

ODSG

18 Sept

Strictly confidential

Note to Ms. Asha-Rose Migiro

Subject: Administration of justice and implementation of General Assembly Resolution 59/283

1. This note contains background information relating to the implementation of General Assembly resolution 59/283 concerning the transfer of the responsibility for formulating decisions on appeals from the Department of Management to the Office of the Secretary-General.

18/09/07

Legislative basis for functions

2. Under Article X of the Staff Rules, the Secretary-General is empowered to establish procedures with staff participation for advising him or her in disciplinary cases. In Article XI, the Secretary-General is required to establish procedures with staff participation to advise him or her in cases of appeals by staff members against administrative decisions alleging the non-observance of their terms of appointment. To date, the responsibility for formulating the decision of the Secretary-General in appeals cases and disciplinary cases has rested with the Under-Secretary-General for Management.

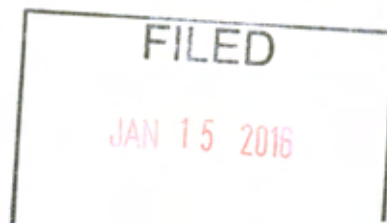
Conflict of interest

3. For some time, there had been a perception of a conflict of interest in light of the fact that in cases before the New York Joint Appeals Board, the Department of Management served as the respondent and handled all aspects of appeals as the representative of the Secretary-General through the Administrative Law Unit, which is located in the Office of Human Resources Management. At the same time, the Department of Management, through the Office of the Under-Secretary-General, formulated decisions on appeal cases on behalf of the Secretary-General. A similar situation prevailed in disciplinary cases. Arguably, this perception diminished the objectivity of the appeals process and the disciplinary process.

General Assembly Resolution 59/283

4. The General Assembly, in its resolution 59/283 of 13 April 2005, decided that measures be taken to eliminate the appearance of conflict of interest and towards this end, requested the Secretary-General to proceed with the transfer of the responsibility for formulating decisions on appeals from the Department of Management to the Office of the Secretary-General (see paragraph 17).

5. The recent decision by the Secretary-General to proceed with the transfer of the responsibility for formulating decisions on appeals from the Department of Management to the Office of the Secretary-General, implemented the decision of the General Assembly. Although the resolution only referred to appeals, the responsibility for formulating decisions in disciplinary cases had been included as there is also the potential for the appearance of conflict of interest in these types of cases.



Functions to be transferred

6. The most important function to be transferred from the Department of Management to the Office of the Secretary-General is the responsibility for formulating decisions on appeals and decisions in disciplinary cases. Although not specifically referred to in General Assembly resolution 59/283, the following functions, which are ancillary to the formulation of decisions on appeals and in disciplinary cases and are supported by the Administration of Justice Unit in the Department of Management, will also be transferred:

- (a) The decision to summarily dismiss a staff member;
- (b) The decision to impose a sanction on a staff member who has waived his or her right to refer the case to a JDC and has agreed to the proposed sanction;
- (c) Drafting of the Secretary-General's report on the administration of justice in the Secretariat concerning the outcome of the work of the Joint Appeals Boards (JABs) and statistics on the disposition of cases and work of the Panel of Counsel;
- (d) Monitoring the implementation of the Secretary-General's decisions in both appeals cases and disciplinary cases, as well as judgements of the United Nations Administrative Tribunal;
- (e) Analysing appeals cases and disciplinary cases with a view to recommending to the Administration such administrative changes as are considered necessary in order to prevent similar cases arising in the future; and
- (f) Monitoring and assisting the functioning of the JABs and Joint Disciplinary Committees (JDCs) and other components of the internal justice system.

7. The following functions, which have to date, to differing degrees, been supported by the Administration of Justice Unit, will not be transferred:

- (a) The decision to suspend a staff member without pay;
- (b) Approval of the membership of the JABs and JDCs; and
- (c) Agreed terminations of staff members.

8. The appeals cases, as referred to in the resolution, consist of (a) appeals to the JAB where cases are heard on the merits, and (b) requests for suspension of action. The requests for suspension of action are time-sensitive and in the event that you are absent from Headquarters, arrangements will need to be made for a senior official to sign the letters containing the Secretary-General's decision in these cases. There are generally between three and five such requests per month and generally arise at the end of the month although there are many exceptions to this generalization.

Resources

9. The actual task of formulating the draft decisions of the Secretary-General in appeals cases and in disciplinary cases has been carried out by the staff of the Administration of Justice Unit in the Office of the Under-Secretary-General for Management. Consistent with the transfer of this responsibility, the related staff support (1 P-5 post funded from the regular budget, and 1 P-4 post and 1 GS post funded from the peacekeeping support account) in the Administration of

Justice Unit will be transferred to the Office of the Secretary-General. The two professional posts are currently staffed by two staff members at the P-4 level.

Numbers of cases

10. In 2005 and 2006, the standing JABs and JDCs (excluding JDCs of UNDP and UNICEF) received about 185 appeals, requests for suspension of action and disciplinary cases per annum, while they were able to dispose of only about 150 cases in 2005 and about 170 in 2006 due to the inadequate staffing situation in the JAB/JDC Secretariats, insufficient pools of JAB/JDC members, a need to give priority to disciplinary cases and suspension of action requests as well as delays in other parts of the system and on the part of the parties. These factors over the past few years have resulted in the accumulation of the so called “backlog” cases, which are appeal cases where all mandatory written submissions have been completed but it has not been possible to assign the cases to a JAB Panel and/or to a Panel Secretary due to various reasons.

11. In 2006, the New York JAB/JDC Secretariat received 108 new appeals and suspension of action requests and about 24 disciplinary cases. About half of the disciplinary cases are requests for review of summary dismissal decisions while the other half are referrals by OHRM of cases of staff members charged with misconduct. Every month, on average, the New York JAB/JDC Secretariat’s schedule of active cases consists of about 90 appeals and suspension of actions requests and about 15 disciplinary cases.

12. Recent efforts taken to clear a backlog of cases in the Administration of Justice Unit have been successful and as of the beginning of September 2007, the outstanding workload of the unit consists of about seven appeal cases and three joint disciplinary cases. Between 1 January 2007 and 31 August 2007, about 90 decisions have been made on behalf of the Secretary-General in both appeal and disciplinary cases.

Types of administrative decisions

13. In the last two years, the most common administrative decisions contested by staff members have been decisions not to extend fixed-term appointments and decisions concerning selection of candidates for vacant posts. A considerable number of appeals also relate to the administration of staff members’ entitlements and benefits.

Reform of the internal justice system

14. In the context of the ongoing reform of the UN system of internal justice, the General Assembly has approved the replacement of the current JABs and JDCs by the United Nations Dispute Tribunal (UNDT), which will be staffed by professional full-time judges who will be supported in their adjudication of cases by a modern registry. In light of the anticipated abolition date of the current system and the introduction of the new system on 1 January 2009, the JABs and JDCs will try to complete the review of all pending cases before them by 31 December 2008. This task, which will require additional staffing resources for all parts of the present system, including the JAB/JDC Secretariats in all four duty stations, may result in the formation of a

backlog of cases in the Administration of Justice Unit towards the end of 2008. A request for supplementary resources has been made to the General Assembly.

Joint Appeals Boards/Joint Disciplinary Committees

15. In addition to the information above, this briefing note also provides an overview of the procedures relating to appeals (see Appendix I) and disciplinary cases (see Appendix II) and additional background information concerning the work of the JABs and JDCs (see Appendix III). In this connection, please find attached a copy of: (a) the Secretary-General's report on the outcome of the work of the JAB during 2005 and 2006 and statistics on the disposition of cases and work of the Panel of Counsel (document A/62/179); and (b) the Secretary-General's report on the practice of the Secretary-General in disciplinary matters and possible criminal behaviour from 1 July 2006 to 30 June 2007 (document A/62/186).



Alicia Bárcena
18 September 2007

Appeals process

1. The appeals process has two main parts: (a) informal mechanisms (i.e., pre-litigation), which strictly speaking are not part of the appeals process as such but are included here as many of these grievances are subsequently the subject of appeals; and (b) formal mechanisms.

