



General Assembly

Distr.  
GENERAL

A/C.5/41/14  
3 November 1986

ORIGINAL: ENGLISH

Forty-first session  
FIFTH COMMITTEE  
Agenda items 114 and 117

JOINT INSPECTION UNIT

PERSONNEL QUESTIONS

Establishment of an office of Ombudsman in the Secretariat  
and streamlining of the appeals procedures

Report of the Secretary-General

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION .....	1 - 5	3
I. THE OMBUDSMAN INSTITUTION WITHIN THE FRAMEWORK OF THE UNITED NATIONS .....	6 - 13	4
II. PROPOSED STRUCTURE OF THE OMBUDSMAN INSTITUTION .....	14 - 20	6
III. IMPLICATIONS FOR THE FORMAL RECOURSE SYSTEM .....	21 - 28	7
IV. STREAMLINING OF THE APPEALS PROCEDURES .....	29	9
V. COMMENTS ON THE REPORT OF THE JOINT INSPECTION UNIT ON THE ADMINISTRATION OF JUSTICE IN THE UNITED NATIONS (A/41/640)	30 - 55	9
A. Recommendation for the establishment of a two-level judicial system [Recommendation 3] .....	34 - 41	10
B. Recommendation for the establishment of an office of Ombudsman [Recommendation 2] .....	42 - 43	12

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
C. Recommendation for the establishment of an Office for the Administration of Justice [Recommendation 1] .....	44 - 46	13
D. Recommendation concerning legal costs and certain administrative aspects [Recommendation 4] .....	47 - 55	14

## INTRODUCTION

1 The General Assembly, in its resolution 39/245 of 18 December 1984, requested the Secretary-General "to strengthen the various appeals machinery, with a view to eliminating the backlog of cases" and to report to it at its fortieth session on the feasibility of establishing an office of Ombudsman in the United Nations. Such report (A/C.5/40/38) was submitted to the General Assembly at its fortieth session. The conclusions of this report, contained in its paragraph 43, read as follows:

"43. In conclusion, it appears feasible to establish an Ombudsman institution in the United Nations. Whether it would replace the panels on discrimination and other grievances in the Secretariat and how far it would streamline or obviate the need for the other existing procedures will depend on how the office of Ombudsman is instituted. The UNDP, UNHCR and UNICEF panels which have been set up independently would of course remain. Some means by which staff members of the Secretariat at duty stations away from Headquarters wishing to approach the Ombudsman could do so through a local representative will have to be arranged. The Ombudsman would collect the necessary information, consider the case and then mediate and/or make whatever recommendation appeared appropriate to resolve the staff member's problem. For this purpose the Ombudsman would have access to all levels of the Administration, up to the Secretary-General. A decision will have to be taken as to whether an outside person, a staff member or former staff member should be chosen. While preliminary discussions have taken place with representatives of the staff at Headquarters, further discussion of the matter needs to be undertaken on a Secretariat-wide basis. Specific proposals for the institution of an office of Ombudsman will be submitted to the Assembly at its forty-first session."

2. It may also be recalled that the Advisory Committee on Administrative and Budgetary Questions (ACABQ) noted in its first report on the proposed programme budget for the biennium 1986-1987 1/ that the Organization was facing "significant and growing problems in the form of the multiplicity of time-consuming and cumbersome procedures, the growing number of appeals and other grievances which are filed, and long delays in the administration of justice". ACABQ pointed out that those matters had a significant financial impact and that to the direct financial costs must be added the considerable distraction of staff from normal duties resulting from their involvement in an appeal. The Advisory Committee felt therefore that there was "an urgent need to simplify administrative procedures with a view to achieving a significant reduction in the number of cases requiring full-scale review". It then recommended that the Secretary-General be requested to prepare an analysis of the problem, together with an indication of the specific steps taken or plans to remedy it. The report to be prepared by the Secretary-General and to be submitted to the General Assembly at its forty-second session should focus inter alia on "streamlining the appeals procedures so as to provide for (a) quick settlement of minor disputes prior to the appeals stage, (b) a mechanism to reject applications for review that are frivolous, and (c) a more efficient handling of cases that reach the Joint Appeals Board and

Administrative Tribunal". The General Assembly, in its resolution 40/252 of 18 December 1985, approved the observations and recommendations of ACABQ on the appeals system.

