



United Nations

**Review of the internal pre-tribunal-stage
appeal mechanisms available to staff of
the United Nations system organizations**

Report of the Joint Inspection Unit

Prepared by Gönke Roscher and Jesús S. Miranda Hita



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Executive summary

Review of the internal pre-tribunal-stage appeal mechanisms available to staff of the United Nations system organizations

I. Introduction and review objectives

To date, the functioning of the internal pre-tribunal-stage appeal mechanisms available to the staff of United Nations system organizations has not been at the centre of attention of either internal or external oversight functions. As the focus in earlier reviews by the Joint Inspection Unit (JIU) had been on higher instance recourse options involving tribunals,^a or on the administration of justice framework in the United Nations,^b formal internal appeal mechanisms have not been assessed comprehensively, nor has a comparative analysis of their characteristics been undertaken at the system-wide level. This is the first time that a JIU review has mapped the diversity of internal appeal mechanisms available to staff of the United Nations system organizations to formally challenge administrative decisions on employment-related matters, before resorting to external tribunals. Accordingly, the scope of the present review does not cover any informal dispute resolution mechanisms.

The objective of the present review is to compare the strengths and weaknesses of the prevailing models of formal internal appeal mechanisms across the system and highlight good practices and, where possible, opportunities for increased effectiveness and coherence through adjustments to existing mechanisms and procedures. Based on the findings of the review, the Inspectors have formulated recommendations aimed at improving the internal appeal mechanisms across the United Nations system organizations. The review complements recent efforts by the Secretary-General of the United Nations to map the jurisdictional set-up of the United Nations common system.^c

Internal pre-tribunal-stage appeal mechanisms generally refer to the preliminary stage of the formal process of employment-related dispute resolution that must be completed as a mandatory first step before staff members can challenge administrative decisions taken by their employer before an external administrative tribunal. These mechanisms generally represent a procedural precondition for any subsequent judicial recourse in respect of an employment-related dispute, under the rules of the United Nations system organizations.

International organizations typically enjoy jurisdictional immunity which, as a general rule, allows them not to have their legal disputes adjudicated by domestic courts. Against this backdrop, employment-related disputes between the administration and staff of international organizations are not subject to the jurisdiction of national courts. The organizations are expected to fill this gap by providing appropriate recourse mechanisms and effective remedies for aggrieved staff internally. The case law of the international tribunals confirms that the provision of adequate recourse to its employees is not an option for any international organization, but rather a requirement. Internal pre-tribunal appeal mechanisms are thus a core element of the internal justice system of international organizations. This principle has been reiterated in the long-standing jurisprudence of the relevant administrative tribunals, which have repeatedly reaffirmed their role in protecting the rights of international civil servants in employment-related disputes at all stages of the process.

Prior to 2009, all JIU participating organizations applied, by and large, the same model of formal internal appeal mechanism, namely, a peer review. The internal justice reform of 2009 transformed how employment-related disputes are handled in the

^a JIU/REP/2002/5.

^b JIU/REP/2000/1 and JIU/REP/86/8.

^c A/75/690 and A/77/222.

United Nations Secretariat,^d its departments and offices and the funds and programmes that are governed by the staff regulations and rules of the United Nations. Among the main changes brought about by the new set-up to one part of the system was the shift to a professionalized management evaluation function subject to appeal before a judicial first instance and a second appellate instance process. This paradigm shift was aimed at increasing the independence, effectiveness and transparency of internal justice in that part of the system.

Today, two main models of internal justice exist in the United Nations system, as the fully professionalized, two-tier judicial system is not generally followed outside the United Nations Secretariat and its offices, funds and programmes. Most United Nations system organizations, in particular the specialized agencies, continue to use versions of the peer review model, which was retired by the United Nations Secretariat in 2009, including partially professionalized and hybrid forms that closely resemble judicial processes, while retaining an element of staff participation in their set-up.

Short of attempting to reach a verdict on which set-up may have proven better than another over time, one of the main questions raised by the review is whether the prevailing models of internal appeal mechanisms in the United Nations system organizations provide adequate means of recourse along with effective remedies, due process safeguards and confidence in their capacity to resolve employment-related disputes, as set out by the legislative organs and governing bodies of JIU participating organizations in their applicable regulatory frameworks.

The findings and recommendations of the present review are intended to inform the legislative organs, governing bodies and executive heads of United Nations system organizations about the set-up and functioning of the internal appeal mechanisms available to staff of United Nations system organizations, and to identify good practices so as to support organizations in validating and, where necessary, revising and updating their related frameworks and practices.

II. Main findings

The present review found that there are two different, equally valid set-ups of formal internal appeal mechanisms used by the United Nations system organizations. One part of the system, namely, the United Nations Secretariat and entities such as the United Nations Conference on Trade and Development (UNCTAD), the United Nations Office on Drugs and Crime (UNODC), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat) and the International Trade Centre (ITC), as well as the United Nations funds and programmes, have created a fully professionalized system, whereby internal appeals are handled entirely by legally trained officials and judges. The other part of the system, most specialized agencies such as the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO) and the World Health Organization (WHO), use the peer review model, whereby peers review internal appeals and make recommendations to the respective executive heads on how to respond to such appeals. In contrast to the relative uniformity that exists among the entities that constitute the United Nations Secretariat, its departments and offices and the funds and programmes, the regulatory frameworks of the specialized agencies that still use the peer review mechanism are marked by considerable diversity.

Notwithstanding the diversity of the landscape, the review found that both systems generally work well in providing sufficient avenues of recourse without any significant lacunae identified. However, each has its advantages and disadvantages, and both may need improvement in certain aspects of their functioning.

What the review found:

- **Jurisdictional requirements impact the set-up of internal appeal mechanisms.** The statutes of tribunals that are empowered to exercise jurisdiction over the organizations impose certain requirements on the mechanisms and the way in which

^d See ST/SGB/2015/3 for the composition of the United Nations Secretariat.

staff of the organizations can engage with the judicial process. This presupposes that the pre-tribunal-stage mechanisms themselves are compatible and compliant with the requirements of the statutes of the respective tribunals used.

- **There are two main jurisdictional systems in the United Nations system organizations.** Except for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which has its own dispute tribunal (UNRWA-DT) for the first judicial step, all JIU participating organizations adhere to one of two tribunal systems used by the United Nations system organizations: (a) the International Labour Organization Administrative Tribunal (ILOAT); or (b) the two-tier judicial system comprising the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT).
- **Management evaluation in the United Nations Secretariat, its departments and offices and the separately administered funds and programmes (except for the World Food Programme).** The initial step performed by or on behalf of the original decision maker in these organizations is a management evaluation, which is followed by a two-step judicial review.
- **Enhanced managerial accountability.** The management evaluation process was to offer an evaluation of the propriety of managerial conduct and its compliance with the regulations and rules of the organization. The present review found that the broader dimension of managerial accountability, as envisioned by the Secretary-General at the outset of the reform process, has become less visible over time, although the aim of holding managers accountable for their decisions is still valid. The two-fold role of the management evaluation is important: on one hand, it is an early opportunity for the administration to reflect on its decision-making and to rectify potential mistakes or irregularities internally, with a view to avoiding further escalation and thus litigation before the tribunals; on the other hand, it contributes to enhanced managerial accountability in administrative decision-making.
- **Management evaluation has become a fully professionalized function.** In practice, the management evaluation is administered – at every stage of the process, even where legal assistance and staff representation in proceedings are concerned – entirely by lawyers. There is a centralized Management Evaluation Unit for the United Nations Secretariat, while legal offices are in charge of management evaluation in the funds and programmes (except for WFP, which applies FAO staff regulations and rules).
- **Management evaluation was assessed positively overall.** In particular, the clearer, more reliable and faster response time in the management evaluation is considered a key accomplishment, while the difference between field and headquarters response times was considered to be outdated. The review found that a unified time limit of 45 days, instead of 30, for administrations to respond would maintain the balance between a realistic, manageable and sufficiently prompt response in the interest of procedural efficiency.
- **High percentage of cases dismissed on procedural grounds.** The review found that a significant number of cases are dismissed on grounds of receivability, that is, for failure to comply with the basic procedural requirements for an application to be considered and reviewed on its merits. Official case statistics on receivability are not routinely reported for the management evaluation stage, but represent an important indicator of possible procedural barriers to accessing justice, which warrant further examination. The systematic collection of data and regular reporting thereon are indispensable for improving the administration of justice in the United Nations system organizations.
- **Peer review used in most specialized agencies.** In organizations where the initial stage of the internal appeal process is an administrative review rather than a management evaluation, the second procedural step is also an internal process, involving a peer review conducted by a “joint body” composed of staff members, or peers, who are designated jointly by management and staff of the organization. The

peer review process is normally advisory in nature and culminates in a recommendation rather than a decision or judgment.

- **Peer review is equivalent to the first instance judicial process.** In the context of standard internal appeal mechanisms, the peer review process is the administrative (i.e. non-judicial) equivalent of the first instance judicial process performed by the United Nations Dispute Tribunal in the two-tier justice system. The peer review is performed not by judges or lawyers, but by individuals without legal training. The participation of staff is a long-established key feature of this set-up, since the very first regulatory acts were introduced for this purpose. Most organizations using the peer review today are unequivocal about its benefits and their intention to retain it, in principle.
- **Format of the peer review has evolved over the years.** As its shortcomings became more evident over time, some organizations gradually introduced changes to the peer review format with a view to improving aspects that had drawn criticism in the past. As a result, there are three models of peer review mechanisms across the United Nations system organizations today. The “traditional” format of a completely internal peer review that acts in an advisory capacity to the executive head of the organization persists in just a handful of organizations, namely, the International Atomic Energy Agency (IAEA), the International Telecommunication Union (ITU), the United Nations Industrial Development Organization (UNIDO) and the World Tourism Organization (UNWTO). A more progressive type of semi-professionalized peer review mechanism exists in seven organizations: FAO, including WFP, ILO, the United Nations Educational, Scientific and Cultural Organization (UNESCO), WHO, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), and World Intellectual Property Organization (WIPO). Those organizations introduced adjustments to their set-up that resulted in a certain degree of professionalization without completely eliminating the lay element of staff participation in the peer review process. The third type of peer review mechanism, referred to for the purposes of this review as a “hybrid” mechanism, is used by the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO) and the Universal Postal Union (UPU). In these organizations, the respective joint bodies have been transformed into quasi-judicial instances that render judgment-like final decisions that are binding on the executive heads of the organizations, and which may be directly appealed by both the staff member and the administration before an appellate instance.
- **Traditional peer review: three main challenges.** The three main challenges associated with traditional peer review are: (a) the duration of the proceedings and related delays; (b) the high risk of conflicts of interest given the fully internal membership of the peer review body, in particular in smaller organizations; and (c) the lack of professionalization of the process, as the members of a peer review body are not normally tied to any specific qualification requirements or necessarily supported by legal or procedural guidance. Training could alleviate the adverse effects of the lack of legal support to an extent, but such training is available to a very limited degree across the organizations and peer review bodies that were examined in the present review.
- **Semi-professionalized (advisory) peer review.** A legally trained external Chair or secretary defines the semi-professionalization of a peer review body, with the remaining members hailing from among the staff, irrespective of their professional background. The push for a certain degree of professionalization of the peer review in many specialized agencies can be attributed to the realization that a process relying entirely on the goodwill and commitment of volunteers (from among the staff) cannot deliver the justice sought by staff who turn to such mechanisms in a sustainable manner over time. Thus, having either a Chair or a secretary with a legal background is considered indispensable.
- **Hybrid peer review with decision-making powers.** The feature that distinguishes the hybrid peer review from the other forms of peer reviews is the decision-making power bestowed upon the peer review body so that its decision is binding upon the

executive head. Organizations that have opted for a hybrid peer review mechanism typically also professionalize the process significantly. For the three organizations that use a hybrid peer review, the need to adjust their internal appeal procedure was precipitated by the jurisprudence developed as of 2019 by their sole judicial instance, the United Nations Appeals Tribunal.

