General's letter to staff re efforts to achieve gender parity. 1 May 2019

15 A/Res/71/266, para 36

When considered in the context of known examples of unethical conduct by OIOS/ID staff[16] this, if nothing else, must raise doubts about the reliability of every disciplinary decision made on the basis of an OIOS Investigation Report.

In *Sirohi (unpublished)*, ALS even coached witnesses on what they should say when testifying, and specifically not to mention the name of the OIOS Deputy Director (Michael Dudley) who was listed as the complainant of record in a sexual harassment complaint, expressed his prejudice from the outset and failed to make a note of what the real complainants actually said.

The disposition of that case - A/Res/71/266 para 31 notwithstanding – *remains unpublished*.

In that regard it must be compared to another UNDT case that exposed incompetence and serious mismanagement by OIOS/ID; *von der Schulenburg (UNDT/NBI/2014/032)* in which Order 048 (NBI/2015) declared that "*proceedings between the parties be* ***stricken from the records*** *of the Tribunals.*" That appears to be an attempt to prevent them even being quoted in other cases in future!

The facts in that case indicate that OIOS colluded with the Conduct & Discipline Unit in order to subject a very senior UN official to an unwarranted investigation for an improper and political motive.

Moreover, the manner in which the v*on der Schulenburg* case was settled leaves little doubt that the Administrative Law Section is complicit in concealing embarrassing examples of mismanagement and misconduct by senior OIOS officials and try to make these cases disappear.

Similarly, the Organizations's out-of-court settlement in *Stefanovic* is highly suspicious. That case contained direct evidence of collusion by the Administrative Law Section in an illegal and maliciously motivated decision by the ASG/OHRM, and which – of course – the Organization was clearly desperate to cover up.

It is also suspicious that the previous USG/DM refused to answer the Investigation Director (Mr. Stefanovic) when he asked about how much money the Organization had paid to settle a number of UNDT cases that arose out of mismanagement of investigations conducted by OIOS. This refusal can be explained, however, by reference to the conspiracy theory of OIOS officials protecting other senior officials who, in turn, protect them from accountability for their own shortcomings.

Complaints of such collusion with ALS, and of OIOS withholding information from the Tribunal cannot be dismissed as ancient history; my complaint to the Secretary-General following the UNDT judgement in *Nouinou (2018/UNDT/070)* remains unanswered.

---

16 See *Nguyen-Kropp & Postica (2013/UNDT/176)* as well as *von der Schulenburg, Lubbad, Sirohi* and others that have been covered up by the Department of Management!

Effect on Staff Members' health

Despite the rhetoric and the Secretary-General's hypocrisy, the Organization is indifferent to harm this does to staff members careers or the impact this has on their mental health. The chances of success are slim and the effort involved in pursuing a case is greater than any vindication the staff member may hope to achieve.

If a staff member does not have any stress or mental health issues to begin with; the experience of the UN "justice" system will soon ensure that they do.

With regard to staff members who report 'harassment' under ST/SGB/2008/5 in particular; there is a clear need for information as to how many complainants (whether their complaints are upheld or not) were also required to take medical leave for stress-related conditions which they claim was directly related to the actions of UN managers.

Conclusion

The UN "justice" system introduced just ten years ago and flaunted as being a "professional" legal structure, has been manipulated, orchestrated and emasculated to a point where is is probably now worse that the ineffective system that preceded it. It is a model of *un*accountability that fails to promote the highest standards of efficiency, competence and integrity, it fails to ensure transparency in the means by which staff are employed and promoted, it fails to protect them from harassment and abuses of authority by venal and malicious managers, and it fails to uphold the Staff Regulations and Rules when a staff member is accused – rightly or wrongly – of misconduct.

This is not a system that can be improved by revised regulations, or the appointment of new judges or the appointment of any number of new committees or new working groups. It cannot be solved by the same persons with the same ideas and the same mindset as corrupted the system in the first place.

Unless and until responsibility the investigation of misconduct and criminality is removed from the UN entirely, and handled by a genuinely independent body that will act impartially, I do not believe anything will change, nor do I believe the current UN "justice" system will ever serve the purpose for which it was intended.

The UN Secretariat has no political will to reform the system because to do so would expose senior staff to the risk of criminal accountability for their wrongdoing, so until such times as the Member States deal with this bureaucratic mess, my advise to staff members must remain unchanged:

1. ***Do not risk your career by reporting 'possible misconduct' within the UN system,***

and

2. ***Do not risk your career - or your health - by trusting in the UN "justice" system***.

References

1) Complaint to the Secretary-General re Director OIOS/ID (22 Aug 2018) following *Nouinou (2018/UNDT/070)* **[Unanswered]**

2) OIOS Hostile Working Environment diagram sent to the USG/DM (12 May 2019) **[Unanswered]**

3) Complaint to the Secretary-General re Counsel for the Respondent. (16 Aug 2018) **[Unanswered]**

4) Letter to the Secretary-General re conduct of USG/OIOS (25 Mar 2019) **[Unanswered]**

5) Letter to the USG/Management re misconduct in OIOS (15 May 2019) **[Unanswered]**

6) Letter to the UNICEF Director-General (17 Mar 19) re Aahooja (2019/UNDT/033) **[Unanswered]**

7) Protection of Child Sex Offenders (17 April 2018) [Letter of 25 Mar 2018 **Unanswered**]

8) PAG von der Schulenburg Memo (28 Feb 2015) [**Unanswered**]