(a) Informal mechanisms

2. Staff Members with grievances are encouraged to seek an informal solution through:
- (i) Supervisors/Human Resources Officers/Executive Officers;
 - (ii) The Ombudsman;
 - (iii) Panel on Discrimination and other Grievances;
 - (iv) Staff Counsellors;
 - (v) Panel of Counsel in its pre-litigation consultative role;
 - (vi) Departmental focal points for women;
 - (vii) Staff representative bodies;
 - (viii) Ethics Office concerning ethics issues and complaints of retaliation; and
 - (ix) Conciliation by members of the Joint Appeals Board (JAB) (after submission of request for administrative review).

(b) Formal mechanisms (Chapter XI, Staff Rules)

3. The formal mechanisms provide recourse through an appeals process for staff members who believe that an administrative decision has been made that has violated their rights under their terms of appointment. To address a grievance that is not related to an administrative decision, it is necessary to resort to the informal avenues outlined above.¹
4. The appeals process consists of the following stages:
- (i) Review stage: when a staff member considers his or her rights have been violated under the terms of their appointment, the first step is to request an administrative review by writing to the Secretary-General. This stage is a final opportunity for the decision to be rescinded or changed and the review is carried out by the Administrative Law Unit in OHRM. The request for administrative review does not have the effect of suspending action on the contested decision;
 - (ii) Appeal to JAB: if a resolution of the issue cannot be achieved at the review stage, the staff member may appeal to the JAB in New York, Geneva, Vienna or Nairobi by filing an appeal. After the Respondent (i.e., the Organization) files the Reply (the parties may also file additional observations), the Secretary of the JAB convenes a panel which considers the case on its merits and makes a recommendation to the Secretary-General. The filing of an appeal does not have the effect of suspending action on the contested decision;

¹ Some grievances can also be addressed outside of the appeals process through other specialized procedures, e.g., PAS rebuttal, claims of a medical nature, classification of posts, decisions of various organs of the Pension Fund, claims for loss or damage to personal effects attributable to performance of official duties.

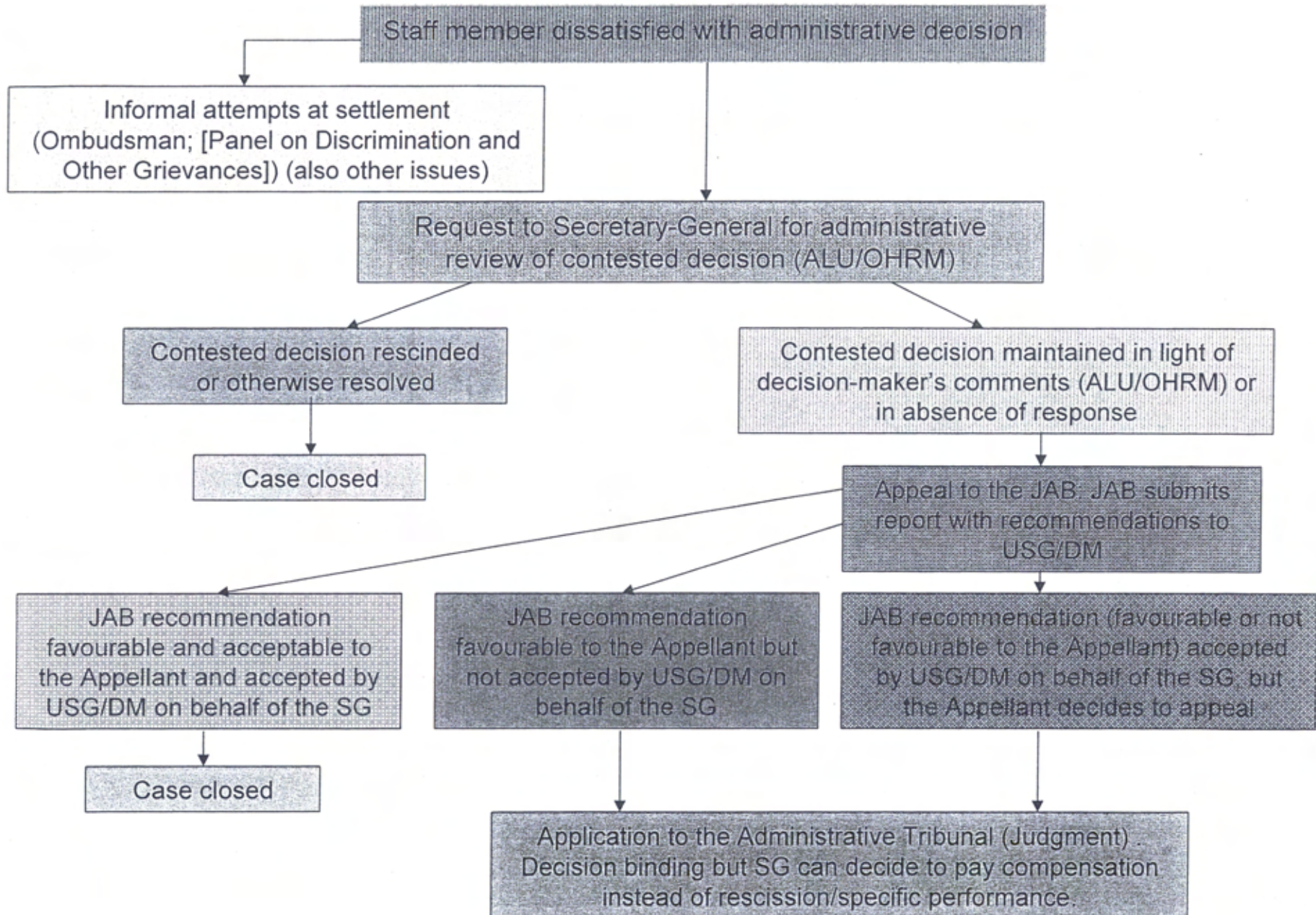
(iii) Decision by the Secretary-General: to date, the Under Secretary-General/Department of Management, on behalf of the Secretary-General, has been delegated authority to decide whether to fully accept, partially accept or reject the recommendation of the JAB. However, the recent decision by the Secretary-General relating to the implementation of General Assembly resolution 59/283 concerning the transfer of the responsibility for formulating decisions on appeals means that, as of 1 September 2007, the Deputy Secretary-General will have the responsibility for formulating this decision and signing it on behalf of the Secretary-General;

(iv) Appeal to the United Nations Administrative Tribunal (UNAT): if the staff member does not accept the decision of the Secretary-General, the staff member may elect to appeal to the UNAT.

(v) Judgement of the UNAT: the UNAT either rescinds the administrative decision or orders specific performance of the obligation invoked, as well as fixing compensation to be paid if the Secretary-General decides, in interests of the Organization, not to implement the obligation in question. In practice, the Organization generally pays compensation.

5. In addition to the appeals process which relates to the hearing of cases on their merits, there is a procedure by which staff members may request a suspension of action on the implementation of an administrative decision. The staff member concerned may file such a request with the JAB. If the panel hearing the case determines that the decision has not been implemented and that its implementation would result in irreparable injury to the staff member, the JAB panel may recommend to the Secretary-General that the decision be suspended. The Secretary-General's decision in such a recommendation is not subject to appeal.