- **Special cases.** On both sides of the divide separating the two main models of internal justice within the United Nations system, there are special cases whose internal appeal mechanisms function differently. For example, UNRWA did not adopt the full “package” of the new two-tier system, only accepting the jurisdiction of the United Nations Appeals Tribunal but not of the United Nations Dispute Tribunal. It modelled its own internal justice system, instituted its own Dispute Tribunal as the first judicial instance (UNRWA Dispute Tribunal), set up the Legal Office for Staff Assistance, and adopted a “decision review” process (in lieu of a management evaluation), which is more akin to the administrative review process practiced by most specialized agencies. There is only one specialized agency (WMO) that decided to subscribe to the full United Nations internal justice system “package” and adopted the entirety of the two-tier judicial system of the United Nations, including the United Nations Dispute Tribunal as the first instance tribunal and the United Nations Appeals Tribunal as the appellate instance. To that end, WMO abandoned the peer review and established the management evaluation process, which is outsourced to the United Nations Children’s Fund (UNICEF). WMO is also the only specialized agency whose staff have access to the services of the Office of Staff Legal Assistance of the United Nations Secretariat and the Office of the United Nations Ombudsman and Mediation Services. The internal justice set-up at IMO also differs from the other organizations in that it is the only JIU participating organization with a four-step process, comprising an initial mandatory informal “dialogue”, a management evaluation, followed by a hybrid peer review, then a judicial review by the United Nations Appeals Tribunal.
- **Specialized recourse mechanisms.** The majority of the United Nations system organizations also have specialized recourse mechanisms, including processes to challenge performance appraisals, which are not considered administrative decisions. Other specialized recourse mechanisms exist in most of the organizations for appeals regarding job reclassifications, medical determinations, disciplinary measures and pension-related claims, as well as appeals to challenge the determination of non prima facie cases of retaliation in the context of whistle-blower protection policies.
- **Capacity and performance, including productivity.** Using information provided by the organizations reviewed regarding the estimated number of cases received, disposed of and pending (accumulated backlog) under their internal appeal mechanisms (including standard and specialized processes), and the number of staff assigned to appeal-related functions, either full or part time, the review was aimed at assessing the resource capacity and the performance of internal appeal mechanisms in JIU participating organizations. It found that most appeal-related functions were performed by staff at the P-4 (28.4 per cent) and P-3 (23.2 per cent) levels, with the majority (70.9 per cent) doing so on a part-time basis. Across the organizations, one half of a full-time staff member at the P-4 level per 1,000 staff members, on average, was assigned to support internal appeal processes, at an average yearly cost of \$482,318 per organization. Based on the indicator developed specifically for the review, the average productivity of a full-time staff member at the P-4 level or equivalent was 23.5 cases processed per year, with the personnel cost of each processed case file amounting to \$8,545, on average. The organizations determined as most “productive” on this basis were the United Nations Secretariat, UNICEF, FAO (including WFP at the peer review stage), the United Nations Population Fund (UNFPA).
- **Case management.** Gauging the average yearly caseload of the participating organizations with regard to standard and specialized mechanisms, the review found that the vast majority of the organizations processed fewer than 30 cases per year; 10 organizations received eight, or fewer, appeals, on average; while the United Nations

and UNRWA processed more than 700 and 150 cases, respectively. The tracking of case management in the organizations was found to be uneven and, in many organizations, of limited reliability, especially regarding average case processing times, which were not routinely tracked, and the peer review process, where systematic data collection and reporting were the exception. To the extent that case management data were available for analytical purposes, the analysis revealed that the peer review process tends to take more than five times the time it takes to handle internal appeals in the administrative review process.

- **Legal advice and representation services.** An important aspect of the adequate functioning of internal appeal mechanisms is the ability of staff to access legal advice before engaging formally with their employer on a contentious matter, and the opportunity to have their rights and interests represented effectively when seeking recourse through formal internal appeal mechanisms. For staff of the United Nations system, the availability of legal representation, when it is permitted, varies significantly among organizations. There are two main approaches to legal advisory and representation services: (a) free legal advice and representation through the Office of Staff Legal Assistance for the staff of the United Nations Secretariat, its departments and offices and the funds and programmes, and the Legal Office for Staff Assistance for the staff of UNRWA; and (b) legal support for staff in the specialized agencies, which is disparate and multifariously restricted. The accessibility of legal support for staff in the United Nations system organizations can thus be described as uneven and requiring adjustments.
- **Office of Staff Legal Assistance: a new and unique source of independent legal support.** The Office of Staff Legal Assistance (together with the Legal Office for Staff Assistance of UNRWA) is unique as there is no other comparable mechanism for the staff of international organizations seeking affordable legal assistance for employment-related matters. The Office of Staff Legal Assistance has a mandated, functionally and operationally independent role. It is staffed by trained lawyers with specialized knowledge and experience in the administrative law of the United Nations, and has been providing free professional legal assistance to staff since 2009. The Office serves as a model for other organizations to aspire to, even as it struggles to keep up with the demand for its services.
- **Legal Office for Staff Assistance.** Its role is supposed to be similar to that of the Office of Staff Legal Assistance in providing free legal advisory and representation services to staff at UNRWA. However, it is still underresourced and without a policy, or terms of reference that spell out its mandate and other details of its functioning.
- **Legal support arrangements for staff of the specialized agencies.** Legal support is comparatively limited for staff of the specialized agencies. Two thirds of the specialized agencies impose explicit restrictions on the ability of staff to seek legal representation during the internal appeal process. Freedom to choose legal representation exists in only a few specialized agencies. In the absence of institutionalized legal support for staff in internal appeal processes, most specialized agencies rely on their staff representative bodies to provide assistance, including financial assistance. The type of assistance provided by such bodies varies greatly and cannot be considered as adequate. Adjustments to the regulatory frameworks of organizations that continue to impose restrictions on the ability of their staff to choose legal counsel freely and without restriction are overdue.
- **System-wide aspects of internal appeal mechanisms.** There is currently no formal system-wide inter-agency mechanism dedicated to the administration of justice as a distinct matter, nor any mechanism that specifically covers justice processes at the pre-tribunal stage, either for standard internal appeals or for specialized recourse processes, irrespective of the subject matter. Some aspects of internal recourse processes, especially those related to specialized recourse mechanisms, are covered by the Human Resources Network and task forces under the auspices of the United Nations System Chief Executives Board for Coordination (CEB). Other aspects may be discussed by the informal networks of legal advisers of the United Nations system organizations, who meet annually to exchange information, experiences and practices

on legal issues of common interest. In the light of the availability of several, albeit informal, vehicles for consultation, exchange and debate on internal justice matters, there is no immediate need to establish a formal inter-agency mechanism dedicated to pre-tribunal appeals as such.

- **Scope for improved coherence and alignment system-wide.** Increased opportunities for cross-functional exchanges in an inter-agency setting would benefit the United Nations system as a whole. Such opportunities would be particularly helpful for smaller, less well-resourced organizations, as well as organizations that have limited access to communities of practice owing to the absence of other organizations headquartered or present in the same duty station.

III. Conclusions and recommendations

- Many United Nations system organizations have made substantial changes towards upgrading their internal justice systems over the past decade, in particular with regard to the set-up and functioning of their internal appeal mechanisms. Nonetheless, there is still room for improvement to enhance access to justice for the staff of United Nations system organizations, and inter-agency cooperation and coherence.
- The present review contains seven formal recommendations, of which five are addressed to the executive heads and two to the legislative organs and governing bodies of the organizations for action.
- The formal recommendations are complemented by 25 informal recommendations, which are indicated in bold in the present report and listed below. They are additional suggestions to the legislative organs, governing bodies and executive heads of the organizations for further strengthening and enhancing the internal appeal mechanisms. They should be read in the context of the review's findings for each organization.

A. Formal recommendations

Recommendation 1

The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, harmonize the time limits for their administrations' response to requests for management evaluation or administrative review to a minimum of 45 calendar days and a maximum of 60 calendar days, irrespective of whether the request originates from a staff member at headquarters or in a field location; or propose this harmonization for decision by their legislative organs or governing bodies.

Recommendation 2

The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, introduce into their regulatory frameworks a provision for suspension of action of contested decisions at the pre-tribunal stage, ex officio or upon the appellant's request, in cases of prima facie unlawfulness of the decision, error of fact, particular urgency or when implementation of the decision could cause irreparable damage; or propose the introduction of this provision for decision to their legislative organs or governing bodies.

Recommendation 3

The executive heads of United Nations system organizations should, where applicable and by the end of 2025, establish terms of reference or similar instruments for the Chairs and secretaries of their peer review bodies that set out the required

qualifications, including legal expertise, their functions and reporting lines, in order to provide the safeguards necessary for their structural independence and impartiality.

Recommendation 4

The legislative organs and governing bodies of the United Nations system organizations should request their respective executive heads who have not yet done so to undertake a thorough review of their regulatory frameworks and practices concerning internal specialized recourse mechanisms, with a view to assessing their continued utility and adequate functioning within the broader framework of internal appeal mechanisms, including eliminating duplicative or ambiguous process paths in the interest of procedural efficiency, and to report to them thereon, no later than 2025.

Recommendation 5

The legislative organs and governing bodies of the United Nations system organizations should request their respective executive heads who have not yet done so to report to them annually, starting in 2025, on the functioning of their formal internal appeal mechanisms, including the specialized recourse mechanisms. The reports should include details on the number, subject matter and outcome of appeals, including cases deemed irreceivable, information on the demographics of applicants and information on whether the appealed decisions were upheld or revised, disaggregated by type of procedure, as applicable.

Recommendation 6

The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, review the procedural rules governing formal internal appeal mechanisms regarding the time limits applicable to the administrations' responses at different stages of the internal appeal processes, and specify the conditions for extending the time limits, with a view to reducing associated delays and fostering legal certainty and accountability.

Recommendation 7

The executive heads of the United Nations system organizations who have not yet done so should, by the end of 2025, adjust the regulatory frameworks of their organizations and remove all restrictions regarding legal representation of their staff in internal justice processes, with the aim of allowing staff to choose their legal counsel freely and without restriction.

B. Informal recommendations

- The Inspectors suggest that organizations examine their regulatory frameworks to clarify which cases require formal internal remedies to be exhausted in order for an appeal to be considered receivable by the relevant tribunal, and give specific advice in every written administrative decision as to the applicable legal remedy, in the event that the staff member concerned should wish to contest the decision (para. 55).
- The Inspectors suggest that organizations in which appropriate investments are warranted in the light of, among others, the size of the staff population and the likelihood of appeals, the establishment of a dedicated resource within the human resources function tasked with ensuring impartiality in reviewing contested decisions be explored (para. 77).

- **The Inspectors suggest that, in the performance of an administrative review, the manager who took the contested decision remains identifiable for accountability reasons (para. 80).**
- **The Inspectors suggest that legal training be provided on a regular basis for all human resources officers who are substantively involved in internal appeal processes (para. 81).**
- **The Inspectors suggest that the provisions of General Assembly resolution 61/261 and the measures regarding managerial accountability that are outlined in the report of the Secretary-General on administration of justice at the United Nations^e be considered when preparing senior managers' compacts, so as to ensure compliance with the purposes of the management evaluation that were initially endorsed by the General Assembly, and to strengthen accountability and the integrity of the system (para. 89).**
- **The Inspectors suggest that customary exceptions to procedural requirements on admissibility of internal appeals be either codified or discontinued (para. 130).**
- **The Inspectors suggest that UNWTO explore options for outsourcing appeal-related functions, ideally to another United Nations organization with a similar internal appeals architecture (para. 162).**
- **The Inspectors suggest that IAEA review the set-up and functioning of its Joint Appeals Board as a matter of priority (para. 166).**
- **The Inspectors suggest that UNIDO establish informal avenues to provide for early settlement of work-related disputes and to prevent further escalation of conflicts (para. 168).**
- **The Inspectors suggest that UNIDO address, as soon as possible, the deficiencies identified regarding the stewardship of its peer review process, with a view to improving the internal administration of justice (para. 169).**
- **The Inspectors suggest that the corporate legal adviser should be responsible for advising the executive head of UNIDO of the peer review body's recommendation at that stage of the process (para. 171).**
- **The Inspectors suggest that UNIDO conduct a review of its specialized peer review processes, as soon as possible, with a view to streamlining them and, to the extent possible, aligning them with the standard avenue for formal appeals (para. 172).**
- **The Inspectors suggest that the bare minimum of professionalization requires, as a matter of priority and, ideally, as an interim measure towards semi-professionalization, the provision of induction briefings and periodic training for members of the peer review bodies, preferably by legal professionals. They also suggest that measures be introduced to ensure regular renewal or replacement of the members of the peer review bodies, as well as sufficient rotation among them in their assignment to individual cases (para. 178).**
- **Based on the findings of the present review, the Inspectors suggest that organizations that use the peer review as part of their standard internal appeal mechanisms examine the possibility of professionalizing their review bodies (para. 196).**
- **To ensure that the internal appeal process can deliver the justice sought by staff in terms of competence and consistency, the Inspectors suggest that ITU introduce the requirement of legal expertise for either the Chair or the secretariat function of its peer review body (para. 197).**
- **The Inspectors suggest that the practice of appointing representatives of its member nations to the FAO Appeals Committee be discontinued and that the**

^e A/68/346.

organization consider making changes to the functions of the Chair and the alternate Chairs with a view to avoiding any actual or perceived conflict of interest between the governing body's oversight role and the management of the organization (para. 199).