3. At the same time the Assembly, in its resolution 40/258 A of 18 December 1985, requested the Secretary-General, "in his efforts to guarantee to staff members a just and expeditious resolution of disputes and grievances, to streamline the appeals procedures and to continue the study on the feasibility of establishing an office of Ombudsman, and to report thereon to the General Assembly at its forty-first session".

4. The Joint Inspection Unit (JIU) in its turn has submitted to The General Assembly at the present session a report on the administration of justice in the United Nations (A/41/640) which proposes major structural changes in the present recourse system.

5. With a view to facilitating a consolidated review of this issue, this report addresses all these requests. It is thus submitted pursuant to the request of the General Assembly in its resolution 40/258. It addresses the modalities which would make the Ombudsman institution feasible in the United Nations Secretariat and indicates the measures being taken to streamline the appeals procedures. It also provides the comments of the Secretary-General on the report submitted by JIU on the administration of justice in the United Nations.

#### I. THE OMBUDSMAN INSTITUTION WITHIN THE FRAMEWORK OF THE UNITED NATIONS

6. The role of the Ombudsman institution would be to strengthen administrative processes by which decisions are made, to overcome defective procedures and to advise staff and administration on how to resolve individual problems. These functions would be reinforced by the Ombudsman's free and direct access to all levels of the Administration. Investigation of a staff member's complaint by the Ombudsman who would have access to all levels of the Administration would contribute to strengthen the administrative process by calling the attention of the decision-maker to individual abuses or defective administrative procedures while contributing, at the same time, the resolution of justified individual complaints.

7. In establishing the Ombudsman institution, the statutory framework of the Charter of the United Nations has first to be considered. In accordance with Article 97 of the Charter, the Secretary-General is the Chief Administrative Officer of the Organization and is appointed by the General Assembly. As Chief Administrative Officer he is responsible, subject to the principles set forth in the Charter and regulations and directives adopted by the General Assembly, for the administration of the Secretariat. Accordingly, he has the authority and responsibility to promulgate administrative rules in the implementation of the Staff Regulations adopted by the General Assembly, and to administer and enforce these regulations and rules. Bearing in mind this statutory framework and, on the other hand, the nature of the Ombudsman institution, which is essentially designed to solve problems through discussion and conciliation and by the value attached to the Ombudsman's recommendations, the Ombudsman's role must necessarily be advisory

to the Secretary-General, as in the case of the other recourse bodies in the United Nations Secretariat.

8. An important factor which has to be taken into account in determining the structure which the Ombudsman institution should have is the large number of staff members who would have access to the Ombudsman. As indicated in paragraph 1 above, it is proposed to establish the Ombudsman institution for the staff of the United Nations and those subsidiary organs which do not have their own Ombudsman system. The number of staff who would have access to the proposed Ombudsman institution is therefore approximately 14,800 staff members.

9. Another important factor which has to be considered is the large number of duty stations. There are staff members at 129 duty stations. On 31 December 1985, there were 5,271 staff members at Headquarters and 9,529 staff members at other duty stations. Of the latter, some 6,140 were serving at major duty stations away from Headquarters and distributed as follows: 2,682 at Geneva, 747 at Addis Ababa, 299 at Baghdad, 867 at Bangkok, 671 at Nairobi, 541 at Santiago and 333 at Vienna.\*

10. The two above-mentioned factors will require the establishment of modalities whereby the Ombudsman institution can effectively respond to the large number of staff serving at offices away from Headquarters. These modalities are discussed in section III below in connection with the proposed structure of an Ombudsman institution in the United Nations.

11. In determining the structure of the Ombudsman institution, in addition to the factors referred to in paragraphs 8 and 9 above, the following considerations should be taken into account.

12. As indicated in the previous report (A/C.5/40/38), an important aspect of the Ombudsman institution is the direct personal communication between the staff member concerned and the Ombudsman, thus allowing staff members to confide in the Ombudsman, to talk over their problem confidentially and, at the same time, giving the Ombudsman the opportunity to listen to the staff and to know each problem first-hand. At the same time, location of the Ombudsman as close as possible to the problem and its administrative background enhances the possibility of settlement at an early stage and permits dealing with the participants without the necessity of correspondence, which often formalizes a dispute and renders it more intractable.