Appeals process (Current system)

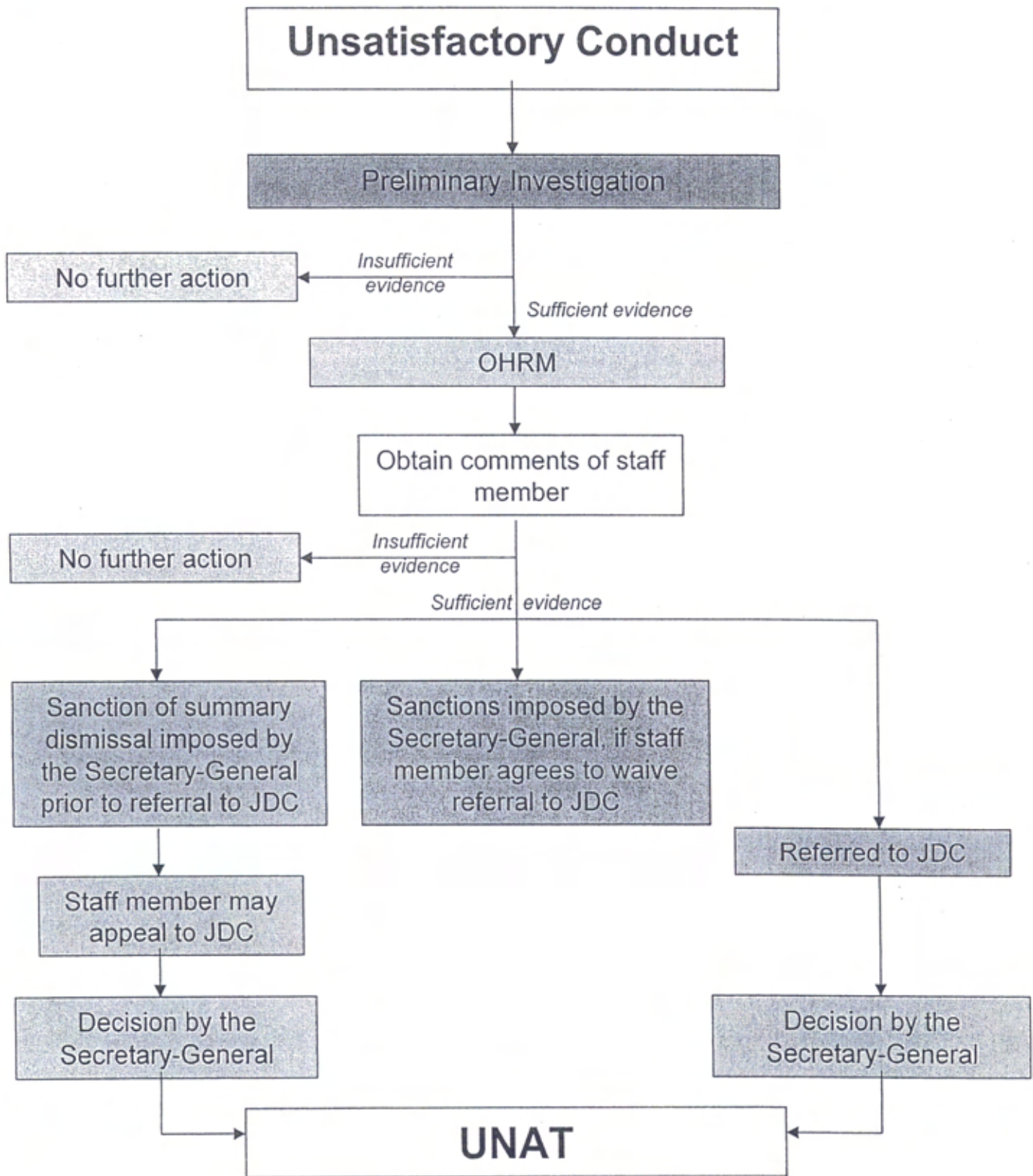


Disciplinary cases

1. Unsatisfactory conduct is defined in Staff Rule 110.1 as a failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other administrative issuances, or to observe the standards of conduct expected of an international civil servant. Unsatisfactory conduct includes, but is not limited to, unlawful acts, misrepresentation or false certification in connection with any claim or benefit, assaulting or harassing or threatening another staff member, misuse of United Nations equipment or files including electronic files, misuse of office, abuse of authority, breach of confidentiality, abuse of United Nations privileges and immunities, and sexual exploitation and sexual abuse.
2. Upon receiving reports of allegations of unsatisfactory conduct, the head of office or “responsible officer” undertakes a preliminary investigation into the allegations. If the allegations are not sustained, the case is closed. If the allegations are sustained, the case is submitted to OHRM. Upon deciding to pursue the case, OHRM informs the staff member of the allegations and of the staff member’s right to respond, provides copies of the documentary evidence of the alleged misconduct and advises the staff member of his or her right to counsel. At this stage, OHRM, on behalf of the Secretary-General, decides whether suspension of the staff member with pay is warranted and, if so, informs the staff member of the suspension. If suspension without pay is warranted, the decision is made by the Under-Secretary-General for Management.
3. After receiving comments from the staff member, OHRM may decide that the case should be closed if there is insufficient evidence to substantiate the allegations. If, after the staff member provides comments, OHRM considers that the evidence indicates disciplinary measures are warranted, it may elect one of three options:
 - (i) Refer the matter to the Joint Disciplinary Committee (JDC) for advice on the basis of which the Secretary-General will decide whether or not to impose a sanction on the staff member. The staff member may appeal to the UNAT from the decision of the Secretary-General;
 - (ii) Recommend to the Secretary-General through the Office of Legal Affairs the summary dismissal of the staff member in those cases where the seriousness of the misconduct warrants immediate separation from service without a prior submission of the case to a JDC. In these cases, the staff member, after being dismissed, may appeal to the JDC, which reviews the case and makes a recommendation. The Secretary-General reviews the recommendation and decides whether or not to accept the recommendation of the JDC. The staff member may appeal to the UNAT from the decision of the Secretary-General; or
 - (iii) Subject to the agreement of the staff member to waive referral of the matter to the JDC, recommend to the Secretary-General that an appropriate sanction be imposed.
4. The disciplinary measures imposed by the Secretary-General may take one or more of the following forms:

- (a) Written censure;
 - (b) Loss of one or more steps in grade;
 - (c) Deferment for a specified period of eligibility for within-grade increment;
 - (d) Suspension without pay;
 - (e) Fine;
 - (f) Demotion;
 - (g) Separation from service, with or without notice or compensation in lieu thereof;
 - (h) Summary dismissal.
5. The following measures are not considered disciplinary measures:
- (a) Reprimand, written or oral;
 - (b) Recovery of moneys owed to the Organization;
 - (c) Suspension pursuant to rule 110.2.

Disciplinary process



Background information on Joint Appeal Boards and Joint Disciplinary Committees

1. Joint Appeals Boards (JABs) and Joint Disciplinary Committees (JDCs), both standing and ad hoc, constitute an important and integral part of the existing system of internal justice in the Organization. While the former provide advice to the Secretary-General on the appeals from staff members against administrative decisions alleging non-observance of their terms of appointment, the latter advise the Secretary-General on disciplinary matters as and when requested.
2. At present, standing JABs and JDCs exist in four duty stations: Geneva, Nairobi, New York and Vienna. However, the Secretary-General has also the authority to create *ad hoc* JAB and JDC panels. The establishment and work of both standing and *ad hoc* JABs and JDCs and JAB/JDC panels are governed by the provisions of Chapter XI and Chapter X of the Staff Rules respectively. Each standing JAB and/or JDC is in essence a pool of volunteers divided into three groups/categories: Chairpersons, Members appointed by the Secretary-General and Members elected by the staff at large. A JAB or JDC review is but a "*peer review*". The recommendations of both JAB and JDC panels are not binding on the Secretary-General and constitute merely an advice to him/her on the facts and disposition of an appeal or a disciplinary case. Otherwise, JAB and JDC panels are considered, for example by the United Nations Administrative Tribunal (UNAT), as the primary fact-establishing bodies. The Tribunal normally does not accept cases which have not been reviewed by a JAB or a JDC panel and where the primary facts have not been established.
3. Each appeal, suspension of action and disciplinary case is reviewed by a three member Panel, one from each group/category, with the assistance of a Secretary/Legal Officer, who is normally a staff member of the JAB/JDC Secretariat responsible for providing the panel with the necessary legal, administrative and secretarial support in an independent and impartial manner. Members for each JAB or JDC panel are identified and proposed to the parties from the respective pool/list by the JAB or JDC Presiding Officer (or the JAB/JDC Secretariat). The parties are allowed 5 working days to raise reasonable objections against any of the proposed members, which are then reviewed and decided upon by the JAB or JDC Presiding Officer. Panel Secretaries for each case are designated by the Chief of the JAB/JDC Secretariat.
4. Both JAB and JDC panels conduct their review of the cases by scrutinizing the written submissions from the parties, organizing hearings of the parties and witnesses, making written and verbal interrogatories, requesting documents and materials from various officials and offices of the Organization and third parties, etc. Upon completion of the review, each panel adopts a report, which is in essence a record of the panel's proceedings but also includes summaries of relevant facts, of the parties' contentions and pleas, of the staff member's employment history and, of course, the panel's own considerations and findings as well as its conclusions and recommendations. While the panel members always try to reach unanimous conclusions and recommendations, each of them, however, is entitled to present his/her separate "dissent" opinion, if necessary.