- The Inspectors support the proposal and suggest establishing such a unit ["administrative revision and dispute intervention unit"], as, in their view, it would enhance the internal administration of justice in the Agency [UNRWA] (para. 224).
- The Inspectors suggest, in order to make the UNRWA Internal Justice Committee a more viable and accountable body, to address the lacunae regarding its responsibilities identified in the course of the present review (para. 225).
- The Inspectors suggest that the feasibility and desirability of requiring a low-threshold attempt at informal resolution of contested administrative decisions before formal processes are engaged be studied at the system-wide level (para. 236).
- The Inspectors suggest that IMO consider reviewing the necessity of retaining management evaluation in its internal appeal process (para. 238).
- The Inspectors are of the view that the complete absence of any formal avenue for challenging performance appraisals on their substance [in FAO, IMO, UNWTO and UPU] is a regulatory lacuna, and therefore suggest that such an avenue be established (para. 259).
- The Inspectors suggest that this approach [informal resolution before formal performance rebuttal] be instituted across the board as a way of pre-empting the escalation of such disputes to a formal process. They also suggest that access to the formal appeal stage be allowed after just one unsuccessful attempt at informal resolution, as any mandatory additional steps would be an excessive burden and unnecessary obstacle to justice (para. 265).
- The Inspectors encourage organizations that continue to perform an administrative review or an equivalent mechanism for appeals against disciplinary measures to revisit their set-up with a view to streamlining the appeal process, and consider providing staff with the option of skipping such a review on a voluntary basis, in the interest of procedural expediency and their right to an effective remedy (para. 275).
- The Inspectors suggest that organizations that retain peer review in disciplinary matters choose either to retain the involvement of the peer review body before a disciplinary measure is taken, or to retain it as part of their standard internal appeal mechanism if the measure is appealed, but not both so as to avoid duplication and minimize delays in the appeal process (para. 286).
- The Inspectors stress the need to implement formal recommendation 2 contained in the report of JIU on its review of whistle-blower policies and practices in United Nations system organizations,^f and suggest that the organizations that have not yet done so revise their policies accordingly, as soon as possible. They also suggest that the organizations concerned conclude agreements with the ethics offices of other United Nations system organizations for the provision of services of second review of non prima facie cases of retaliation (para. 304).

^f JIU/REP/2018/4.

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Abbreviations and acronyms

CEB	United Nations System Chief Executives Board for Coordination
FAO	Food and Agriculture Organization of the United Nations
FICSA	Federation of International Civil Servants' Associations
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
ILOAT	International Labour Organization Administrative Tribunal
IMO	International Maritime Organization
ITC	International Trade Centre
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
LOSA	Legal Office for Staff Assistance (UNRWA)
OIOS	Office of Internal Oversight Services
OSLA	Office of Staff Legal Assistance
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNAT	United Nations Appeals Tribunal
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UN-Habitat	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNJSPF	United Nations Joint Staff Pension Fund
UNODC	United Nations Office on Drugs and Crime
UNOG	United Nations Office at Geneva
UNON	United Nations Office at Nairobi
UNOPS	United Nations Office for Project Services
UNOV	United Nations Office at Vienna
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNRWA-DT	UNRWA Dispute Tribunal
UNWTO	World Tourism Organization
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women

UPU	Universal Postal Union
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

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I. Introduction

1. **System-wide review of the pre-tribunal stage of formal appeal mechanisms.** The Joint Inspection Unit (JIU) included in its programme of work for 2021 a review of the formal, internal, pre-tribunal-stage appeal mechanisms available to the staff of the United Nations system organizations.¹ The review falls within one of the four thematic areas of focus articulated in the Unit's strategic framework for 2020–2029² and the cluster of reports by JIU that address integrity and accountability. The review also complements work undertaken by JIU on different matters relating to the administration of justice across the United Nations system.³

2. **Functioning of pre-tribunal-stage appeal mechanisms not the centre of attention of internal and external oversight functions.** To date, pre-tribunal-stage appeal mechanisms in the United Nations systems organizations have not been comprehensively assessed and no comparative analysis of their characteristics has yet been undertaken at the system-wide level. This is the first time that JIU has mapped the diversity of pre-tribunal-stage appeal mechanisms available to staff across the United Nations system organizations who wish to formally challenge administrative decisions internally. Such internal appeals are usually a procedural prerequisite before application can be made for an independent judicial review.

3. **Review objectives.** The objective of the present review is to compare the strengths and weaknesses of the prevailing models of formal internal appeal mechanisms across the system, so as to highlight good practices and, where possible, opportunities for increased effectiveness and cost-efficiency through adjustment of existing mechanisms and procedures. Based on the findings of the review, the Inspectors will provide recommendations aimed at improving the appeal mechanisms and enhancing cooperation and coherence for the system as a whole.

4. **Contribution to ongoing internal justice reform efforts and debate.** In undertaking this review, JIU is seizing the window of opportunity presented by the Secretary-General's ongoing efforts to study the jurisdictional set-up of the United Nations common system.⁴ The present review capitalizes on that indirect momentum in the hope that its findings will contribute to further improving justice-related efforts, including longer-term reform initiatives.

A. Background

5. **Adequate recourse for staff is an obligation, not a choice.** Most international organizations enjoy jurisdictional immunity which, as a general rule, allows them not to have their legal disputes adjudicated by domestic courts.⁵ Against this backdrop,

¹ A/75/34, annex V.

² Accountability and oversight functions and systems of organizations, as well as the functions for administration of justice and for ethics and integrity (A/74/34, annex I, para. 9 (a); see also paras. 9 (b) and (d)).

³ On the administration of justice, see JIU/REP/86/8, JIU/REP/2000/1, JIU/REP/2002/5 and JIU/REP/2004/3; on the investigation function, see JIU/REP/2020/1; on whistle-blower policies, see JIU/REP/2018/4; on ombudsman services, see JIU/REP/2015/6; on accountability frameworks, see JIU/REP/2011/5; on staff-management relations, see JIU/REP/2011/10 and JIU/REP/2012/1; and on conflict of interest, see JIU/REP/2017/9. Some JIU reviews of management and administration in individual organizations have also touched upon internal administration of justice, see JIU/REP/2014/2 (WIPO), JIU/REP/2017/1 (UNIDO), JIU/REP/2017/4 (UPU), and JIU/REP/2021/1 (WMO).

⁴ See A/75/690; also General Assembly resolution 74/255 B.

⁵ Such immunities are typically granted through constituent agreements, including bilateral treaties such as host country agreements, multilateral treaties on privileges and immunities, such as the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, and national legislation such as the

employment-related disputes between the administration and staff of international organizations are not typically decided by national courts; rather, organizations are expected to provide appropriate recourse mechanisms and effective remedies for aggrieved staff. The case law of international tribunals has confirmed that the provision of adequate recourse to its employees is not an option for any international organization, but rather a requirement.

6. **Internal justice is a core aspect of organizational effectiveness.** In an advisory opinion issued on 13 July 1954, the International Court of Justice found, *inter alia*, that the establishment of a tribunal was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity.⁶ The General Assembly did not depart from that view when it established the new system of internal justice in 2009. It recognized that a transparent, impartial and effective system of administration of justice was a necessary condition for ensuring fair and just treatment of United Nations staff, and important for the success of human resources reform in the Organization.⁷ Indeed, a well-functioning internal justice system helps, *inter alia*, to sustain the credibility and efficiency necessary for international organizations to effectively fulfil their mandates.

7. **Right to internal appeal that is distinct from, yet complementary to, the right to judicial review.** Internal pre-tribunal appeal mechanisms are a core element of the internal justice system of international organizations. This principle has been reiterated in the long-standing jurisprudence of the International Labour Organization (ILO) Administrative Tribunal and of the former United Nations Administrative Tribunal, which repeatedly reaffirmed their role in protecting the rights of international civil servants in employment-related disputes at all stages of the process. In a recent judgment, the ILO Administrative Tribunal, citing established jurisprudence, asserted that the right to an internal appeal was a safeguard that international civil servants enjoyed in addition to their right of appeal to a judiciary authority. It also stated that the existence of an internal appeal procedure allowed the organization to remedy an omission or rectify an error, if necessary, as well as to alter its position before taking a final decision.⁸

8. **Concurrent models across the system since the internal justice reform in 2009.** For part of the United Nations system, the internal justice reform of 2009 transformed how employment-related disputes were handled and marked the onset of a new era in the administration of justice, specifically for the United Nations Secretariat⁹ and the organizations that apply its staff regulations and rules.¹⁰ Among the main changes brought about by the reform was the shift from an internal appeal mechanism based on an administrative review and followed by a committee-based peer review, to a professionalized management evaluation function performed by legal officers and subject to appeal before a neutral (judicial) first instance body.

9. This paradigm shift was aimed at increasing the independence, impartiality and transparency of the system.¹¹ Whether it has lived up to expectations and how the new bodies established by the reform compared to the old set-up will be considered in the present review, especially as the new model is not used outside the United Nations Secretariat. Most United Nations system organizations, in particular the specialized agencies, continue to use versions of the peer review model that the United Nations Secretariat retired in 2009. As a

United Kingdom International Organisations Act of the United Kingdom of Great Britain and Northern Ireland and the International Organizations Immunities Act of the United States of America.

⁶ Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954, p. 57.

⁷ General Assembly resolution 59/283, preamble.

⁸ International Labour Organization Administrative Tribunal, *P. v. ILO*, Judgment No. 4313, 24 July 2020, consideration 3.

⁹ See ST/SGB/2015/3 for the composition of the United Nations Secretariat.

¹⁰ As at July 2021, these were the following JIU participating organizations: UNCTAD, UNDP, UNEP, UNFPA, UN-Habitat, UNHCR, UNICEF, UNOPS, UNODC and UN-Women.

¹¹ General Assembly resolution 61/261, preamble; see also General Assembly resolutions 59/283, 62/228 and 63/253, and A/61/205.

result, concurrent models of internal appeal mechanisms continue to exist in the United Nations system.

B. Review purpose

10. **Adequacy of prevailing internal appeal mechanism models.** The main question raised by the present review is whether the prevailing models of internal appeal mechanisms across the United Nations system organizations provide adequate recourse, due process safeguards and confidence as regards their capacity to deliver on the objectives set out by their legislative organs and governing bodies in the applicable regulatory frameworks, according to parameters such as fairness, integrity, transparency, impartiality, effectiveness and efficiency.

11. The present review aims to formulate the basic tenets of an adequate internal appeal mechanism for the United Nations system organizations with a view to enhancing the efficiency, effectiveness and coherence of the mechanisms, safeguarding the due process rights of staff and identifying areas that could benefit from enhanced coordination and cooperation system-wide.

C. Review scope and limitations

12. **System-wide review of general and subject-specific internal pre-tribunal appeal mechanisms.** The present review was undertaken on a system-wide basis and covered all JIU participating organizations, namely, the United Nations Secretariat, the United Nations funds and programmes, other United Nations bodies and entities, the specialized agencies and the International Atomic Energy Agency (IAEA). Four JIU participating organizations (the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat) and the United Nations Office on Drugs and Crime (UNODC) – did not fully participate in the review, as the internal appeals mechanisms of the United Nations Secretariat apply to them. Thus, they are not covered in detail in the present report. The Executive Director of the International Trade Centre (ITC) indicated in a letter to the Chair of JIU regarding the JIU programme of work 2021 in which reviews it would fully participate, and which reviews it would observe, given that ITC applied the Secretariat's rules and regulations relating, among others, to the internal appeal mechanisms available to staff. Therefore, the Centre is not featured in the present report.

13. **Limitations.** A large part of the review was carried out during the coronavirus disease (COVID-19) pandemic. Owing to the particular timing of the review, there were delays in data collection, and the first set of interviews had to be conducted exclusively by videoconference. That may have hindered access to some interlocutors, as well as their willingness to share sensitive information that may have been obtained through in-person interactions.

14. **All formal internal appeal mechanisms of relevance were reviewed.** All prevailing models of internal pre-tribunal-stage appeal mechanisms, as well as subject-matter-specific recourse processes, in JIU participating organizations were examined. This was done by means of a comparative analysis of their set-up, functioning and case records, covering the main advantages and disadvantages thereof, and identifying good practices in individual organizations and the system as a whole.

15. **Consideration given to the different mandates, organizational structures, applicable rules and principles of international law and the core values of the United Nations system organizations.** For the purpose of the review and to facilitate its use by participating organizations and Member States, and after taking into consideration the mandates, sizes and funding of the different organizations, a distinction was made between the United Nations Secretariat, its departments and offices, and the United Nations funds and programmes on the one hand, and the specialized agencies, IAEA and other entities, such as the Joint United Nations Programme on HIV/AIDS (UNAIDS), on the other. In cases where

the recommendations do not apply equally to all the organizations that participated in the review, this has been pointed out clearly.

16. **Judicial review, informal dispute resolution and non-staff categories not covered in the review.** Given the considerable complexity of internal pre-tribunal-stage appeal mechanisms in and of themselves, the judicial review of employment disputes and the functioning of related processes at the tribunal stage (i.e. the last tier of the formal administration of justice process),¹² informal dispute resolution mechanisms, such as mediation, coaching, counselling, conciliation or managerial intervention,¹³ and recourse options available to non-staff categories of personnel, such as consultants, contractors, interns and other affiliate personnel, which tend to differ from the mechanisms available to staff in significant ways,¹⁴ have been excluded from the review.

D. Methodology

17. **Approach.** The review followed a two-step approach consisting of: (a) an analysis of the current set-up of internal pre-tribunal appeal mechanisms since the 2009 reform of the administration of justice system in the United Nations system organizations; and (b) an analysis of the situation during the period 2021–2022 against criteria such as objectivity, due process, competence, accessibility, transparency, confidentiality, effectiveness and efficiency.

18. **Ethical safeguards.** Due consideration was given to protecting the confidentiality of stakeholders who responded to the corporate questionnaire and participated in interviews, and to the professional independence of the Inspectors. In that respect, the Inspectors have no affiliations with or involvement in any organization or entity nor any financial or non-financial interest in the subject matter discussed in the present report; they acted free of any interference and fully independent of the participating organizations or any other governmental or non-governmental entities.