13. Another important aspect is the number of the complaints which the Ombudsman institution would have to deal with. The panels on discrimination and other grievances seem to have handled between 100 and 150 cases per year. There are indications, however, that many other problems, which would appear suitable for "Ombudsman-type" attention, may not be going to the panels, but instead to other

---

\* This figure does not include the United Nations Industrial Development Organization.

quarters in the Secretariat, such as the staff representatives, the Co-ordinator for the Improvement of the Status of Women in the Secretariat, the Staff Counsellor and members of the Panel of Counsel. Consequently, the case-load at least in the first year of an Ombudsman institution, which would probably be perceived as a more effective channel of recourse, could be substantially higher than the current case-load of the panels on discrimination and other grievances.

## II. PROPOSED STRUCTURE OF THE OMBUDSMAN INSTITUTION

14. The present informal grievance mechanism is constituted by the panels on discrimination and other grievances which was described at some length in paragraphs 24 to 33 of the report contained in document A/C.5/40/38. The first question which must be addressed is whether the Ombudsman institution should replace these panels or whether they should be maintained and an Ombudsman be established in addition to them. Bearing in mind the need to simplify rather than to add further elements of complexity to the United Nations internal recourse system, the Ombudsman institution should replace the present panels on discrimination and other grievances.

15. It is next necessary to determine whether decentralized arrangements should be made for the establishment of the Ombudsman institution.

16. Bearing in mind the substantial number of staff at the major offices away from Headquarters and the desirability that the Ombudsman should be located as closely as possible to the problem, it is proposed that, in addition to a full-time Ombudsman at Headquarters, a staff member be designated at each of the major duty stations away from Headquarters to perform on a part-time basis the Ombudsman function at the respective duty station, rather than having a single Ombudsman at Headquarters to deal with complaints from United Nations staff at all duty stations. Staff serving at those major duty stations as well as staff administered from those major duty stations would have recourse to the Ombudsman designated for the respective duty station. If such an Ombudsman is unable to solve a problem locally, he or she would then refer it to the Ombudsman at Headquarters for appropriate follow-up at the highest level of the Administration, where required. The Ombudsman at Headquarters would have competence in respect of all staff serving at Headquarters or administered from Headquarters and in respect of other staff whose complaints had been referred to him or her by any of the part-time Ombudsmen from the other major duty stations. The Ombudsman at Headquarters would provide guidance to the Ombudsmen at the other major duty stations and would monitor and co-ordinate the overall functioning of the institution, as required.

17. The Ombudsman at Headquarters as well as the part-time Ombudsmen at the major duty stations would be designated by the Secretary-General after consultation with the staff. It would be desirable that the Ombudsman at Headquarters have substantial experience in the fields of personnel administration or labour relations and familiarity with the rules and procedures of the United Nations common system. He or she would be designated at the senior level for a specified period, which would not be renewed. The part-time Ombudsmen at the other major duty stations would be chosen from among serving staff members on the basis of

their administrative experience, their having the confidence of the Staff and the Administration and their negotiating skills. Their functions as Ombudsmen would be regarded as part of their official duties.

18. The office of the Ombudsman at Headquarters would constitute a separate organizational unit within the Department of Administration and Management. The Ombudsman would have free and direct access to the highest levels of the Administration and may submit recommendations directly to the Secretary-General, if necessary. The part-time Ombudsmen at the major duty stations would have free and direct access to the heads of the respective offices and may submit recommendations directly to them, as well as to the Ombudsman at Headquarters if the matter could not be settled locally.

19. The Ombudsman could decline to deal with any case which did not appear well justified or would decline to deal with a case, where it appeared that such a case would be more appropriately considered or dealt with through the formal recourse procedures. In general, matters which come under the competence of the special recourse bodies or cases where the interpretation of provisions of the Staff Regulations and Staff Rules is at issue or where the validity of established policies is brought into question would be more appropriately dealt with through the formal recourse system, while cases where questions of fair and equitable treatment are at issue would be more appropriately dealt with by the Ombudsman.