5. The distribution of cases between standing JABs/JDCs is governed by the staff rules and is based on the staff member's administrative affiliation rather than anything else. Nevertheless, the appellant or the staff member charged with misconduct has the right to request the Secretary-General to change the venue, if and when justified. The administrative affiliation principle has resulted in a somewhat unequal distribution of cases between the four standing JABs/JDCs. The New York JAB/JDC bears the biggest caseload, the Geneva JAB/JDC has the second largest and then Nairobi and Vienna. At present, the New York JAB, for example, is responsible for reviewing appeals and suspension of action requests from the staff members of: (i) the UN Secretariat at Headquarters, (ii) all Regional Commissions, except for Europe; (iii) all peace-keeping missions; and (iv) UNDP, UNFPA, UNOPS and UNICEF staff members. In total, this represents about 30,000 staff members if not more. More or less the same situation applies with disciplinary cases, except that UNDP, UNFPA, UNOPS and UNICEF have their own disciplinary machinery. On the other hand, the New York JDC generally reviews all requests from staff members against summary dismissal decisions, including such decisions by UNHCR.

**General Assembly**

Distr.: General
2 August 2007

Original: English

Sixty-second session

Item 139 of the provisional agenda*

Administration of justice at the United Nations

**Outcome of the work of the Joint Appeals Board during
2005 and 2006 and statistics on the disposition of cases and
work of the Panel of Counsel**

Report of the Secretary-General

Summary

The present report is submitted in response to the request of the General Assembly to the Secretary-General, in its resolution 55/258 (sect. XI, para. 5), to report to the Assembly on an annual basis on the outcome of the work of the Joint Appeals Board. In response to that request, the report of the Secretary-General on the administration of justice in the Secretariat (A/61/71 and Corr.2) provided information concerning the outcome of the work of the Joint Appeals Board for the period 2004-2005. The present report provides information on the work of all Joint Appeals Boards of the Secretariat (New York, Geneva, Vienna and Nairobi) in 2006. The present report also compares 2006 and 2005 data. In response to the request of the Assembly in its resolution 57/307, the report also provides statistics on the disposition of cases and information on the work of the Panel of Counsel for 2006.

* A/62/150.



I. Introduction

1. In its resolution 55/258 (sect. XI, para. 5), the General Assembly requested the Secretary-General to report to it on an annual basis on the outcome of the work of the Joint Appeals Board. In response to that request, the report of the Secretary-General on the administration of justice in the Secretariat (A/61/71 and Corr.2) provided information on the work of all Joint Appeals Boards of the Secretariat (New York, Geneva, Vienna and Nairobi) for the period 2004-2005. The present report provides information and statistical data on the work of the Joint Appeals Boards in 2006.

2. In its resolution 57/307 (para. 21), the General Assembly requested the Secretary-General to include statistics on the disposition of cases and information on the work of the Panel of Counsel in his annual report on the administration of justice in the Secretariat. In response to that request, the above-mentioned report of the Secretary-General on the administration of justice provided information on the disposition of cases and work of the Panel of Counsel for 2005. The present report provides such information for 2006.

II. Outcome of the work of the Joint Appeals Board

3. Table 1 and figure I below set out information, in both numerical and graphic form, on the work of the Joint Appeals Boards in New York, Geneva, Vienna and Nairobi for 2005 and 2006 by providing the number of appeals and suspension of action cases filed and disposed of¹ during those years.

4. As can be seen from the information presented in table 1, there was an increase in the number of appeals filed with the Joint Appeals Boards during 2006. The New York Joint Appeals Board received 9 more appeals in 2006 than in 2005, an increase of 9 per cent. As for the corresponding figures for the other Joint Appeals Boards, the Geneva Board received 3 more appeals as compared with 2005, an increase of 13 per cent. The Vienna Board received 1 more appeal in 2006, an increase of 20 per cent, and the Nairobi Board received 5 fewer appeals, a decrease of 31 per cent.

5. There is also a difference between the two periods in the number of cases disposed of by the Joint Appeals Boards. Both the New York and the Geneva Joint Appeals Boards disposed of more appeals during 2006 than in 2005. Specifically, the number of appeals disposed of by the New York Joint Appeals Board increased by 19 per cent in 2006, while the number of appeals disposed of by the Geneva Joint Appeals Board increased by 4 per cent. The Vienna Joint Appeals Board disposed of 2 more cases in 2006 than during 2005, an increase of 200 per cent, while in Nairobi the Board disposed of 10 fewer cases in 2006 than in 2005, a decrease of 48 per cent. This decrease in the number of cases disposed of by the Nairobi Joint Appeals Board was due to: (a) the post of Secretary, Joint Appeals Board, being vacant for three months in 2006; and (b) the disposal of a backlog of more complex and time-consuming cases that were pending from previous years.

¹ The term "disposed of" refers to appeals with respect to which the Joint Appeals Board has completed its involvement. The figures may include appeals which, though filed during a previous year, were disposed of in subsequent years owing to an existing backlog. This explains why, at times, the number of appeals disposed of is higher than the number of appeals filed.

6. As to the number of pending appeals at the end of the reporting period, the Vienna Joint Appeals Board had 9 pending appeals, the Nairobi Joint Appeals Board had 9 pending appeals, and the Geneva Joint Appeals Board had 33 pending appeals and 13 pending disciplinary cases. The New York Joint Appeals Board continues to have the highest number of pending appeals. As at the end of 2006, there were 93 pending appeals at the New York Joint Appeals Board. The New York Joint Appeals Board also had 25 pending disciplinary cases at the end of 2006.

7. Disciplinary cases are also handled by the secretariats of the Joint Appeals Boards and are always considered on a priority basis. In 2006, 24 disciplinary cases were referred to the New York Joint Disciplinary Committee, which disposed of 18 of those cases. The Geneva Joint Disciplinary Committee received 8 new disciplinary cases during 2006 and disposed of 13 disciplinary cases during the same period. The Nairobi Joint Disciplinary Committee considered 1 disciplinary case. No cases were submitted to the Vienna Joint Disciplinary Committee in 2006.

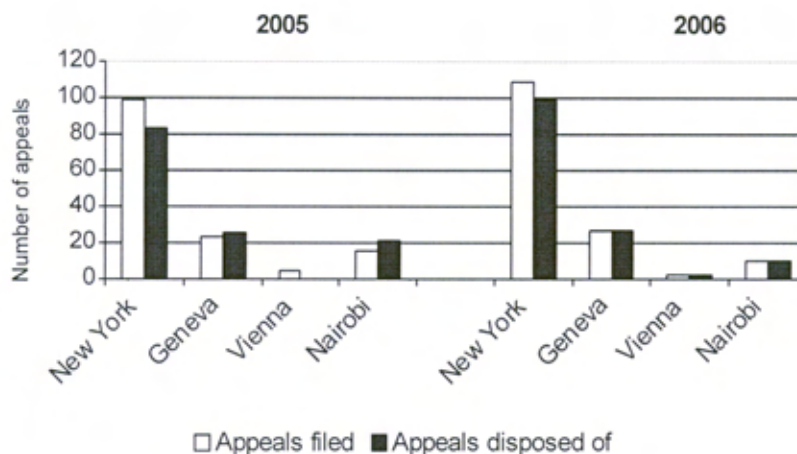
Table 1

Number of appeals and suspension of action cases filed and disposed of by all Joint Appeals Boards in 2005 and 2006

<i>Standing Joint Appeals Boards</i>	<i>2005</i>	<i>2006</i>	<i>Variance (percentage)</i>
New York: appeals filed	99	108	+9
New York: appeals disposed of	83	99 ^a	+19
Geneva: appeals filed	24	27	+13
Geneva: appeals disposed of	26	27	+4
Vienna: appeals filed	5	6	+20
Vienna: appeals disposed of	1	3	+200
Nairobi: appeals filed	16	11	-31
Nairobi: appeals disposed of	21	11	-48

^a One of these appeals comprised 232 cases contesting the same administrative decision, where the Secretary-General, after a long process of negotiations and conciliation, initially agreed to direct submission of the cases to the United Nations Administrative Tribunal and subsequently decided to rescind the contested decision.