19. **Timing and methodology.** The review was conducted from July 2021 to December 2022 on a system-wide basis and covered 27 JIU participating organizations. The methodology for the review was designed and implemented in accordance with the internal standards and working procedures of JIU.¹⁵ The Inspectors employed a mixed-method research approach, which included qualitative and quantitative methods of data collection and analysis, and drew on multiple sources, including:

- An extensive desk review and an in-depth analysis of the policies and procedures relating to internal appeal mechanisms, such as the staff regulations and rules of JIU participating organizations, reports to the legislative organs and governing bodies of the participating organizations, in particular the annual reports of the United Nations Secretary-General to the General Assembly on the administration of justice, decisions of the legislative organs and governing bodies, and various pertinent reports, administrative instructions and other issuances. In addition, data from the documentation and other information received and collected were analysed in detail;
- A corporate questionnaire sent to 27 JIU participating organizations;
- Follow-up interviews (based on the results of the desk review and the analysis of the responses to the corporate questionnaire), held with JIU participating organizations (in-person and remotely);

¹² See, in particular, A/75/690, which, among other things, examines past efforts to address the challenges of having two tribunal systems for the United Nations common system, and sets out options for further elaboration in that regard.

¹³ See JIU/REP/2015/6.

¹⁴ Typically, some non-staff categories of personnel have access to parts of the internal justice process (e.g. reporting misconduct or, in exceptional cases, resorting to the tribunals for certain matters); however, for most contract-related grievances, the standard recourse option is arbitration, with additional variations among the regulatory frameworks of the United Nations system organizations.

¹⁵ See A/51/34, annex I; and A/68/34, annex VII.

- Interviews with other representatives of the administration of justice.

20. **Data sources used.** The data originated from, inter alia, the responses to the corporate questionnaire, interview notes, relevant decisions, documentation on the legislative organs and governing bodies, and additional information provided by JIU participating organizations. The data were subjected to a quantitative and qualitative analysis, and triangulation and validation of the information obtained was performed.

21. **Interviews based on a corporate questionnaire.** Twenty-seven JIU participating organizations responded to the JIU corporate questionnaire and other requests for information. In addition, 140 individuals from 23 JIU participating organizations were interviewed for the review. In-person meetings were held with staff in organizations in Amman, New York, Rome and Vienna; in all other cases, meetings were conducted remotely via videoconference, owing to the restrictions imposed as a result of the COVID-19 pandemic.

22. In all the organizations, staff in the following offices or functions were interviewed: the executive office; legal affairs; human resources management, including the conduct and discipline units; legal assistance for staff or equivalent bodies providing legal counsel, and advisory and representation services to staff in the context of and in preparation for appeal proceedings; secretaries of administrative review bodies and specialized, subject-specific bodies; registries of the relevant tribunals; and staff representatives.

23. Written follow-up requests and communications were sent to 13 JIU participating organizations. The information and views gathered through the responses to the questionnaire and interviews have been treated with the usual respect for confidentiality observed by JIU.

24. **The present report contains seven formal recommendations, two of which are addressed to the legislative organs and governing bodies, and five are addressed to the executive heads of JIU participating organizations.** The timely and effective implementation of the recommendations addressed to the executive heads would be greatly facilitated by the explicit support of the legislative organs and governing bodies, and their follow-up with the said executive heads to verify implementation. The formal recommendations are complemented by 25 informal recommendations, which are indicated in bold in the report, as suggestions for effecting further improvements.

25. **Internal peer review and quality control.** A draft report was prepared on the basis of the information gathered through the desk review, the responses to the questionnaire and interviews. In accordance with article 11.2 of the Statute of the Joint Inspection Unit and for quality assurance purposes, the draft report was subjected to an internal peer review in order to solicit comments from all JIU Inspectors to test the recommendations against the collective wisdom of the Unit. The revised report was then circulated to the organizations reviewed for them to correct any factual errors and provide comments on the findings, conclusions and recommendations. The report was finalized taking into consideration the comments received.

26. **Follow-up measures.** To facilitate the handling of the report as well as the implementation of the recommendations and the monitoring thereof, annex VI indicates whether the report is being submitted to the legislative organs, governing bodies and executive heads of the organizations reviewed for action or for information.

27. **Acknowledgements.** The Inspectors wish to express their sincere appreciation to all representatives of the United Nations system organizations and of other bodies and entities who assisted in the preparation of the present report, in particular those who participated in the interviews, responded to the questionnaires and other information requests, and so willingly shared their knowledge and expertise.

E. Key terms and definitions

28. The terms below are used in the context of the present review.

29. **Internal appeal mechanism:** any formal, internal recourse process available to staff on employment-related matters.

30. **Peer review body:** internal appeal body typically composed of staff members, or peers, nominated to serve jointly as an additional instance of review on employment-related matters. Traditionally, the peer review body advises the executive head of the organization or a senior official with delegated authority, by means of recommendations (e.g. on action to be taken or whether to uphold or reverse a decision).

31. **Specialized (or subject-specific) recourse process:** formal, internal appeal mechanism available to staff to challenge specific employment-related matters for which the related procedure diverges from the standard appeal process (e.g. by referral to a specialized or technical body). The outcome of a specialized recourse process may itself be subject to appeal under the standard appeal mechanism or the process may be the final mandatory step before a judicial review (e.g. performance rebuttal, disciplinary action, review by a medical board).

32. **Standard appeal process:** formal, internal appeal mechanism that is not subject to a specialized recourse process. A standard internal appeal typically includes a management evaluation, or administrative review or equivalent, and a single or multi-tier review process; it is a mandatory procedural step before judicial review by an administrative tribunal.

II. Regulatory frameworks

A. Modalities of internal justice

33. **Constitutional and jurisdictional factors affecting the regulatory framework of an organization.** The staff regulations and rules of an organization provide the general regulatory context in which internal appeal mechanisms operate. Which rules are applied and what type of appeal mechanism an organization follows as a result, are determined by two main factors related to the organization's broader regulatory context: the "constitution" of the organization itself; and the jurisdiction of the administrative tribunal to which it is subject.

34. **Legal status of the organization.** The "constitution", or founding instrument, of an organization, determines whether it is categorized as an entity of the United Nations Secretariat or the United Nations funds and programmes, which are separately administered, or as a specialized agency of the United Nations system. The constitution therefore also determines the internal justice set-up of the organization. The United Nations Secretariat, its departments and offices and its separately administered funds and programmes are governed, at the highest normative level, by the Charter of the United Nations and their staff are subject to the staff regulations adopted by the United Nations General Assembly and the staff rules provided by the Secretary-General. The specialized agencies are established by a separate treaty or intergovernmental agreement and their staff are subject to their own staff regulations and rules.

35. **Uniformity vs. diversity of internal justice set-up:** The employment-related matters of staff of the United Nations Secretariat, its departments and offices and the separately administered funds and programmes, specifically of the JIU participating organizations UNCTAD, the United Nations Development Programme (UNDP), UNEP, UNFPA, UN-Habitat, the Office of the United Nations High Commissioner for Refugees (UNHCR), UNICEF, UNODC, United Nations Office for Project Services (UNOPS) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), as well as ITC are subject to a relatively uniform regulatory framework, in particular concerning the standard internal appeal mechanisms (as opposed to their specialized recourse mechanisms). On the other side, the regulatory landscape for staff of the specialized agencies and IAEA is more diverse, with every agency following its own set of staff regulations and rules and human resources policies, notwithstanding significant conceptual commonalities among the agencies with regard to their internal justice architecture.

36. **United Nations Secretariat-affiliated entities vs. funds and programmes.** Some organizations are fully aligned with the regulatory framework of the United Nations Secretariat applying not only the latter's staff regulations and rules but also its general administrative issuances without specific adaptations. The following JIU participating organizations are part of this group: UNCTAD, UNEP and UN-Habitat. UNODC (an office of the United Nations Secretariat) and ITC (a joint agency of the United Nations and WTO) also apply the United Nations human resources policy framework, with some specific variations adopted under their respective delegated authority. The United Nations funds and programmes (except WFP) apply the staff regulations and rules of the United Nations Secretariat, as well as certain administrative issuances (mostly the Secretary-General's bulletins that expressly extend their application to the funds and programmes, as indicated in the respective bulletin's chapeau provisions), but have otherwise adopted their own internal instructions and human resources policies, including on internal justice matters. These are UNDP, UNFPA, UNHCR, UNICEF, UNOPS and UN-Women.

37. **United Nations Relief and Works Agency for Palestine Refugees in the Near East.** UNRWA represents an exception in several respects. Its constituent instrument, General Assembly resolution 302 (IV) of 8 December 1949, provides for staff to be appointed "in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director [of UNRWA] and the Secretary-General shall agree are applicable", which places the Agency under a distinct regulatory regime with general accountability to the General Assembly. As a result, UNRWA adopted its own staff regulations and rules, including one set applicable to

international staff, and another to (local) area staff. Since 2007, the Agency has its own first instance tribunal – the UNRWA Dispute Tribunal. The Agency has two categories of staff: most of whom are (local) area staff (28,144 as at 1 January 2022) and a few international staff (192 as at 1 January 2022). Both categories of staff are entitled to appeal administrative decisions, first internally, before the UNRWA Dispute Tribunal, and then before the United Nations Appeals Tribunal. UNRWA is the only United Nations system organization in which beneficiaries of its humanitarian and development assistance are also staff members (area staff) of the organization.

38. **World Food Programme.** Another exception among the United Nations funds and programmes is WFP, an autonomous joint subsidiary programme of the United Nations and the Food and Agriculture Organization of the United Nations (FAO). Pursuant to its founding instrument, WFP applies the staff regulations and rules of FAO, which is a specialized agency. However, for some human resources matters, WFP has exercised its authority to adopt “special rules” (equivalent in the hierarchy of norms to FAO staff rules) in agreement with the Secretary-General of the United Nations and the Director-General of FAO, which apply only to WFP. It has also promulgated several administrative issuances, including on aspects of the internal justice process.

39. **Mechanisms at the Food and Agriculture Organization of the United Nations and the World Food Programme are unique.** In several respects, the mechanisms in place at FAO and WFP are unique with regard to their regulatory framework, the final decision on internal appeals and the persons eligible to chair the peer review body. WFP does not only apply FAO staff regulations and staff rules, it also uses the FAO Appeals Committee as its first instance internal appeal mechanism for standard appeals. While the administrative review step is performed by the respective executive heads of FAO and WFP, under whose authority the contested decision is originally taken, the final decision on all appeals is taken exclusively by the Director-General of FAO upon recommendation by the FAO Appeals Committee (for both WFP and FAO staff). The Director-General of FAO takes the final decision on appeals by WFP staff against administrative decisions taken by the Executive Director of WFP after consultation with the Executive Director of WFP. Furthermore, the FAO Appeals Committee is chaired by an external Chair (i.e. not a member of staff). This function has traditionally been filled by a representative of a Member Nation appointed by the FAO Council, who serves in a personal capacity. This practice has been consistently applied since 1948 and is unique across all the organizations reviewed.

40. In the course of the review, concerns were expressed about the final decision-making power of the Director-General of FAO on appeals by WFP staff. Given the considerable growth of WFP in terms of staff, operations and budget since its inception more than 60 years ago, the Inspectors question whether the current set-up is still appropriate or whether it needs adjusting.

41. **Joint United Nations Programme on HIV/AIDS.** Similar to WFP, for historical reasons linked to its establishment as a joint and co-sponsored programme of the United Nations, UNAIDS applies the staff regulations and rules of one of its original co-sponsoring organizations, the World Health Organization (WHO), itself a specialized agency. Furthermore, UNAIDS uses the standard internal appeal mechanisms of WHO, in addition to separately codified adaptations (in the terminology used by UNAIDS) to reflect organizational specificities, where needed.

42. **Diverse landscape among specialized agencies, including individual specificities.** In contrast to the relative uniformity that exists among the United Nations Secretariat, its departments and offices and funds and programmes, the regulatory frameworks of the specialized agencies are marked by considerable diversity. The frameworks can be further nuanced by special characteristics present in some individual organizations. One such specificity applies in the case of ILO,¹⁶ the only United Nations system organization with a tripartite structure. In ILO, collective bargaining is a core principle of its staff-management relations. Several collective agreements have led to the adoption of rules that have been incorporated into the ILO Staff Regulations by the ILO Governing Body. The relevant

¹⁶ The International Training Centre of ILO was not considered in the present review.

collective agreements have contributed to shaping significant portions of the internal appeal mechanisms in ILO and, as such, are also sources of applicable law.

43. **Regulatory instruments on specialized recourse mechanisms.** Making use of the wide margin of regulatory authority accorded to the executive heads by the legislative organs and governing bodies, some organizations have exercised their discretion to put in place a variety of specialized recourse mechanisms for specific matters (e.g. disputes concerning staff performance, job reclassification and medical determinations).