20. The Ombudsman functions would be conducted with the maximum dispatch and informality. Documentation would, in general, be kept to the minimum possible. All proceedings would, to the extent possible, be conducted on a confidential basis, and no reference thereto would be included in the personnel record of the staff member or in any formal recourse procedure.

### III. IMPLICATIONS FOR THE FORMAL RECOURSE SYSTEM

21. The Organization's formal recourse system comprises, as indicated in document A/C.5/40/38, the special recourse procedures and the general review procedures.

22. The special recourse procedures are designed to be used in narrowly defined situations for the review of particular types of administrative decisions, such as appeals from decisions of organs of the Pension Fund, appeals in case of service-incurred injury or illness, appeals in case of loss or damage to personal effects, appeals in respect of sick leave, appeals in respect of classification of posts, rebuttal of performance evaluation reports, recourse in respect of promotion, appeals in respect of competitive examinations for promotion to the Professional category. Most of these procedures appear to function effectively. On the other hand, because of their specific scope and nature these claims are generally not suited to settlement through an informal procedure.

23. With regard to the general appeal procedure before the Joint Appeals Board (JAB) provided for in chapter XI of the Staff Rules, it is mainly in this recourse procedure that substantial delays have occurred in the disposition of

cases and a large backlog has existed for a number of years. During 1984 and 1985 there was a reduction in the number of appeals filed per year compared to those filed in 1981, 1982 and 1983. During those three years the total number of appeals filed with JAB at Headquarters, Geneva and Vienna was 92 in 1981, 73 in 1982 and 95 in 1983. The total number of appeals filed during 1984 and 1985 with the above-mentioned JABs was about 60 per year. At the JAB Headquarters 46 appeals were filed in 1984 and 47 in 1985. However, in the first six months of 1986, 30 appeals were filed with JAB at Headquarters, which constitutes a substantial increase over 1984 and 1985. There has been a total reduction of pending appeals at the JAB Headquarters by over one third, from 137 on 31 December 1983 to 89 cases on 30 June 1986, apart from 11 appeals referred to the newly established JAB at Nairobi. For all the JABs the reduction in the number of pending cases is also significant, from 159 on 31 December 1983 to 113 on 30 June 1986. This reduction is in great part due to the additional staff resources provided for a period to the JAB secretariat at Headquarters and the Unit which reviews each case on behalf of the Secretary-General and then represents the Secretary-General in the formal appeals proceedings.

24. The establishment of the Ombudsman institution in so far as it would provide a more effective informal grievance procedure would contribute to reduce the number of certain types of appeals filed with JAB.

25. On the other hand, it is particularly important to consider how the Ombudsman institution would function in relation to JABs with a view to avoiding duplication, while bearing in mind the statutory right established in regulation 11.1 whereby staff members may appeal to JAB any administrative decision "alleging the non-observance of their terms of appointment, including all pertinent regulations and rules ...".

26. It is of interest to note in this connection that the United Nations Administrative Tribunal in its recent Judgement No. 368 observed in relation to the consideration of the Applicant's case by the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat that it was not in keeping with the best standards of administration that, while a case is under consideration by JAB, another body should deal essentially with the same complaints as are before the Board. The Tribunal added that this could lead to unnecessary duplication and conflicting decisions.

27. Appropriate mechanisms could be established to avoid such duplication, e.g. resort to the formal recourse procedures would put an end to the Ombudsman's competence to deal with a case. In addition, if the Ombudsman failed to settle a problem, no records of the Ombudsman's recommendations or actions would be cited to, or be receivable by, any appeals body.

28. The minimum staff requirements for the establishment of an Ombudsman institution would be one post at the D-2 level, one post at the P-3 level and one post at the G-4 level. It is proposed that such staffing be achieved through redeployment. The G-4 post could be redeployed from the Office of Personnel Services, where a post in the Office of the Assistant Secretary-General has been assigned on a full time basis to the servicing of the panels on discrimination and



other grievances, which as outlined in paragraph 14 of the report would be replaced by the Ombudsman institution. Vacant posts at the D-2 and P-3 levels which could be redeployed permanently to the new Office remain to be identified.