Figure I
Number of appeals and suspension of action cases filed and disposed of by all Joint Appeals Boards in 2005 and 2006



8. Tables 2 and 3 and figures II and III below provide, in both numerical and graphic form, information on the decisions taken by the Secretary-General on reports of the Joint Appeals Boards for 2005 and 2006, respectively.

Table 2
Decisions by the Secretary-General on unanimous recommendations of the Joint Appeals Boards on appeals and requests for suspension of action in 2005

Location of Joint Appeals Board	Decisions on reports of the Board	Unanimous recommendations of the Board	Unanimous recommendations of the Board fully accepted by the Secretary-General	Unanimous recommendations of the Board partially accepted by the Secretary-General	Unanimous favourable recommendations of the Board rejected by the Secretary-General	Unanimous unfavourable recommendations of the Board
New York	90	87	69 (79%)	10 (12%)	8 (9%)	35 (40%)
Geneva	18	18	14 (78%)	2 (11%)	2 (11%)	11 (61%)
Vienna	4	4	4 (100%)	0	0	3 (75%)
Nairobi	20	19	14 (74%)	3 (16%)	2 (11%)	11 (58%)
Total	132	128	101 (79%)	15 (12%)	12 (9%)	60 (47%)

91% (full and partial acceptances)

Figure II
Decision by the Secretary-General on unanimous recommendations of the Joint Appeals Boards on appeals and requests for suspension of action in 2005

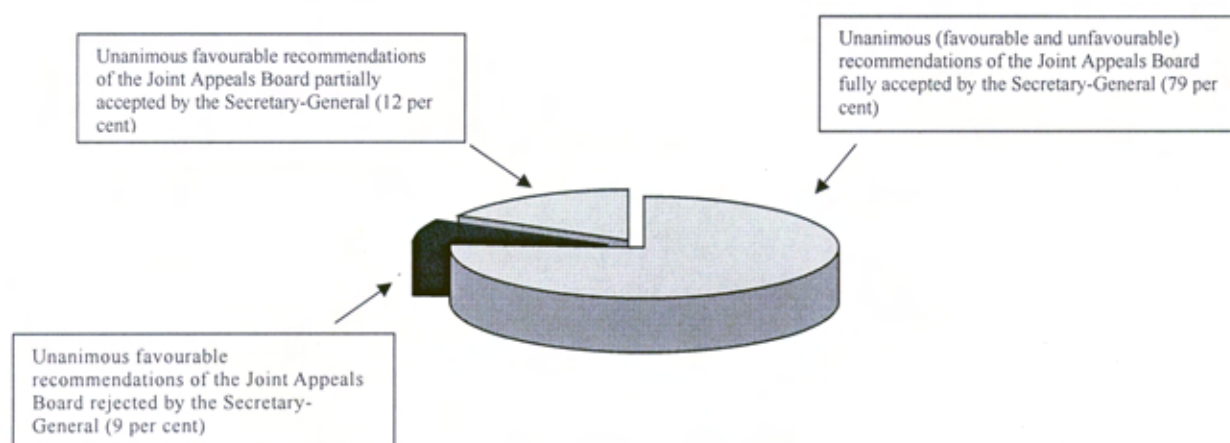
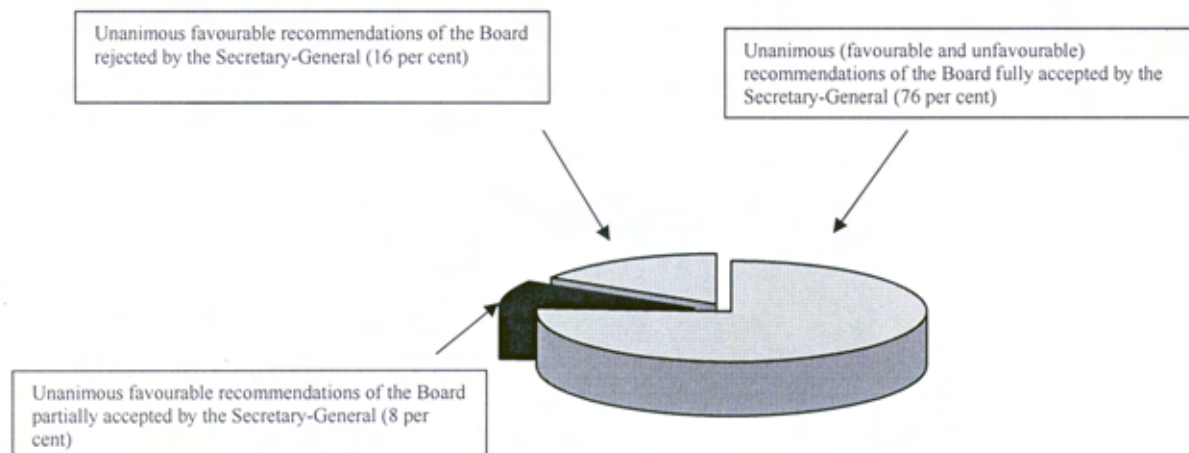


Table 3
Decisions of the Secretary-General on unanimous recommendations of the Joint Appeals Boards on appeals and requests for suspension of action in 2006

<i>Location of Joint Appeals Board</i>	<i>Decisions on reports of the Board</i>	<i>Unanimous recommendations of the Board</i>	<i>Unanimous recommendations of the Board fully accepted by the Secretary-General</i>	<i>Unanimous recommendations of the Board partially accepted by the Secretary-General</i>	<i>Unanimous favourable recommendations of the Board rejected by the Secretary-General</i>	<i>Unanimous unfavourable recommendations of the Board</i>
New York	64	62	46 (74%)	5 (8%)	11 (18%)	30 (48%)
Geneva	30	30	25 (83%)	2 (7%)	3 (10%)	20 (67%)
Vienna	2	2	1 (50%)	0	1 (50%)	1 (50%)
Nairobi	6	5	3 (60%)	1 (20%)	1 (20%)	2 (40%)
Total	102	99	75 (76%)	8 (8%)	16 (16%)	53 (54%)

84% (full and partial acceptances)

Figure III
Decisions of the Secretary-General on unanimous recommendations of the Joint Appeals Boards on appeals and requests for suspension of action in 2006



9. As can be seen from tables 2 and 3 and figures II and III above, the percentage of full and partial acceptances by the Secretary-General of unanimous recommendations of the Joint Appeals Board decreased in 2006 compared with the previous year (91 per cent for 2005 and 84 per cent for 2006). The percentage of rejections by the Secretary-General of unanimous recommendations of the Board that were favourable to the appellants was low in both periods (9 per cent in 2005 and 16 per cent in 2006).

10. This is in line with the stated policy of the Secretary-General, which is normally to accept unanimous recommendations unless there is a compelling reason of law or policy not to do so. In all such instances, the decisions of the Secretary-General provide detailed reasons for such rejection, which in most cases is attributable to the incorrect application of law or policy by the Joint Appeals Board or inadequate fact-finding that is not supported by the available evidence. With the increased training for members of the Joint Appeals Boards and the Joint Disciplinary Committees in the applicable law and policies of the Organization and the availability of the web-based repository of the recent jurisprudence of the United Nations Administrative Tribunal (encompassing jurisprudence on judgements rendered from 1980 onwards), the Secretary-General trusts that unanimous recommendations will be both more reliably supported by the evidence and reflective of the applicable law, and that consequently the percentage of acceptable recommendations would remain at current levels or rise. The Secretary-General, however, would still have the discretionary authority to reject unanimous recommendations of the Joint Appeals Board should he find that it is in the interests of the Organization to do so.