B. Requirements of tribunal jurisdictions on internal appeal mechanisms

44. **Statutory requirements.** The second key factor informing the type of internal appeal mechanism used by the United Nations system organizations derives from the administrative tribunal that is competent to adjudicate their disputes. More specifically, the statutes of the respective tribunals impose certain requirements on the internal mechanisms and the way in which staff can engage with the judicial process. These requirements must be satisfied in each individual case before a tribunal can consider a dispute submitted to it for adjudication and thus for the staff member to access justice. This presupposes that the pre-tribunal-stage appeal mechanisms themselves are compatible and compliant with the requirements of the statute of the respective tribunal. Therefore, as part of an organization's broader regulatory framework, it is important to consider under which tribunal jurisdiction it falls and what requirements must be met by its pre-tribunal-stage appeal mechanisms.

45. **Two main jurisdictional systems in the United Nations system organizations.** Except for UNRWA, which has its own dispute tribunal, all other organizations reviewed adhere to one of two tribunal systems available to them, namely, the International Labour Organization Administrative Tribunal, and the two-tier judicial system comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (see fig. I).

Figure I.

Jurisdictions of the administrative tribunals

JIU participating organization		UNDT	UNAT	ILOAT
United Nations Secretariat, its departments, and offices	United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC	x	x	
	UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UN-Women	x	x	
Funds and programmes	UNRWA	UNRWA-DT	x	
	WFP			x
Other entities	ITC	x	x	
	UNAIDS			x
Specialized agencies and IAEA	FAO, ILO, ITU, UNESCO, UNIDO, UNWTO, WIPO, WHO, IAEA			x
	ICAO, IMO, UPU		x	
	WMO	x	x	

Source: Prepared by JIU.

46. **International Labour Organization Administrative Tribunal.** The ILO Administrative Tribunal exercises jurisdiction over most of the specialized agencies, as well as other international (but not necessarily intergovernmental)¹⁷ organizations that have accepted to be bound by its statute. As at 1 November 2022, 11 JIU participating

¹⁷ Statute of the ILO Administrative Tribunal, art. II (5), and annex.

organizations (including nine specialized agencies, WFP¹⁸ and UNAIDS¹⁹) fell within the jurisdiction of the ILO Administrative Tribunal as their sole judicial instance for the resolution of employment-related disputes.

47. **Two-tier justice system comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.** The second jurisdictional system used by other United Nations system organizations (see fig. I) is the two-tier judicial system comprising the United Nations Dispute Tribunal as the first instance and the United Nations Appeals Tribunal as the appellate instance. The two tribunals replaced the former United Nations Administrative Tribunal, which was abolished on 31 December 2009. In its place, the United Nations General Assembly instituted a two-tier system of judicial review.²⁰

48. The two tribunals became operational on 1 July 2009 and constitute the mandated instances of judicial review for employment-related disputes in the United Nations Secretariat, its departments and offices and the funds and programmes (except for WFP and UNRWA). The latter has its own first instance Dispute Tribunal and uses the United Nations Appeals Tribunal as its second instance tribunal. Of the JIU participating organizations four specialized agencies, namely, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the United Postal Union (UPU) and the World Meteorological Organization (WMO)) have accepted the jurisdiction of the United Nations Appeals Tribunal as the appellate instance; WMO has also accepted the jurisdiction of the United Nations Dispute Tribunal as a first instance.

1. Receivability

49. **Conditions of receivability.** The present review found that one of the differences in the tribunals' statutes having a bearing on the ability of staff to successfully pursue their appeals concerns the receivability of such appeals. The requirements that determine whether an appeal is receivable by a tribunal exercising its jurisdiction generally include: eligibility (i.e. who or which categories of personnel can access the tribunal); time limit (i.e. the period of time within which an appeal must be filed); whether the matter is appealable (i.e. whether the tribunal is competent to hear and pass judgment on that type of dispute); and other general, including procedural, requirements, such as exhaustion of remedies available internally, and whether an external instance has also been seized of the appeal or the existence of a valid arrangement (normally by agreement or mandated by a legislative document of the organization's governing body) referring the dispute to the respective tribunal. Conditions of receivability are similar, but not identical, for all the tribunals of the United Nations system.²¹

2. What constitutes an appealable matter?

50. **Requirement of an "administrative decision".** Another difference lies in how the tribunals' overall scope of competence is defined in their statutes. The ILO Administrative Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of staff, and of such provisions of the staff regulations as are applicable to the case, in respect of ILO or any other international organization that meets

¹⁸ FP has standing before the ILO Administrative Tribunal owing to its application of FAO staff rules and regulations, and FAO internal appeal mechanisms.

¹⁹ UNAIDS has standing before the ILO Administrative Tribunal owing to its application of WHO staff rules and regulations, and WHO internal appeal mechanisms.

²⁰ See General Assembly resolutions 61/261, 62/228 and 63/253.

²¹ While the ILO Administrative Tribunal does not publish statistics on the outcome of cases that have been disposed, based on the judgments published on the website of the tribunal, JIU found that, on average, only about 19 per cent of the cases disposed between 2018 and 2021 and involving JIU participating organizations were dismissed for failing to satisfy conditions of receivability, including but not limited to the absence of an appealable matter. Some 30 per cent were dismissed for the same reason over the same period by the United Nations Dispute Tribunal (see A/77/156, fig. III (p. 10), and figures titled "Outcome of applications disposed of" in A/76/99, A/75/162, A/74/172, A/73/217, etc.), and 31 per cent by the UNRWA Dispute Tribunal (see UNRWA Dispute Tribunal, Activity Report 2021, chart 7 (p. 6)). General receivability issues seemed to be more pronounced in respect of the organizations under the jurisdiction of the United Nations tribunals.

the standards set out in the annex of its statute.²² The United Nations first instance tribunals – the United Nations Dispute Tribunal and the UNRWA Dispute Tribunal – are competent to adjudicate appeals against “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.²³ However, the statutes of the United Nations tribunals do not define what constitutes an appealable administrative decision or matter, and the statute of the ILO Administrative Tribunal only makes reference to the impugned decision being a final decision in the context of an internal process before the tribunal is seized of the appeal.²⁴

51. Although the jurisprudence of all the tribunals is firmly settled and largely consistent with regard to what constitutes an appealable matter,²⁵ the Inspectors found that some of the appeals failed, including at the tribunal stage, because an explicit appealable administrative decision could not be identified.

3. Exhaustion of internal remedies

52. **International Labour Organization Administrative Tribunal.** Directly linked to the availability and nature of internal appeal mechanisms is the requirement to exhaust available internal remedies before proceeding to seek redress externally before a tribunal. The principle is reflected in the statutes of all the tribunals, but is articulated differently in each one, which may have inadvertently created uncertainty about the procedural requirements for filing an appeal. The statute of the ILO Administrative Tribunal neither defines nor dictates what type of internal process the applicant should have submitted to, but rather states that the appeal will not be receivable “unless the person concerned has exhausted such other means of redress as are open to her or him under the applicable staff regulations”.²⁶ This formulation provides flexibility for diverse mechanisms to be set up internally, while also being unequivocal about the fact that, whatever the internal process available, it is a procedural prerequisite for consideration of a formal appeal.

53. **United Nations tribunals.** The statute of the United Nations Dispute Tribunal requires that the applicant had “previously submitted the contested administrative decision for management evaluation, where required”.²⁷ There is no other, more generic mention of exhaustion of internal remedies in the statute of the Dispute Tribunal, nor in the statute of the United Nations Appeals Tribunal. In theory, reference to a particular type of internal process should not be a problem, as the formulation is understood to capture all matters and processes that are not explicitly excluded from it.

54. However, the review identified areas where this seemingly watertight regulatory text may give rise to legal uncertainty. As evidenced in the jurisprudence of the United Nations Dispute Tribunal,²⁸ certain aspects of matters that are generally exempt from management evaluation (e.g. compensation-related matters, which are normally decided on the basis of advice from a technical body) may remain subject to management evaluation. Such cases may be dismissed as not receivable by the tribunals because the requirement of exhaustion of available internal remedies may not have been apparent to the staff member and as a result was not met.

55. For lay persons in particular, the margins of such matters are not always obvious and may lead to cases being dismissed owing to lack of clarity in the regulatory framework. Because the case may seem straightforward at first glance, a staff member may not even be

²² Statute of the ILO Administrative Tribunal, art. II (1) and (5).

²³ Statute of the United Nations Dispute Tribunal, art. 2 (a); and Statute of the UNRWA Dispute Tribunal, art. 2 (a).

²⁴ Statute of the ILO Administrative Tribunal, art. VII (1).

²⁵ See, for example, United Nations Administrative Tribunal, *Andronov*, Judgment No. 1157, 30 January 2004; United Nations Appeals Tribunal, *Andati-Amwayi*, Judgment No. 2010-UNAT-058; and ILO Administrative Tribunal, *Iverus v. European Patent Organisation*, Judgment No. 533, 18 November 1982, consideration 3.

²⁶ Statute of the ILO Administrative Tribunal, art. VII (1).

²⁷ Statute of the United Nations Dispute Tribunal, art. 8 (1) (c).

²⁸ See, for example, United Nations Appeals Tribunal, *James*, Judgment No. 2015-UNAT-600; *Dahan*, Judgment No. 2018-UNAT-861; and *Kollie*, Judgment No. 2021-UNAT-1138.

alerted to the potential need for expert legal advice on the matter. Based on these findings, **the Inspectors suggest that organizations examine their regulatory frameworks to clarify which cases require formal internal remedies to be exhausted in order for an appeal to be considered receivable by the relevant tribunal, and give specific advice in every written administrative decision as to the applicable legal remedy, in the event that the staff member concerned should wish to contest the decision.**

56. **United Nations Relief and Works Agency for Palestine Refugees in the Near East Dispute Tribunal.** The statute of the UNRWA Dispute Tribunal makes the receivability of appeals contingent on the applicant having “previously submitted the contested administrative decision for decision review”,²⁹ a process equivalent to management evaluation. There are no exceptions to the requirement of a decision review under the staff regulations and rules of UNRWA. Even in disciplinary matters and decisions taken following review by relevant advisory bodies, an appeal must always be submitted for decision review before applying to the tribunal. This approach eliminates ambiguities about the necessary procedural steps since every matter of contention follows the same process.

4. Necessity of a neutral first instance process

57. **Precondition for appellate review by the United Nations Appeals Tribunal.** As an appellate instance, the United Nations Appeals Tribunal is limited in its jurisdiction to adjudicate cases solely on the basis of a narrow set of grounds for appeal. Its competence is restricted to reviewing errors committed by a first instance body in relation to questions of law, fact or procedure, or whether the first instance exceeded or failed to exercise its jurisdiction or competence.³⁰ This limitation places higher demands on the body performing the review at the preceding stage of appeal. Accordingly, the Tribunal was designed to rely on the findings of a first-instance mechanism equivalent to the judicial process conducted by the United Nations Dispute Tribunal, the default first instance mechanism on which the United Nations Appeals Tribunal was tasked to act as an appellate instance as part of the internal justice reform adopted by the General Assembly in 2009. In addition, the statute of the United Nations Appeals Tribunal contains a clause that allows it to carry out its appellate functions in respect of an agency, organization or entity that does not use UNDT only on condition that it “utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law.”³¹

58. **No comparable condition under the International Labour Organization Administrative Tribunal.** A comparable condition does not exist in the context of the ILO Administrative Tribunal. The jurisdiction of the ILO Administrative Tribunal has traditionally covered a non-homogeneous group of organizations since 1998, when the Tribunal opened its statute to international organizations, whether or not they were intergovernmental in character.³² Being the sole judicial instance for the organizations under its jurisdiction, the Tribunal is also less restricted in its review of the outcome of first instance processes. Its statute therefore does not dictate specific requirements for the set-up of such processes. Although standard requirements of objectivity, due process and other procedural and legal safeguards apply in the same way as for other administrative tribunals and have consistently been relied upon in the jurisprudence of the Tribunal, an explicit requirement for a neutral first instance process within the specific meaning employed by the statute of the United Nations Appeals Tribunal does not exist under the ILO Administrative Tribunal.

59. **Critical contribution of peer review bodies recognized by the International Labour Organization Administrative Tribunal.** The case law of the ILO Administrative Tribunal has recognized the critical contribution of peer review bodies as performing the functions of quasi-first instance judicial bodies, which has enabled the Tribunal to operate as a quasi-appeals tribunal. In that spirit, the Tribunal considered that “internal appeal procedures play a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from the composition of the appeal bodies and their extensive knowledge

²⁹ Statute of the UNRWA Dispute Tribunal, art. 8 (1) (c).

³⁰ Statute of the United Nations Appeals Tribunal, art. 2 (1).

³¹ *Ibid.*, art. 2 (10).

³² Statute of the ILO Administrative Tribunal, art. II (5), and annex.

of the functioning of the organization.” It also considered that one of the main justifications for the mandatory nature of such a procedure was “to enable the Tribunal, in the event that a complaint is ultimately filed, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies, especially those whose membership includes representatives of both staff and management, as is often the case.”³³

³³ ILO Administrative Tribunal, *P v. ILO*, Judgment No. 4313, 22 June 2020, consideration.3; see also *G. (No. 2) v. UPU*, Judgment No. 3732, 27 October 2016, consideration 2.