#### IV. STREAMLINING OF THE APPEALS PROCEDURES

29. Pursuant to General Assembly resolution 48/258, as indicated in paragraphs 2 and 3 above, the Secretary-General has recently approved a number of measures to streamline the appeals procedures with a view to establishing a more efficient and cost-effective system of administration of justice. These measures are essentially designed:

(a) To ensure that, notwithstanding limited staff resources, a review by the Administration of each contested decision under the procedure established in staff rule 111.2 is carried out and a substantive reply is given to the staff member. This will result in the settlement or conciliation of many cases at this early stage. On the other hand, where there is a negative reply to the staff member's request, the reasons given may dissuade the complainant from pursuing the claim further. An extension of the time-limits for review under the Staff Rules is under consideration in order to facilitate the implementation of this measure;

(b) To avoid duplication in the review of cases by various formal recourse bodies, i.e. first by one of the special formal recourse bodies and then by a JAB. In this connection, a procedure permitting direct application to the Administrative Tribunal from certain special recourse bodies is under consideration, which may require amendments to the provisions in force;

(c) To simplify the lengthy internal procedures before JABs through a more expeditious and informal handling of cases, such as summary review of appeals clearly devoid of merit, resort to oral proceedings rather than to lengthy written presentations by the parties, brief JAB deliberations with a one-month time-limit and reduction in the length of JAB reports (maximum five pages).

The above measures would result in a substantial reduction of formal appeals to JABs, as well as in an effective and expeditious resolution of disputes.

#### V. COMMENTS ON THE REPORT OF THE JOINT INSPECTION UNIT ON THE ADMINISTRATION OF JUSTICE IN THE UNITED NATIONS (A/41/640)

30. This report is closely related to the questions addressed in the preceding sections of this report. The Inspector describes and analyses in sections II and III of his report the existing formal recourse system. In section IV, the Inspector then makes proposals for the reform of the system. He proposes a two-level judicial system, with a Claims Court as a first instance, to replace JABs. The Administrative Tribunal would then become the second judicial instance. He proposes at the same time the establishment of an Ombudsman office. On the

other hand, the Inspector also recommends the establishment of an Office for the Administration of Justice which would be separate from the Office of Personnel Services and include the functions of all units of the Office of Personnel Services which concern the appeal procedure under staff regulation 11.1 and staff rule 111.2. The Inspector finally makes, in section V, recommendations concerning the legal costs and administrative aspects of the internal recourse system of the United Nations. The Inspector's conclusions and recommendations are summarized in section VI of his report.

31. The Secretary-General finds some of the comments and proposals of the above-cited JIU report interesting and worth pursuing. However, others appear to rest on misconceptions about the existing administrative recourse system of the United Nations Secretariat.

32. The basic difficulty is a conceptual one, as to whether it is proper in this connection to talk about the "administration of justice". This is a misleading designation which initially appeared in some reports of the federation of International Civil Servants' Associations (FICSA) and the United Nations Staff Committee. The term is a misnomer because the primary purpose and function of those parts of the recourse procedure that precede consideration by the Administrative Tribunal are to advise the Secretary-General as to what administrative decisions to take in respect of applications submitted by staff members, taking into account all relevant considerations, such as perceived fairness, administrative convenience, practical possibilities and of course any legal constraints. While these recommendations are forged in a "quasi-judicial" forum - so characterized because a generally adversary framework is used in which the "parties" confront each other on factual, legal and other issues in writing and often also orally - the purpose is not to constitute a preliminary judicial stage but rather to bring out the best relevant arguments (which experience shows is most effectively done in an adversary setting) and to have them weighed by a substantially independent group of advisers. This procedure, thus, is meant to assure the Secretary-General of as good advice as is possible, which he must then evaluate against other pertinent factors. It is only after the Secretary-General has had an opportunity to take an informed, definitive decision that the latter can appropriately be submitted for a genuine judicial test based solely on applicable legal standards.

33. The Secretary-General's comments on the main aspects of the four recommendations made by the Inspector are indicated below.