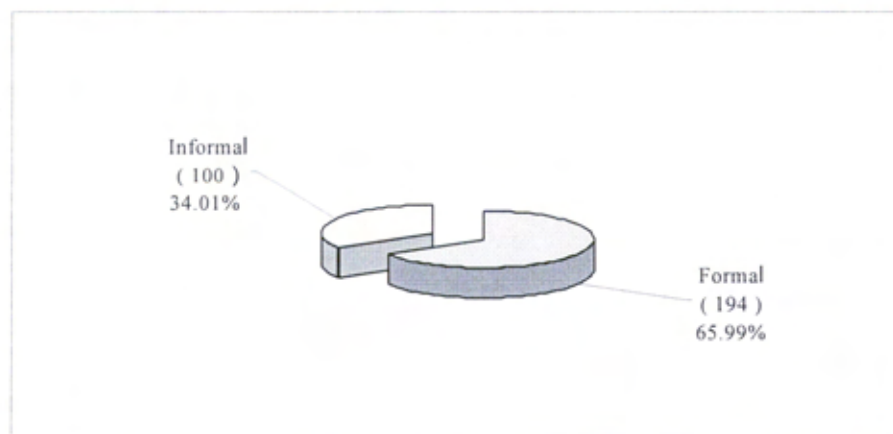
11. During the reporting period for 2006, in addition to the regular functions required of them, the various secretariats of the Joint Appeals Boards were involved in the following activities:

- (a) Providing advice and assistance to the Redesign Panel on the United Nations system of administration of justice and to management on issues relating to the various aspects of the reform of the internal justice system;
- (b) Contributing to the preparation of the report of the Secretary-General on various aspects of the reform of the internal justice system;
- (c) Providing reports on the status of the work of the Joint Appeals Boards to various oversight bodies, at their request;
- (d) Drafting new rules for the Joint Appeals Boards and implementing time limits recommended by the Office of Internal Oversight Services;
- (e) Preparing for plenary meetings of the Joint Appeals Boards and Joint Disciplinary Committees;
- (f) Preparation of training materials and making training presentations for participants in the internal justice system;
- (g) Creating, maintaining and improving websites and databases.

III. Disposition of cases and work of the Panel of Counsel

12. In 2006, 294 new cases were brought to the Panel of Counsel in New York, compared with 266 new cases in 2005, an increase of 11 per cent.² Of the 294 cases brought to the Panel of Counsel in 2006, 194 went through the formal appeals process and 100 were dealt with informally (see figure IV). In 2005, there were 150 formal cases and 116 informal cases. Formal cases increased by 29 per cent from 2005 to 2006, while informal cases decreased by 14 per cent.

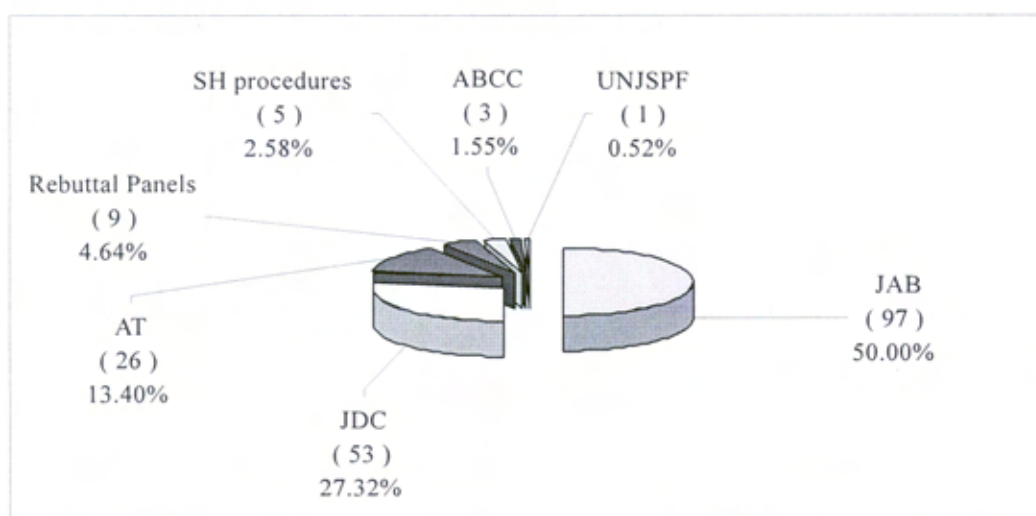
Figure IV
Distribution of informal and formal cases in 2006



² Cases reported as new cases in previous reports are not included here, although many continue to involve the time and attention of both counsel and the Coordinator.

13. The distribution of the 194 formal cases by recourse body is shown in figure V below. Compared with 2005, in 2006 the number of cases taken to the Joint Appeals Board increased by 21 per cent and the number of cases taken to the United Nations Administrative Tribunal decreased by 13 per cent. The number of cases taken to the Joint Disciplinary Committee increased by 83 per cent from the previous period, from 29 cases in 2005 to 53 cases in 2006. An increase in disciplinary cases is particularly significant, as the cases are generally more complex than other types of cases and are often much more labour intensive.³

Figure V
Distribution of formal cases by recourse body in 2006

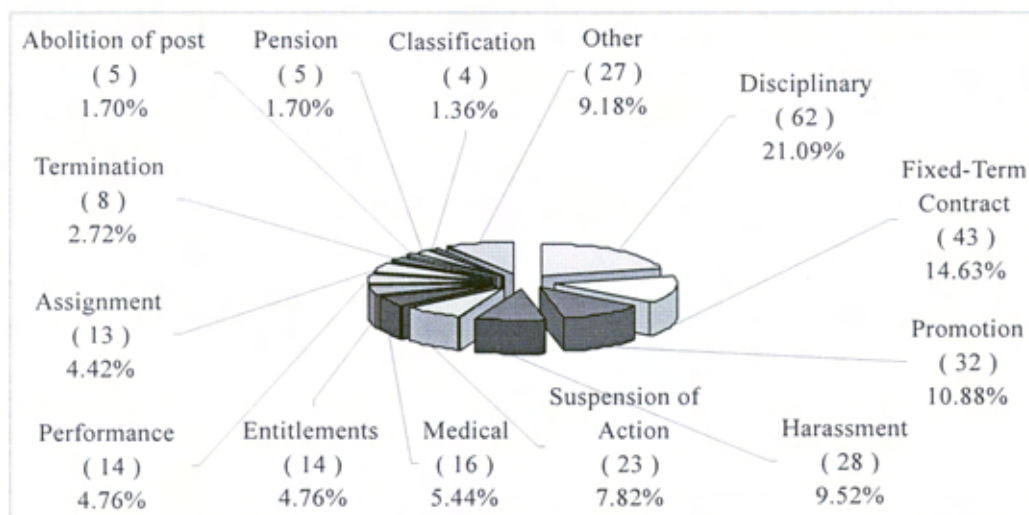


Abbreviations: ABCC, Advisory Board on Compensation Claims; AT, United Nations Administrative Tribunal; JAB, Joint Appeals Board; JDC, disciplinary committees of the Secretariat and United Nations funds and programmes; SH, sexual harassment procedures; and UNJSPF, United Nations Joint Staff Pension Fund.

14. As shown in figure VI below, most of the 294 cases in 2006 concerned disciplinary matters (21 per cent); non-renewal or termination of fixed-term contracts (15 per cent); and promotion (11 per cent).