III. Functioning of standard internal appeal mechanisms

60. **Two models of internal appeal mechanisms.** There are two prevailing models of standard internal appeal mechanisms in the United Nations system: that of the United Nations Secretariat, its departments and offices and its separately administered funds and programmes (except WFP), and the model used by the specialized agencies. Both models involve a three-step process comprising stages of an internal administrative review and an external judicial review, albeit distributed differently among the organizations. The majority of the specialized agencies manage two steps of the process internally, while other United Nations system organizations proceed to an independent judicial review immediately after the first step of the internal review. Although most organizations generally follow one or the other model in the set-up of their standard appeal mechanisms, exceptions and variations exist on both sides and are explored in more detail below.

Figure II.

Set-up of the standard formal appeal process in JIU participating organizations

Internal (administrative process)	Two administrative stages		One administrative stage		
	First stage Administrative review (14)	Second stage Peer review (14)	Management evaluation (14)		
	FAO, IAEA, ICAO, ILO, ITU, UNAIDS, UNESCO, UNIDO, UNRWA, UNWTO, UPU, WFP, WIPO, WHO	FAO, IAEA, ICAO, ILO, IMO, ITU, UNAIDS, UNESCO, UNIDO, UNWTO, UPU, WFP, WIPO, WHO	United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC, ITC, UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UN-WOMEN, WMO, IMO		
External (judicial process)	Single judicial review		Two-tier judicial review		
	ILOAT (11)	UNAT (3)	First instance		Second instance
			UNRWA-DT (1)	UNDT (13)	UNAT (14)
	FAO, IAEA, ILO, ITU, UNAIDS, UNESCO, UNIDO, UNWTO, WFP, WIPO, WHO	ICAO, IMO, UPU	UNRWA	United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC, ITC, UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UN-WOMEN, WMO	United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC, ITC, UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UNRWA, UN-WOMEN, WMO

Source: Prepared by JIU.

61. **Internal reconsideration as the first procedural step.** In all JIU participating organizations (see fig. II), the first procedural step is a request submitted by the staff member to the administration of the employing organization for reconsideration of an administrative decision. The administration then reassesses the decision taken, and as a result may reverse or amend the decision, explore avenues for informal resolution or confirm that the decision was taken in accordance with the applicable regulations and rules, and therefore uphold it.

62. **Management evaluation in the United Nations Secretariat its departments and offices and the separately administered funds and programmes (except for the World Food Programme).** In these organizations, the initial step performed by or on behalf of the original decision maker is called a management evaluation. In most of the specialized agencies (except ICAO, IMO, UPU and WMO) and IAEA, as well as in UNAIDS and WFP, the initial stage of the appeal process is an administrative review. Both the management

evaluation and the administrative review are mandatory steps without which further appeal, whether to an internal peer review body or an external judicial instance, is generally not permissible. In all the organizations reviewed, this initial step is administrative in character, whether it is performed by legal or administrative specialists.

63. **Management evaluation followed by two-step judicial review.** In organizations where administrative decisions are subject to a management evaluation, staff who are not satisfied with the outcome may seek further recourse by appealing directly before the United Nations Dispute Tribunal, a first instance administrative tribunal composed of trained judges. If not satisfied with the decision handed down by the Dispute Tribunal, the staff member concerned may appeal it before the second and final instance, the United Nations Appeals Tribunal. Both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal are external to and independent of the United Nations system organizations and together, they form the two-tier judicial review system introduced by the comprehensive reform of the administration of justice system in 2009.

64. **Peer review in most of the specialized agencies, the World Food Programme and the Joint United Nations Programme on HIV/AIDS after the administrative review and before the single judicial review.** In organizations where the initial stage of the appeal process consists of an administrative review rather than a management evaluation, the second procedural step is also internal to the organization, and normally consists of a peer review conducted by a joint body composed of staff members, or peers of the applicant, who are designated jointly by management and staff. The peer review process is advisory in nature and culminates in a recommendation rather than a decision or judgment. Once the peer review process has been concluded and the executive head of the organization concerned has taken a final decision upon the recommendation of the peer review body, the staff member can proceed to the third and final step in the process, if necessary, and seek an external judicial review by a single-instance administrative tribunal (for most of the above-mentioned organizations, this is the ILO Administrative Tribunal).

65. **International Civil Aviation Organization and International Maritime Organization.** Since its inception, ICAO chose to accept the statute of the United Nations Appeals Tribunal. However, for the internal pre-tribunal appeal process, the organization decided to apply an administrative review followed by a peer review, for which it created an Appeals Board. The same applies to IMO. This organization also chose the jurisdiction of the United Nations Appeals Tribunal, since its inception, and manages internal pre-tribunal appeals through an Appeals Board. At the time of the present review, both organizations were in the process of reviewing the administrative and organizational set-up of their internal appeal processes to bring them in line with the recent rulings of the United Nations Appeals Tribunal, which require the organizations to establish a neutral first instance judicial process so that staff appeals could be deemed receivable by the Tribunal.

66. **World Meteorological Organization and Universal Postal Union.** WMO decided to join the statute of the United Nations Appeals Tribunal in 2017. That decision required considerable revision of the organization's internal appeal processes to bring them into line with the statutory provisions of the Tribunal. Against that background, in 2020, WMO decided to join the statute of the United Nations Dispute Tribunal and to introduce a management evaluation as the first procedural step of its appeal process. Therefore, WMO also adheres to the two-tier judicial system applied by the United Nations Secretariat and the majority of the funds and programmes. In 2020, UPU decided to join the statute of the United Nations Appeals Tribunal, which became effective in May 2021. In February 2022, UPU completed the process of making the changes in the administrative and organizational set-up of its internal pre-tribunal appeal process, as required by the Tribunal.

67. **Three-step process balancing internal administrative and external judicial reviews.** The general set-up of the appeal mechanisms can be summarized as a three-step process involving either one internal administrative step and two external judicial reviews or two internal administrative steps, including a peer review by a joint body from within the organization, and one external judicial review by an administrative tribunal. Their particularities are described below.

A. Administrative reviews

1. Set-up and powers

68. **Human resources departments are usually in charge of the administrative reviews.** In 10 out of 14 JIU participating organizations that conduct administrative reviews as the first step of their standard appeal processes, this step is managed by the human resources department³⁴ on behalf of the executive head of the respective organization, in whose name the decisions are taken by delegated authorities, with or without the involvement of the legal offices in a purely advisory capacity. The organizations in which the legal offices were managing this stage of the process were exceptions; at the time of the present review they included FAO, ICAO, WFP and WIPO.

69. **Dedicated administrative law or policy units within human resources departments.** WHO and UNAIDS have each established a dedicated unit comprising administrative law experts assigned to perform the administrative review (and defend the administration in the subsequent peer review process). The Office of the Legal Counsel of WHO then represents the executive heads of both organizations in proceedings at the tribunal stage. Similar legal or policy teams are part of the human resources departments of UNICEF (Policy, Employee Relations, Compensation and Social Benefits Section), UNOPS (Policy and Compliance Unit), the United Nations Office in Vienna, including UNODC (Legal and Policy Team, Operational and Advisory Unit) – which acts as a service provider for Vienna-based Secretariat entities, and the United Nations Office in Geneva (Legal and Policy Advisory Section) – which acts as a service provider for the internal appeal mechanisms at UNCTAD, ITC and other Geneva-based organizations.

70. However, in the United Nations Secretariat and the funds and programmes, the legal teams do not actually perform the administrative review or management evaluation themselves, but rather advise the managers before they take decisions, and later assist in formulating the administration's input to the specialized offices when responding formally and separately to management evaluation requests.

71. **Particular set-up at the World Intellectual Property Organization and the International Telecommunication Union.** At WIPO, all staff-related legal functions are consolidated within the legal department. In 2022, the Policy and Law Section of the Human Resources Department was discontinued, and its legal functions, including responsibility for performance rebuttals and workplace-related conflicts and grievances, were transferred to the Office of the Legal Counsel. That completed the comprehensive restructuring of the internal justice processes that the organization had started in 2014. ITU adopted the same approach: in November 2021, the legal function took over the handling of appeals from the human resources function.

72. **Set-up reflects administrative character of internal appeal process.** The distribution of appeals-related responsibilities tends to shift from the human resources department to the legal office in subsequent stages of the appeal process, at the latest when an appeal reaches the tribunal stage, which typically involves litigation. In 6 out of 10 specialized agencies (IAEA, ILO, UNAIDS, UNIDO, UNWTO and WHO), the human resources department manages the administrative review and defends the administration's decision at the peer review stage. The legal offices in those organizations are seized of the appeals only after both stages of internal appeal have been concluded, then they advise the executive heads on the final decisions to be taken in the light of the recommendations issued by the peer review bodies. With regard to UNAIDS, the Human Resources Policy and Legal Unit in the Human Resources Management Department is responsible for representing the organization during the peer review process, and advises the executive head on the final decision to be taken, following the issuance of the recommendations by the peer review body.

73. The review found that the lines of responsibility are blurred at UNWTO, which reflects the close collaboration between extremely small teams operating with scarce resources. Similarly, at ITU, the legal officer in the human resources department handles internal appeal matters on behalf of the organization, and supports the appeal process from

³⁴ In IAEA, ILO, ITU, UNESCO, UNIDO, UNRWA, UNWTO, UPU, WHO and UNAIDS.

start to finish through all stages of the internal administrative and the external judicial reviews. At UNESCO, responsibility for the administration's defence in the peer review was recently transferred from the human resources department to the legal office, while the responsibility for the administrative review process was retained within human resources.

2. Strengths and weaknesses

74. **Rationale for placement of administrative review under human resources.** The rationale provided by the organizations to the JIU for having the initial administrative review performed by the human resources function is, on the one hand, the fact that many contested decisions concern staff-related matters that are administered by human resources, such as benefits and entitlements or related processes. Therefore, any mistakes could be corrected early and, since they are handled directly by the decision-making source, further escalation and, ultimately, litigation could be avoided. On the other hand, both staff and managers are clients of the human resources departments. Therefore, it was considered beneficial to early resolution efforts, based on the assumption that the human resources function would be well placed for a facilitation role in disputes concerning employment-related matters, underpinned by their solid knowledge of the organization's regulatory framework, administrative practices and culture.

75. It was also pointed out that the initial steps of the appeal process served primarily to establish facts and to verify that established procedures had been duly followed, which would not normally require legal expertise. Some organizations considered that having the process handled by the legal office at an early stage rendered it overly formal, more litigious and thus less approachable, instead of being geared towards identifying solutions. They also felt that it would reduce the probability of an early amicable resolution.

76. **Objectivity required to justify administrative review.** While the described set-up and the rationale provided by JIU participating organizations is generally persuasive, the Inspectors consider that the set-up presents risks that should be carefully considered and mitigated. Having the very decision makers re-examine their own decisions runs a high risk of inherent bias in favour of defending rather than critically examining the basis for and the reasoning behind the decision. The likelihood of arriving at a different conclusion in such a setting is limited, unless additional safeguards of objectivity are put in place and enforced.

77. **Impartiality and legality.** Based on the findings of the review, the Inspectors are of the view that every effort must be made to ensure that the officers involved in preparing the contested decision in the first place are not, or at least not the only, reviewers of its propriety later on. **The Inspectors suggest that organizations in which appropriate investments are warranted in the light of, among others, the size of the staff population and the likelihood of appeals, the establishment of a dedicated resource within the human resources function tasked with ensuring impartiality in reviewing contested decisions be explored.** Such good practice exists in several organizations, namely, UNAIDS, UNICEF, the United Nations Office at Geneva, UNOPS, the United Nations Office at Vienna/UNODC and WHO.

78. **Human resources function vs. managers as decision makers.** Certain categories of administrative decisions that are frequently challenged are taken by managers, such as termination of a staff member's contract (separation from service), refusal to grant leave (benefits and entitlements) or selection of a candidate for a vacancy (staff selection). Against this backdrop, it may be a viable option for the human resources department – as opposed to another, including the legal unit – to be the primary reviewers of the propriety of decisions in the context of an administrative review. Two important considerations should be borne in mind in this regard.

79. **Shared and adequately distributed accountability.** For one, accountability for an administrative decision is always shared between the manager taking the decision and the service that is entrusted with exercising scrutiny over it on behalf of the organization. The manager's input and rationale for the decision must be sought and reflected in the reasoning provided to the staff member appealing the decision. That would allow the staff member to defend his or her interest with full knowledge of the reasons underpinning the administrative

decision, as well as emphasize the individual responsibility associated with taking decisions on behalf of the organization, which will subsequently have to defend the decision.

80. The Inspectors are of the view that, when decisions on administrative review are taken by administrative representation, the original decision makers must be identifiable so that accountability can be adequately distributed. The logical consequence of such distribution is that the function entrusted with administrative review assumes the role of a genuine gatekeeper ready to admit mistakes on behalf of the administration and to offer appropriate remedies where warranted, not to defending the contested decision at all costs and exercising delegated authority jointly with the manager. In that regard, **the Inspectors suggest that, in the performance of an administrative review, the manager who took the contested decision remains identifiable for accountability reasons.**

81. **Benefits of legal training.** Secondly, an administrative review necessarily entails a degree of legal analysis, given that decisions taken in an administrative context must not only satisfy operational requirements and considerations but also be rule based, that is, consistent with the regulatory framework. **Therefore, the Inspectors suggest that legal training be provided on a regular basis for all human resources officers who are substantively involved in internal appeal processes.**

82. **Administrative review serves valuable objectives.** The findings of the review confirm the utility of a review step that is internal to the organization and that affords it the opportunity to review administrative decisions and amend them before more elaborate – and costly – formal proceedings are instituted. The Inspectors see merit in an administrative review process that takes into consideration these objectives. However, the effectiveness of such a review is contingent upon several factors, which are unevenly reflected in the regulatory frameworks and the practices of JIU participating organizations.