A. Recommendation for the establishment of a two-level judicial system (Recommendation 3)

34. The appeal procedure established by staff regulation 11.1 and staff rule 111.2 fully meets the objective that administrative decisions which are contested by staff members as violating their terms of appointment be reviewed by the Secretary-General on the basis of independent advice from staff members not involved in the adoption of the contested decision. Since staff members may, after a definitive decision has been taken on the advice of the Joint Appeals Board,

resort to the Administrative Tribunal, which is a true judicial body, i.e. a court whose decisions are generally final and binding, there can be no question that the existing recourse system provides mechanisms to fully ensure the safeguard of staff members' rights under their terms of appointment.

35. The shortcomings of the procedure before JAB relate essentially to the substantial delays which have occurred in the disposition of appeals. However, these delays are not due, as the Inspector appears to imply, to the JAB procedure being "primitive". This procedure, which consists of written presentations by the parties similar to those which exist in many judicial proceedings, as well as the JAB reports to the Secretary-General, are often long and elaborate. The steps being taken to expedite the JAB procedure referred to in paragraph 29 above are designed to simplify the proceedings and reports. It is not likely that the establishment of a Claims Board as a first instance to replace JABs would result in a more cost-effective and efficient system. Such a system might, on the contrary, lead to more formalistic and legalistic proceedings. It is not clear how a single individual, replacing the existing JABs, could perform their tasks more effectively. Even if this were the case, the costs incurred in the present procedure are constituted largely by the remuneration, not of the JAB members but of the staff members who prepare the written pleadings (Administration representatives, applicants and their counsel), and the JAB secretariat, and all of these would have to be maintained if not strengthened for a full-fledged judicial body, even if consisting only of a single judge. These efforts would be better directed to streamlining and simplifying the appeals procedure within the existing framework as requested by the General Assembly in its resolution 40/258.

36. With regard to the estimated average cost of JAB cases, indicated in paragraph 26 of the JIU report as \$24,000, it should be borne in mind that this figure was obtained by dividing, for a given year, the annual costs associated with JAB by the average number of cases handled in a year. It is distorting then to estimate the costs of JAB by multiplying that average cost per case by the number of backlogged cases.

37. As regards paragraphs 17 and 18 of the JIU report, the fact that many JAB members have no legal training should not be considered a handicap, as their task is basically to give administrative advice to the Secretary-General. They can obtain the legal advice they may require, in the first instance from the Secretary of the Panel, who usually is a lawyer.

38. While the Secretary-General does not consider it advisable to establish the two-instance system proposed by the Inspector, it should be recalled that the Secretary-General's proposals on Administrative Tribunal harmonization already contain, in effect, a proposal for a two-level judicial system (A/40/471, para. 83 (b) and annex I A, art. 11 bis). However, instead of creating another judicial instance below the Tribunal, it has been proposed to establish a Joint Panel of the Presidents of the United Nations Administrative Tribunal (UNAT) and the International Labour Organisation Administrative Tribunal (ILOAT), with a Chairman appointed by the President of the International Court of Justice (ICJ) to review challenged Tribunal judgements, which would dispose of most cases at present

submitted fruitlessly to the extremely restricted Committee on Applications for Review.

39. It seems necessary to comment next, although the Inspector made no formal recommendation in this connection, on the views expressed in part III B of the JIU report with regard to the Panel of Counsel in Disciplinary and Appeals cases, which is an integral component of the existing recourse system. The Panel of Counsel was established to provide legal advice to staff members in the Joint Disciplinary Committee (JDC), JAB, UNAT and other recourse proceedings. The Inspector, in paragraphs 31 and 33 of his report, appears to question the very propriety of having a Panel of Counsel.

40. However, there would seem to be only three realistic approaches to supplying staff members in JDC, JAB, UNAT and other recourse instances with legal advice:

(a) Require staff members in such proceedings to rely entirely on themselves by not allowing them to secure any assistance - which would appear to be grossly unfair to the less legally and linguistically versed staff members, and especially to those not at the seat of the competent organ;

(b) Allow only the use of outside counsel - which would be expensive, intrusive into the internal administration of the Organization, and often useless, as outsiders, whether or not legally trained, are usually unfamiliar with United Nations policies, rules and practices;

(c) Allow reliance on fellow staff members - which is the present system. The Panel of Counsel is merely an organized way of ascertaining which staff members are suitable and available for such duty; abolition of the Panel would not change the burden borne by the Organization in permitting staff members to represent others, but would just make the process of locating suitable counsel much more difficult.