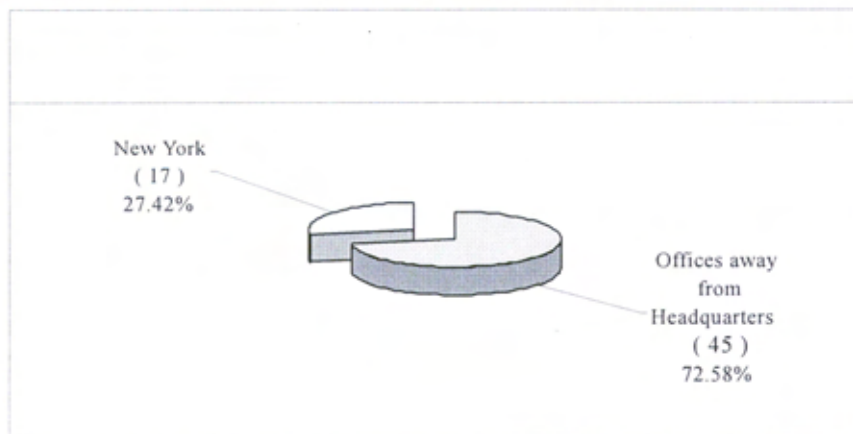
³ Disciplinary cases (see figure VI) comprise all cases of a disciplinary nature and include cases in the investigative stages and those that seek recourse to the United Nations Administrative Tribunal. Cases before the Joint Disciplinary Committee (see figure V) are those of a disciplinary nature that involve formal hearings before the established Joint Disciplinary Committee of the Secretariat, as well as those established by other United Nations funds and programmes, i.e., the Disciplinary Committee of the United Nations Development Programme, the United Nations Population Fund and the United Nations Office for Project Services and the United Nations Children's Fund ad hoc disciplinary committees.

Figure VI
Subject and respective number of new cases dealt with by the Panel of Counsel during 2006



15. As seen in figure VII below, in 2006 a substantial majority (73 per cent) of disciplinary cases represented by members of the Panel of Counsel involved clients who were based in offices away from United Nations Headquarters and who were not therefore able to be physically present at their own hearings.

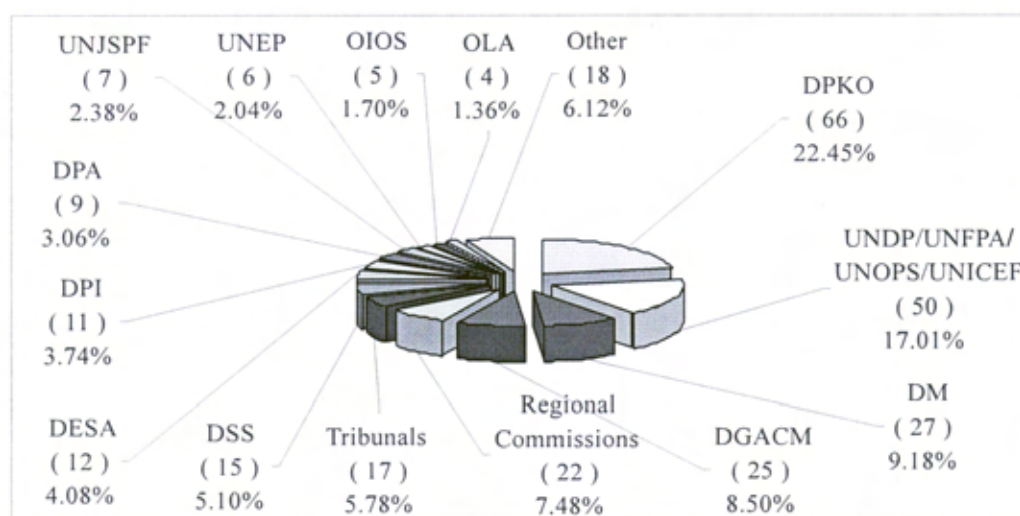
Figure VII
Distribution of disciplinary cases by duty station in 2006



16. As can be seen from figure VIII below, many of the requests for assistance addressed to the New York Panel of Counsel during 2006 came from staff members in departments and United Nations funds and programmes involved in field operations, in particular the Department of Peacekeeping Operations of the Secretariat, the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Office for Project Services (UNOPS) and the United Nations Children's Fund (UNICEF).

Figure VIII

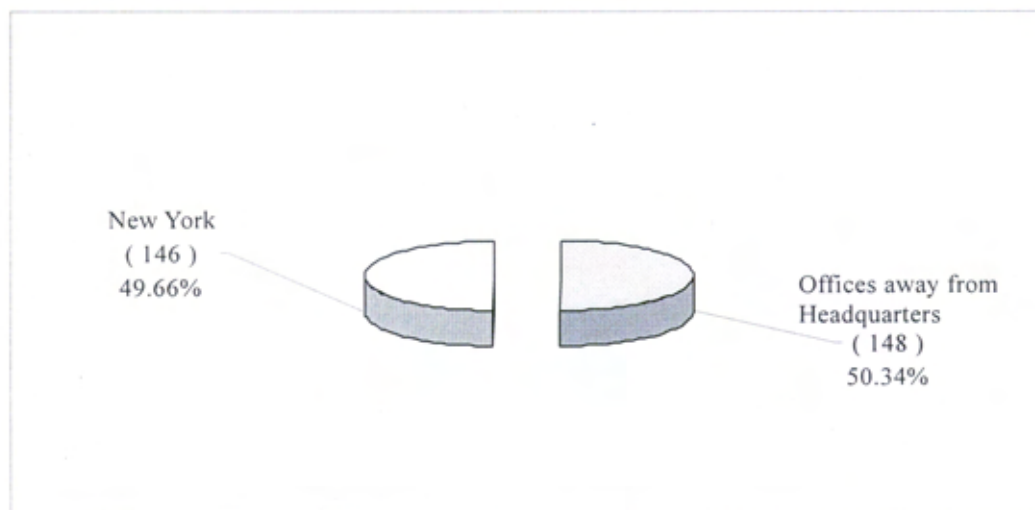
Departments of the Secretariat and United Nations funds and programmes where most requests for assistance from the New York Panel of Counsel originated in 2006



Abbreviations: DESA, Department of Economic and Social Affairs; DGACM, Department for General Assembly and Conference Management; DM, Department of Management; DPA, Department of Political Affairs; DPI, Department of Public Information; DPKO, Department of Peacekeeping Operations; DSS, Department of Safety and Security; OIOS, Office of Internal Oversight Services; OLA, Office of Legal Affairs; Tribunals, International Tribunal for the former Yugoslavia and International Tribunal for Rwanda; UNDP, United Nations Development Programme; UNEP, United Nations Environment Programme; UNFPA, United Nations Population Fund; UNICEF, United Nations Children's Fund; UNJSPF, UNOPS, United Nations Office for Project Services.

17. Figure IX below shows the distribution of cases in 2006 between New York and offices away from Headquarters.

Figure IX
Distribution of cases by duty station in 2006



18. The General Assembly may wish to take note of the present report.



General Assembly

Distr.: General
3 August 2007

Original: English

Sixty-second session
Item 135 of the provisional agenda*
Human resources management

Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2006 to 30 June 2007

Report of the Secretary-General

Summary

The present report is submitted in response to General Assembly resolution 59/287, in which the Assembly requested the Secretary-General to inform Member States on an annual basis on all actions taken in cases of proven misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2006 to 30 June 2007.

* A/62/150.

I. Introduction

1. The present report is submitted in response to paragraph 16 of General Assembly resolution 59/287, by which the Assembly requested the Secretary-General to inform Member States on an annual basis on all actions taken in cases of proven misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. It covers the period from 1 July 2006 to 30 June 2007.

2. As requested in paragraph 17 of resolution 59/287, an information circular is being issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the data provided in sections III and IV can be understood in context. Section III of the report contains a summary of the cases for which a disciplinary measure was imposed by the Secretary-General during the reporting period. Section IV contains comparative data and reader-friendly figures reflecting the disposition of all cases that were completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members¹

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on

¹ For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGB/2002/13, entitled "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,² provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

7. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.³ During the period covered by the present report, preliminary investigations were undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services at its own initiative or at the request of the head of office.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

9. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member can be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate. Such referral to a Joint Disciplinary Committee may be waived when the staff member concerned and the Secretary-General agree on a disciplinary measure and the proceedings would therefore serve no valid purpose. When the seriousness of the case warrants summary dismissal, prior referral to a Joint Disciplinary Committee is not required; however, staff members who have been summarily dismissed may, at their initiative, seek a review of their case by a Joint Disciplinary Committee. All staff members

² Also relevant is administrative instruction ST/AI/379, on procedures for dealing with sexual harassment.