83. **Some evolution in the process of administrative review since the 2009 reform.** Several JIU participating organizations cautioned against equating the administrative review and the peer review processes with the mechanisms that were in place in the United Nations Secretariat prior to the 2009 reform of the administration of justice system. In examining the processes in place across the United Nations system today, the Inspectors noted that most of the specialized agencies have introduced considerable improvements to elements of their internal justice apparatus, which permit a differentiated review of decisions and thus more nuanced conclusions.

B. Management evaluation

84. **Management evaluation considered as positive overall.** Most of the stakeholders interviewed in the course of the present review considered that the professionalization of the internal appeal process, including the management evaluation as the first procedural step, had contributed to a more transparent, streamlined and strengthened internal administration of justice in the entities that have adopted the two-tier judicial system following the 2009 reform. Similarly, most of the stakeholders agreed that the system was working well overall, with no major challenges encountered in its functioning or significant differences discerned in accessibility by staff, whether they were located at headquarters or in field offices, or any obvious deficiencies or lacunae encountered over time in the applicable regulatory framework, except in very specific cross-organizational constellations elaborated elsewhere. While this view was echoed by the vast majority of sections or units involved in the management evaluation process on the administration's side, other perspectives were offered not only by staff representatives but also by members of the organizations' administrative structures.

1. Purpose of a management evaluation

85. **Management evaluation introduced through the 2009 internal justice reform.** Although the panel tasked with redesigning the administration of justice in the United Nations had explicitly recommended that the administrative review process be eliminated altogether, without proposing any comparable mechanism in its place but urging instead that the handling of staff appeals be entrusted entirely to external, legally trained and independent

adjudicators – at least for the organizations applying the United Nations Staff Regulations and Rules,³⁵ the Secretary-General advocated replacing the administrative review with a management evaluation function as recommended by the Staff-Management Coordinating Committee.³⁶ Such a tool would serve two purposes: (a) it would “give management an early opportunity to review a contested decision, to determine whether mistakes have been made or whether irregularities have occurred and to rectify those mistakes or irregularities before a case proceeds to litigation” and (b) it would enable “executive heads to hold managers accountable for their decisions, including in cases where an improper decision has been taken.”

86. In the Inspectors’ view, such accountability was not a mere aspiration, but a mandate. To this end, the Secretary-General agreed with the recommendation of the Staff-Management Coordinating Committee regarding managerial accountability,³⁷ and proposed measures to ensure this accountability which were endorsed by the General Assembly.³⁸ The Secretary-General was subsequently tasked with taking concrete measures to realize accountability as a result of management evaluation requests and judgments.³⁹

87. In effect, and beyond simply reviewing the matter from a legal and administrative standpoint (as suggested by the term “administrative review”), the management evaluation process was intended to evaluate, if need be, the propriety of managerial conduct as well as compliance with the regulations and rules. Both the administration, as an abstract entity, and individual managers were to be held accountable more promptly, concretely and also discreetly, thereby affording full opportunity to the organizations to take proactive ownership of individual as well as systemic managerial failings, without incurring public exposure through tribunal proceedings.

88. Despite the foregoing, the present review found that the broader dimension of managerial accountability, as envisioned by the Secretary-General at the outset of the reform process is now less present in some narratives associated with the management of the function.⁴⁰ For example, in 2010, the Secretary-General reported that he had included compliance with requests for comments on management evaluations in senior managers’ compacts between the Secretary-General and heads of departments and offices,⁴¹ however, there is no reference to management evaluation, internal justice processes (beyond those related to misconduct), or accountability for decision-making on administrative and – rather than only – programmatic matters to be found in present-time compacts.

89. Considering those measures and, in particular, the provisions of the compacts as being valid, **the Inspectors suggest that the provisions of General Assembly resolution 61/261 and the measures regarding managerial accountability that are outlined in the report of the Secretary-General on administration of justice at the United Nations⁴² be considered when preparing senior managers’ compacts, so as to ensure compliance with the purposes of the management evaluation that were initially endorsed by the General Assembly, and to strengthen accountability and the integrity of the system.**

2. Set-up and powers

90. **Management evaluation mandated by the General Assembly.** Since 2009, the management evaluation has been the first step in the standard internal appeal process for staff of the United Nations Secretariat and the funds and programmes. Since 2020, WMO has also adopted the management evaluation as the first step of its internal appeal process, but outsources the conduct of the evaluation to UNICEF. For organizations applying the United Nations staff regulations and rules, the management evaluation has been mandated by the

³⁵ Namely, ITC, UNCTAD, UNDP, UNEP, UNFPA, UN-Habitat, UNHCR, UNICEF, UNODC, UNOPS and UN-Women.

³⁶ A/61/758, para. 29.

³⁷ Ibid., para. 31.

³⁸ General Assembly resolution 61/261, para. 27.

³⁹ Such measures are outlined in A/68/346, para. 156.

⁴⁰ A/61/758, para. 31; A/65/373, para. 6; A/68/346, para. 23; and A/74/172, para. 9.

⁴¹ A/65/373, para. 150.

⁴² A/68/346.

General Assembly as part of their regulatory framework and they cannot opt out of it or replace it with a different process or format.

91. **Types of appeals requiring management evaluation as a first step.** With the exception of two categories of administrative decisions, any decision alleging non-compliance with a staff member's contract of employment must be submitted to a management evaluation before it can be appealed externally at the competent first instance tribunal, the United Nations Dispute Tribunal. The two categories exempted from management evaluation are administrative decisions taken pursuant to advice obtained from a technical body,⁴³ normally in the context of a specialized recourse mechanism, and decisions by which disciplinary or non-disciplinary measures are imposed on a staff member following the completion of a disciplinary process. In the latter cases, the staff member may appeal directly to the Dispute Tribunal without requesting a management evaluation.

92. **Professionalization as a distinguishing factor.** Although this aspect was not a requirement in the original proposal for the establishment of the management evaluation function⁴⁴ or in the observations of the Advisory Committee on Administrative and Budgetary Questions thereon⁴⁵ or in the conditions under which the General Assembly approved the establishment of the function,⁴⁶ the management evaluation in its current form has become a fully professionalized function in practice. The mechanism is administered entirely by lawyers at every stage of the process, even where legal assistance and representation of staff in proceedings is concerned. The full professionalization of the standard internal appeal mechanism in the United Nations Secretariat and the funds and programmes is one of the aspects that distinguishes the management evaluation from the administrative review that it replaced.

93. **Legal offices in charge of management evaluation in some funds and programmes.** Unlike the administrative review process which is conducted predominantly by the human resources departments in the organizations that implement it, the management evaluation is carried out by the legal services of the following organizations, namely, UNDP, UNFPA, UNHCR, UNOPS and UN-Women. This is not the case for UNICEF, where a dedicated stand-alone administrative law unit not affiliated with either the organization's legal or human resources department handles management evaluations. In four of those organizations, the staff of the respective legal departments conduct management evaluations as well as other duties, which typically include a wide range of corporate legal matters. Matters relating to administrative law (the body of law comprising the staff regulations and rules and procedures governing employment-related dispute resolution processes) are normally filed in the portfolios of the legal offices of the funds and programmes. In all of the above-mentioned organizations, the same legal teams represent the Secretary-General of the United Nations (on behalf of their respective executive heads) before the Dispute Tribunal.

94. **Dedicated administrative law and policy units in some funds and programmes.** UNOPS, one of the five organizations that maintains the management evaluation function within its legal office, has created a dedicated administrative law unit within the legal office to process the management evaluation requests of its staff. In contrast, and as stated above, at UNICEF the function is removed from the remit of the legal office completely. Its Administrative Law Unit used to be part of the human resources department but is now in the Office of the Executive Director, following an independent external review of aspects of the organization's internal justice function that was carried out in 2019. UNICEF also handles the management evaluations for WMO under an outsourcing arrangement.

95. Both UNICEF and UNOPS also rely on dedicated units within their respective human resources departments, which have legally trained staff, to advise managers on the correct application and interpretation of the regulations and rules and applicable human resources

⁴³ ST/AI/2018/7, para. 2. The technical bodies are: (a) medical boards or independent medical practitioners duly authorized to review medical decisions or medical recommendations, including reconsiderations referred to in article 5.1 of appendix D to the Staff Rules; and (b) classification appeals committees.

⁴⁴ A/61/758, paras. 29 and 30.

⁴⁵ A/61/815, paras. 34 and 36–40; also A/62/7/Add.7, paras. 34 and 35.

⁴⁶ General Assembly resolutions 61/261, paras. 25–27; and 62/228, paras. 50–56.

policies at the decision-making stage, thereby relieving the legal offices of such advisory responsibilities that could create a conflict of interest later on.

96. **Good practice: separation of duties among decision makers and reviewers.** In the Inspectors' view, the above-mentioned set-up enables a separation of duties among decision makers and reviewers, even with regard to advisory functions. More specifically, it ensures that the offices involved in advising managers on the legal aspects of administrative decision-making are not also required to act as impartial reviewers of the same decisions in the context of the management evaluation. This separation and distribution of duties can thus be considered a good practice.

97. **Centralized Management Evaluation Unit for the United Nations Secretariat.** A similarly segregated set-up prevails for the entities that comprise the United Nations Secretariat and are subject to its staff regulations and rules. The management evaluation for those entities, which include UNCTAD, UNEP, UN-Habitat, UNODC as well as ITC, among others, is conducted by the Management Evaluation Unit in the Department of Management at headquarters in New York. At the end of the process, the Unit makes a recommendation to the Under-Secretary-General for Management Strategy, Policy and Compliance, who then decides whether the contested decision will be upheld, reversed, amended or otherwise disposed of. The process is thus fully centralized for all the entities, irrespective of under which head of entity's authority the original decision was taken or where the staff member was stationed geographically.

98. **Complete functional and physical segregation of the Management Evaluation Unit.** Consistent with a recent description of the management evaluation function as involving "an objective review of the contested decision by legal staff who were not part of the decision-making process",⁴⁷ the Management Evaluation Unit is outside the purview and chain of command of both the legal and human resources functions. Rather, the Unit reports directly and exclusively to the Under-Secretary-General for Management Strategy, Policy and Compliance. It is also physically segregated from other parts of the Secretariat, as its offices are in a separate building – a factor generally considered to be beneficial to the function and to its credibility.

99. **Segregation of appeal-related responsibilities at all stages of appeal.** Once a staff member submits an appeal against the original contested decision to the United Nations Dispute Tribunal, the Management Evaluation Unit's involvement ceases. The case is then transferred to other legal teams who will defend the administration in the ensuing tribunal proceedings.⁴⁸ None of the legal teams report to the Office of Legal Affairs, which has the sole authority to defend the Secretary-General at the final, appellate stage of proceedings before the United Nations Appeals Tribunal (including for the funds and programmes). It exercises strategic oversight and has an advisory role for all the entities of the United Nations Secretariat, in particular in cases relating to overarching issues affecting the staff of more than one entity. In that way, the segregation of responsibilities relating to the appeal is ensured at every stage. The Inspectors consider such segregation good practice.

100. **Counterpart offices within each entity contributing to management evaluation.** The Management Evaluation Unit relies on the support of the administrative offices within the entities from which contested decisions originate to establish the facts and gather the decision makers' arguments for the management evaluation. For most Headquarters-based entities of the United Nations Secretariat, it is the respective executive office⁴⁹ that serves as the intermediary office; in field missions, including peacekeeping operations and special political missions, it is the mission support administrative office; in other offices away from Headquarters, it is the relevant human resources department.

101. **Special units provide full-time support at selected locations.** In some locations and offices, the intermediary role is assumed by dedicated units staffed with full-time legal experts. For example, the legal units within the human resources departments of the United

⁴⁷ A/74/172, annex I, para. 8.

⁴⁸ A/76/99, sect. F (1), footnote 3 lists the offices and units which represent the Secretary-General/defend the administration in proceedings before the United Nations Dispute Tribunal.

⁴⁹ ST/SGB/2015/3, sect. 7.

Nations Office at Geneva and the United Nations Office at Vienna serve as internal justice service providers for a number of United Nations Secretariat entities. They prepare or assist managers in the preparation of the requisite inputs in response to management evaluation requests filed by staff of the entities they serve. The units' duties are limited to providing input on the decision maker's behalf, and their role in the management evaluation process is distinct from that of the evaluator, which is fully centralized and retained exclusively at Headquarters.