41. To sum up, the Secretary-General feels that the basic structure of the present recourse system, i.e. an essentially administrative advisory instance, which may be followed by recourse to a truly judicial instance, the Administrative Tribunal, normally the end of the line for a dispute, should remain. This system may, however, be enhanced by auxiliary mechanisms such as the Ombudsman institution proposed in sections II to IV of the present report.

B. Recommendation for the establishment of an office of Ombudsman [Recommendation 2]

42. The recommendation made by the Inspector concerning the establishment of a one-person Ombudsman institution in the United Nations (Recommendation 2) coincides in some respects with the proposal contained in sections II to IV of the present report. However, the JIU proposal appears not to take sufficiently into account characteristics of the Secretariat which make it necessary to establish decentralized arrangements so that the Ombudsman institution may function more effectively, as indicated in paragraph 16 above. At the same time, the

Secretary-General feels that while the Ombudsman institution is designed to perform to a great extent a mediation and conciliation function, the Ombudsman should also be given the competence to make, where mediation had failed and he or she deems it appropriate, recommendations to the highest levels of the Administration. It should be noted in this connection that the four organizations of the United Nations common system (the International Monetary Fund, the United Nations Educational, Scientific and Cultural Organization, the World Bank and the World Health Organization) which have established an Ombudsman institution have all given the Ombudsman the authority to make such recommendations, which is also inherent to the Ombudsman institution as it exists in various Member States. The Ombudsman's role would necessarily be advisory to the Secretary-General, as explained in paragraph 10 above.

43. In paragraph 19 above, the matters which would more appropriately be dealt with by the Ombudsman and those which would more appropriately be dealt with through the existing formal appeal procedures have been indicated. Mediation and conciliation, while being of the very essence of the informal Ombudsman procedure, should also have their place within the formal appeal system. The Ombudsman institution is envisaged as a separate procedure to the formal JAB procedure, rather than as a first step to precede the initiation of any formal recourse, as envisaged by the Inspector.

C. Recommendation for the establishment of an Office for the Administration of Justice [Recommendation 1]

44. The Inspector has recommended that "an Office for the Administration of Justice should be created within the Executive Office of the Secretary-General in order to separate the entire function of the administration of justice from the Administration" endorsing a proposal initially made by the New York staff representatives. This recommendation appears to be based on the concept of a Secretary-General's office apparently separated from the administration of the Secretariat.

45. The Inspector feels that the concentration of the functions relating to the appeal procedure of the Administrative Review Unit, JAB secretariat, Rules and Personnel Manual Section and secretariat of the Panel of Counsel in the Office of Personnel Services is inappropriate because the "Office of Personnel Services is in a position to play a double role as defendant and applicant". It is not clear how the Office of Personnel Services would play such a double role. The fact that it provides administrative support to the Panel of Counsel cannot transform the Office of Personnel Services into the "applicant". This criticism only has some validity with regard to the Office of Personnel Services' function of reviewing the JAB reports and making a recommendation on the final disposition of the case in the light of JAB report through the Legal Counsel and the Under-Secretary-General for Administration and Management to the Secretary-General. The final decision on the disposition of the case is then taken by the Secretary-General or the Under-Secretary-General for Administration and Management on his behalf. The review in question is undertaken by officials in the Office of Personnel Services other than those who represented the Administration before JAB. Nevertheless,

consideration could be given to changing the existing procedure so that the JAB reports are transmitted directly to the Under-Secretary-General for Administration and Management who, where he considered it warranted, could consult the Office of Legal Affairs and/or the Office of Personnel Services.

46. It is difficult to see how having all the functions indicated by the Inspector under one head in an "Office for the Administration of Justice" would better assure objectivity in the adoption of the final decision taken on the disposition of a case. Furthermore, it would add to the number of units for which the Secretary-General would have immediate responsibility, thus adding to his scope of command and detracting from the time he needs for the broader issues for which he is responsible.