³ The head of administration in a mission will refer the case to the Department of Peacekeeping Operations, Personnel Management and Support Service, at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission.

subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.⁴

D. Disciplinary measures

10. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

- (a) Written censure by the Secretary-General;
- (b) Loss of one or more steps in grade;
- (c) Deferment, for a specified period, of eligibility for within-grade increment;
- (d) Suspension without pay;
- (e) Fine;
- (f) Demotion;
- (g) Separation from service, with or without notice or compensation in lieu thereof;
- (h) Summary dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

12. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are administrative/managerial measures. However, they are also important measures for upholding standards of proper conduct and promoting accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2006 to 30 June 2007

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function or other particulars of the staff member are provided only when they played a role as

⁴ Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of those cases can be found in the online "Case and Jurisprudence Digest" (see <http://webfarmext.un.org/hrmtribunal>).

aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations the case is closed and the staff member is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Abuse of authority/harassment

15. A staff member verbally harassed and physically assaulted a colleague. *Disposition:* fine of six months net base salary; written censure. The staff member was also required to undertake counselling after the advice of a Joint Disciplinary Committee.

16. A staff member became publicly intoxicated and harassed a female staff member. *Disposition:* written censure after waiver of referral to a Joint Disciplinary Committee.

B. Fraud/misrepresentation

17. A staff member altered a signed list of applicants for a vacant post, thereby improperly influencing the recruitment process. *Disposition:* separation from service after the advice of a Joint Disciplinary Committee.

18. A staff member submitted a claim for education grant for a child which contained incorrect information. The staff member had relied on information provided by the child without making independent inquiries concerning its accuracy. *Disposition:* written censure after waiver of referral to a Joint Disciplinary Committee.

19. A staff member knowingly misrepresented his academic credentials on the personal history profile form submitted to the Administration. *Disposition:* separation from service after the advice of a Joint Disciplinary Committee.

20. A staff member provided another staff member with a United Nations medical certificate to assist the latter in forging medical certificates which would be used by other staff to facilitate their participation in the United Nations Inter-Agency Games. *Disposition:* written censure after waiver of referral to a Joint Disciplinary Committee.

21. A staff member submitted seven forged medical certificates to facilitate the participation of seven staff members in the United Nations Inter-Agency Games. *Disposition:* written censure after waiver of referral to a Joint Disciplinary Committee.

C. Theft/misappropriation

22. A staff member attempted to steal a quantity of truck tyre inner tubes from a United Nations vehicle repair facility. *Disposition:* written censure; payment of a fine in the amount of \$200; and loss of one step within grade after waiver of referral to a Joint Disciplinary Committee.

23. A staff member diverted fuel from a United Nations tank truck to sell on the black market. When apprehended, he attempted to bribe a local policeman. *Disposition:* summary dismissal.

24. A staff member attempted to steal property on United Nations premises. *Disposition:* written censure; loss of one step within grade; one-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

25. A staff member misappropriated \$1,159 of the Organization's funds. *Disposition:* separation from service after the advice of a Joint Disciplinary Committee.

26. A staff member engaged in fraud, over a period of three years, by accessing for personal use United Nations vehicles using an identity other than his own. *Disposition:* summary dismissal.

27. A staff member mismanaged various United Nations construction projects, failed to exercise proper control over subordinates, unnecessarily inflated contract estimates, and solicited and accepted a bribe from a local contractor. *Disposition:* separation from service, after the advice of a Joint Disciplinary Committee.

28. A staff member failed to return or account for within the required time frame unused monies advanced to the staff member for disbursement to others. *Disposition:* written censure after waiver of referral to a Joint Disciplinary Committee.

D. Sexual exploitation and sexual abuse

29. A staff member engaged in consensual sexual relations with a local woman in the mission area and gave money to her afterwards for expenses. *Disposition:* written censure after the advice of a Joint Disciplinary Committee.

30. A staff member engaged in sexual exploitation, sexual abuse and sexual harassment of staff members and United Nations Volunteers. The staff member also engaged in abuse of authority by seeking favours and personal benefits from staff members and United Nations Volunteers in exchange for performing official acts, and by seeking to exchange employment or services for sexual favours. *Disposition:* summary dismissal.

31. A staff member used a United Nations computer to send and receive pornographic video clips and photographs. The staff member also solicited and paid for sexual favours from local women in a mission area. The staff member further took pornographic photographs of local women, which photographs later became public. *Disposition:* separation from service after the advice of a Joint Disciplinary Committee.

E. Computer-related misconduct

32. A staff member received and widely distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: demotion of one grade with no possibility of promotion for three years after waiver of referral to a Joint Disciplinary Committee.

33. A staff member received and distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of three steps in grade; three-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

34. A staff member received and distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of three steps in grade; three-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

35. A staff member received and stored pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of two steps in grade; two-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

36. A staff member received and stored pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of two steps in grade; two-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

37. A staff member working in information technology used a password to gain unauthorized access to the United Nations e-mail account of another staff member and read that staff member's e-mail messages. *Disposition*: written censure; loss of two steps within grade; one-year deferral of eligibility for within-grade increment after waiver of referral to a Joint Disciplinary Committee.

38. A staff member accessed pornographic material over a period of 16 months using a United Nations computer. *Disposition*: loss of two steps within grade and three-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

39. A staff member accessed a colleague's United Nations e-mail account, copied the colleague's private note and sent it to the colleague's supervisors. At the time of the unauthorized access, the two staff members were competing for the same post. *Disposition*: demotion with no eligibility for promotion for three years and fine in the amount of one month's salary after the advice of a Joint Disciplinary Committee.

F. Conflict of interest

40. A staff member engaged in a conflict of interest in connection with a recruitment process. The staff member also acted in an insubordinate and obstructive manner during the investigation into the matter. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

41. A staff member working in the procurement area engaged in a conflict of interest by entering into a commercial arrangement with representatives of a United Nations vendor. *Disposition*: summary dismissal.

IV. Disposition of all cases completed during the period from 1 July 2006 to 30 June 2007

42. The list below shows the total number of cases that were completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. It should be noted that, owing to the time required to process disciplinary matters under established procedures, including the need in some cases to obtain further information after the initial investigation, the requirement to give staff members an opportunity to provide comments on charges of misconduct and referral of a case to a Joint Disciplinary Committee for advice, the figures reflect cases completed during the reporting period that had been referred to the Office of Human Resources Management prior to and during the reporting period.

Approximate number of staff	37 371
Number of cases completed during the reporting period	55
Summary dismissals	4
Other disciplinary measures after waiver of referral to the Joint Disciplinary Committee	15
Other disciplinary measures after advice of a Joint Disciplinary Committee	8
Administrative measures ⁵	13
No disciplinary or administrative action ⁶	15

V. Criminal behaviour

43. Resolution 59/287 requests the Secretary-General to take action expeditiously in cases of "proven ... criminal behaviour" and inform Member States on the actions taken. The Office of Legal Affairs has advised that criminal behaviour of staff members can be established only by competent authorities of Member States, in accordance with their criminal procedures. That office is aware of two cases during the reporting period where United Nations staff members have been subject to criminal proceedings by competent national authorities of Member States:

(a) A staff member was indicted and arrested for the criminal offence of smuggling a narcotic substance (khat) using the diplomatic pouch. The staff member entered a guilty plea for possession of a controlled substance. The staff member is awaiting sentencing;

⁵ Administrative measures include written or oral reprimands, warnings and letters of caution, all of which are important measures for upholding standards of proper conduct and promoting accountability. Additionally, where behaviour affects performance, the issue is addressed in the context of performance management, which may include training, counselling, withholding of salary increments and non-renewal of or termination of appointment.

⁶ As noted in paragraph 14 of the present report, the decision not to take disciplinary or administrative action is normally based on lack of evidence of misconduct or wrongdoing. In certain cases, no action was taken because the staff member had separated from service during the investigation owing to resignation, office-wide downsizing and death.

(b) A former staff member, who had been summarily dismissed for misconduct, was indicted, tried and found guilty of mail and wire fraud, conspiracy and corruption. That individual is awaiting sentencing.

44. The Secretary-General recommends that the General Assembly take note of the present report.