D. Recommendation concerning legal costs and certain administrative aspects [Recommendation 4]

47. The Inspector has recommended that measures be taken to prevent staff members from abusing their rights and privileges by imposing costs on litigants and penalizing the submission of claims which are clearly devoid of all merit. The Secretary-General agrees that staff should be discouraged from filing claims which are clearly devoid of all merit. The Secretary-General recommended in his report of 25 July 1985 on the feasibility of establishing a single Administrative Tribunal (A/40/471, para. 35 (b) and annex I.A, art. 9 (2B)) that for such cases "the Tribunal be authorized to impose costs, limited to no more than one month's net emoluments, if it considers such a step appropriate". Alternatively, consideration could also be given to the introduction of a filing fee, which would be refunded in so far as the Tribunal considered that there were sufficient grounds for presenting the application.

48. The application of the above principle in respect of proceedings in the Committee on Applications for Review could be contemplated, but some special machinery might have to be established, as that body can not be expected to make decisions as to the allocation of costs. Presumably no frivolous appeals can reach ICJ, as these are screened by the Committee.

49. It might be desirable to institutionalize some method of offering assistance (as ICJ itself suggested in the Fasla case, I.C.J. Reports 1973, pp. 166 and 212, para. 99) to applicants in cases that the Committee on Applications for Review decides to submit to ICJ.

50. The Inspector has also recommended that amendments to the Staff Regulations and Rules be made to discourage officials from applying the rules and regulations in an improper manner, including "disciplinary measures or penalties".

51. The Staff Rules already contain a provision for this purpose. In accordance with staff rule 112.3, "any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction". With regard to the

imposition of disciplinary measures, it should be noted that in accordance with staff regulation 10.2 the Secretary-General may impose disciplinary measures on staff members in cases of misconduct, i.e. where a wrongful act has been wilfully committed.

52. It should be noted in connection with the above that, as all legal provisions, the Staff Regulations and Staff Rules are expressed in general and abstract terms. No general and abstract norm can cover all the possible variations of individual and concrete situations. Likewise some individual and concrete situations do not fit exactly in the framework of the general and abstract rule intended to regulate. Divergencies in the interpretation of the Staff Regulations and Rules are therefore bound to arise.

53. On the other hand, while some appeal cases involve questions of interpretation of the applicable provisions, the majority contest decisions taken in the exercise of the Secretary-General's discretionary authority, i.e. situations where the Administration is free to act or not to act according to its judgement of what is in the best interest of the Service. These decisions, being discretionary, should not normally be the subject of an appeal which is intended to protect staff members' entitlements or rights under their terms of appointment, including all pertinent regulations and rules. However, these decisions may nevertheless be contested essentially because of procedural deficiencies or improper motivation. These decisions have been found to be invalid by the JABs and/or the Administrative Tribunal in very few cases. On the other hand, in a number of cases payment of some compensation has been found to be justified because of procedural defects, delay or other unsatisfactory aspects of a case.

54. With regard to the statement made in paragraph 99 of the JIU report that the Administration loses more than 50 per cent of cases before UNAT, it should be noted that, as a matter of fact, the position of the Administration was upheld in the overwhelming majority of the cases submitted to UNAT (in 1983 through 1985, of 50 judgements, only 9 were substantively for the staff member or former staff member applying to the Administrative Tribunal, 30 completely for the Administration and in 11 the Administration's position was upheld on the substantive issue but it had to pay some damages for delay or procedural irregularities). The fact that the position of the Administration is not upheld in some appeals does not necessarily indicate a fault on its part - for evidently the Tribunal could not continue functioning if the Administration were to submit only cases where the respondent must necessarily prevail, while settling all others.

55. Lastly, it should be noted that the number of contested decisions in proportion to the total number of decisions taken in respect of approximately 26,000 staff who come under the purview of JABs is relatively small and should not in itself give rise to serious concern, particularly bearing in mind that these decisions are taken by and in respect of staff members from many different cultural backgrounds serving at some 129 duty stations around the world.

#### Notes

1/ Official Records of the General Assembly, Fortieth Session, Supplement No. 7 (A/40/7).

-----