102. **Exceptions to full segregation at the United Nations Office at Geneva.** Most of the appeals submitted to the United Nations Dispute Tribunal are handled centrally by a dedicated team/unit within the human resources department at Headquarters in New York, which would normally not be involved in any capacity in the management evaluation process. The legal team at the United Nations Office at Geneva⁵⁰ represents an exception in this regard, as it is involved in the appeal process at both the management evaluation stage (as an input provider) and later before the United Nations Dispute Tribunal (as respondent on behalf of the Secretary-General in the proceedings). Representing the Secretary-General as respondent is a fully cost-recovered service provided by the United Nations Office at Geneva, that is charged on an hourly basis and reimbursed under memorandums of understanding concluded with each client. UNCTAD, ITC, other Geneva-based, as well as some Bonn-based Secretariat entities, and the International Court of Justice avail themselves of this service.⁵¹

103. In addition, the legal team at Geneva acts as respondent on behalf of the Secretary-General for the United Nations Office at Vienna, including UNODC, in proceedings before the United Nations Dispute Tribunal only, under a special arrangement formally recognized by the General Assembly,⁵² which is therefore budgeted rather than separately costed. Nonetheless, input on contested decisions at the management evaluation stage is provided by a dedicated unit within the United Nations Office at Vienna, including UNODC, and on behalf of other, mainly Vienna-based offices of the United Nations Secretariat.⁵³ As these

⁵⁰ Located in the Legal and Policy Advisory Section, Human Resources Management Service, United Nations Office at Geneva.

⁵¹ As a service provider to the Geneva-based entities of the United Nations Secretariat and the United Nations funds and programmes, the Human Resources Management Service (and its Legal and Policy Advisory Section) of the United Nations Office at Geneva supports the following entities in the management evaluation process and other internal justice matters: the United Nations Office at Geneva; UNCTAD; ITC; JIU; the Office of the United Nations High Commissioner for Human Rights (OHCHR); the United Nations Office for Disaster Risk Reduction; the Economic Commission for Europe (ECE); the United Nations Institute for Disarmament Research (UNIDIR); the United Nations Research Institute for Social Development (UNRISD); the secretariats of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, the Independent Investigative Mechanism for Myanmar, and the Special Envoy of the Secretary-General for Syria. It also supports the following offices, funds and programmes with respect to their Geneva-based staff only: the Office for the Coordination of Humanitarian Affairs; the Office of Internal Oversight Services (OIOS); the United Nations Office for Disarmament Affairs; and the United Nations Joint Staff Pension Fund. Lastly, it supports the International Court of Justice (The Hague); and the secretariats of the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change (Bonn, Germany), the United Nations System Staff College (Turin, Italy), and the Technology Bank for the Least Developed Countries (Gebze, Turkey).

⁵² General Assembly resolution 66/237, para. 23 and A/67/265, para. 120.

⁵³ The Legal and Policy Team, Operational and Advisory Support Unit, Human Resources Management Service, United Nations Office at Vienna (UNOV). The Director-General of UNOV is also the Executive Director of UNODC. The two organizations share the Division for Management, which includes the Human Resources Management Services as service provider to Vienna-based entities of the United Nations Secretariat, including UNODC globally. The Operational and Advisory Support Unit of the United Nations Office at Vienna, including UNODC, supports the following entities in the management evaluation process and on other internal justice matters, without specific cost recovery arrangements: the United Nations Office at Vienna; UNODC; the International Trade Law Division of the Office of Legal Affairs; the Vienna-based offices of OIOS and the Office for Disarmament Affairs; the regional branch office of the Ombudsman and Mediation Services and UNEP; and the secretariat of the United Nations Scientific Committee on the Effects of Atomic Radiation. It also

functions only participate in the defence of their respective administrations, and remain on the same “side” of the dispute throughout the appeal process, the Inspectors found no conflict of interest inherent in this arrangement.

3. Time frames

104. **What distinguishes the management evaluation from the administrative review.** Apart from the “professionalization” of the management evaluation function, the most significant changes relating to the handling of internal appeals compared to the pre-2009 system are the tightened time limit for the disposition of cases, the requirement of providing a reasoned response, the possibility of requesting that the implementation of the contested decision be suspended while the management evaluation is ongoing (“suspension of action”); and, more importantly, access to legal assistance and representation through a dedicated resource, namely, the Office of Staff Legal Assistance, at no cost to the staff member at all stages of the appeal process, including before and during the management evaluation.

105. **Tightened time limits and the requirement for a reasoned response.** The response to a request for management evaluation under the post-2009 regulatory framework is an explicit requirement that must be communicated in writing and reflect the progression of the process, which implies that the reasons that led to the conclusion must be presented. The time limits for the response are fairly tight – 30 days for staff stationed in New York, 45 days for all other staff – and strictly enforced by the tribunals. The only exception foreseen in the regulatory frameworks that can legally justify a request for an extension of the time limit is ongoing efforts for informal resolution by the Office of the United Nations Ombudsman, under conditions specified by the Secretary-General.

106. **Adequate time limits for staff to file a request for management evaluation.** In general, the Inspectors found that the amount of time allowed (60 days) for staff to consider their options and file a formal request for management evaluation is reasonable, without any specific indications to the contrary from either staff or the administrations. That time limit is consistent with the statutory time limits for staff to file an internal appeal in the majority of the other United Nations system organizations. Apart from the 12 JIU participating organizations that apply the United Nations staff regulations and rules, IAEA, ICAO, UNAIDS, UNESCO, UNIDO, UNRWA, WHO and WMO require the initial request to be filed within 60 days of notification of the administrative decision. Five organizations provide a longer period: 90 days at FAO, WFP and WIPO; 14 weeks at IMO; and three months at ILO; while three organizations have shorter time limits (one month at UPU and UNWTO, and 45 days at ITU).

107. **Key accomplishment: clearer, more reliable and accelerated response time.** One aspect that was highlighted as being particularly positive and that instilled greater trust in the current system than in the pre-reform one was the accelerated and, at the same time, clearer and more reliable time frame within which staff could expect to receive a response from the administration and have the matters they appealed heard, examined and clarified. Although not solely a result of the newly introduced management evaluation function, which is only the first step in the formal process, the improvement in the timeliness of responses to requests has addressed one of the most pressing concerns relating to the pre-2009 system. In the Inspectors’ view that is a key accomplishment of the reform.

108. **Difference between field and headquarters response times has become outdated.** Several stakeholders interviewed in the course of the present review considered that the difference in the administration’s response time for staff stationed at headquarters and those in other locations no longer reflected the realities of the digital age. This reality became particularly evident during the COVID-19 pandemic, when both staff and administrations

supports the Vienna-based staff of UNFPA, under a separate service agreement; and the Turin-based United Nations Interregional Crime and Justice Research Institute, on an ad hoc cost recovery basis. Prior to the introduction of the new, decentralized delegation of authority framework for the United Nations Secretariat (see ST/SGB/2019/2), the Unit also supported the United Nations Office for Outer Space Affairs and the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, which now provide input to the Management Evaluation Unit directly.

were obliged to use electronic means exclusively to engage with the internal justice system and communicate with each other over an extended period of time. Several stakeholders, including staff representatives in both the field and at headquarters, reported that the – initially involuntary – move to “virtual justice” has had a positive impact on the equality of staff access to and engagement with the relevant mechanisms across locations.

109. Historically, the location-related difference in time limits for the administration’s response to management evaluation requests was a feature of the pre-2009 internal justice system. The retention of this difference in the post-2009 regulatory framework was a compromise between the Secretary-General’s proposal of a 45-day response time, and the Advisory Committee on Administrative and Budgetary Questions’ request for a 30-day response time across the board. The General Assembly ultimately approved the continuation of a 30-day response time for headquarters, and a 45-day response time for offices away from headquarters. The only organizations that apply different time limits for the administration’s response to requests for administrative review are FAO and WFP, which have set their response times at 45 days and 60 days, respectively for staff at headquarters and field staff.

110. **Need for a response time commensurate with the effort involved.** Most of the organizations interviewed echoed the Secretary-General’s original proposal of a 45-day time limit across the board. This was considered to be more realistic and commensurate with the effort involved in coordinating with decision makers and administrative support offices across a wide range of locations and time zones to obtain documentation and narrative inputs; and navigating the diverse processes and engaging with various officers in an often complex, multilayer chain of command. Such effort is required regardless of whether the appeal originates away from headquarters, from a “deep field” location or from “across the corridor”.

111. The issue was clearly not related to insufficient human resources, but was rather viewed as a direct reflection of the amount of time needed by all relevant stakeholders to gather and provide the requisite inputs, on one hand, and to analyse the information received, and provide a considered view, on the other.

112. **Longer response time limits prevalent in system-wide comparison.** In the Inspectors’ view, having adequate time to ensure a thorough and comprehensive review of information provided in respect of management evaluation requests is indispensable for due process and in the best interest of organizations that earnestly wish to administer justice. This view is based not only on the experience of the processing officers interviewed, but also on the comparison of response times in other organizations. Most of the officers interviewed had more than a decade of practical experience with the post-reform structure. While they consistently mentioned response times as the most and, often, only challenging aspect of the management evaluation, they also cautioned against extending the deadlines considerably and to the detriment of a timely conclusion of processes.

113. The statutory response time limits in most other United Nations system organizations range from 45 days for both headquarters and field staff at ICAO, ITU, and WMO; 60 days at UNAIDS, UNESCO, UNIDO, WHO and WIPO; 14 weeks at IMO; and to three months at ILO. FAO and WFP allow a 45-day response time for headquarters staff and 60 days for field staff. Other than the organizations that apply the United Nations staff regulations and rules, a response time limit of one month is applied at UNRWA, UNWTO, UPU and IAEA.

114. **Balancing swift and holistic justice.** In assessing the adequacy of response time limits, two more or less competing interests must be balanced. On the one hand, if the time taken to conclude the process is too extensive, it will have an adverse impact on the staff member concerned (“justice delayed is justice denied”) and on the credibility of the process. Therefore, it is in the interest of both the staff member and the administration to have a swift process that provides conclusive relief and resolution, so that both can “move on” as soon as possible once the contested decision has been clarified and settled.

115. On the other hand, with more time at the evaluators’ disposal, there is an increased potential for a more comprehensive, thorough and wholesome consideration of the decision, without which relief and resolution is likely to remain elusive. The odds are increased in favour of a more satisfactory response and thus de-escalation for the staff member concerned when the incentives to dispose of the case overly quickly are reduced. However, it is important to strike a balance between rapidity and thoroughness. Avoiding unnecessary

delays is as imperative as counteracting incentives to hurriedly dismiss a case as not receivable, based on purely procedural aspects. Based on the findings of the review, the Inspectors consider that this balance would be obtained with a harmonized response time frame of a minimum of 45 days and a maximum of 60 days to be equally applied to staff at headquarters and in field locations.

116. The following recommendation is expected to strengthen coherence and harmonization.

Recommendation 1

The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, harmonize the time limits for their administrations' response to requests for management evaluation or administrative review to a minimum of 45 calendar days and a maximum of 60 calendar days, irrespective of whether the request originates from a staff member at headquarters or in a field location; or propose this harmonization for decision by their legislative organs or governing bodies.

Suspension of action

117. One more difference in the tools of redress available to staff of certain organizations, since the 2009 reform, is the possibility of requesting that the implementation of a contested administrative decision be suspended while an appeal is pending internally. This is called a "suspension of action". This procedural possibility is recognized by the United Nations Dispute Tribunal and UNRWA Dispute Tribunal, but is not available under the statute of the ILO Administrative Tribunal. As a general rule, administrative appeals do not automatically suspend the implementation of a contested decision. In the statutes of the dispute tribunals, a request for suspension of action is tied to three conditions which must be cumulatively met, namely, prima facie unlawfulness of the decision, particular urgency, and whether the implementation of the decision would cause irreparable damage. These conditions underline the exceptional character of the measure, which is further limited in cases of appointment, promotion and termination. The procedure has been used extensively by staff under the jurisdiction of the United Nations Dispute Tribunal since the 2009 reform of the justice system; it has become an important feature of the internal justice system of the United Nations and constitutes about one quarter of the applications on average submitted to Tribunal every year.

118. **No restrictions on providing for suspension of action internally.** Three JIU participating organizations (ILO, UNIDO and WIPO) that are under the jurisdiction of the ILO Administrative Tribunal have provided for suspension of action in their internal appeal processes. Organizations are not restricted from introducing the suspension of action option into their regulatory frameworks, even where the tribunals do not provide additional avenues for doing so at the litigation stage. The Inspectors consider the decisions by ILO, UNIDO and WIPO to provide for a suspension of action in their regulatory framework to be good practice and an important step towards a more comprehensive concept of justice. The implementation of certain decisions while the contested decision is still pending judgment can cause irreparable damage, as the organization could be obliged to pay compensation.

119. The following recommendation is expected to enhance the effectiveness of administration of justice.

Recommendation 2

The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, introduce into their regulatory frameworks a provision for suspension of action of contested decisions at the pre-tribunal stage, ex officio or upon the appellant's request, in cases of prima facie unlawfulness of the decision, error of fact, particular urgency or when implementation of the decision could cause irreparable damage; or propose the introduction of this provision for decision to their legislative organs or governing bodies.

4. Positioning and reporting lines

120. **Centralization bears objectivity gains.** The centralization of the management evaluation function in the United Nations Secretariat, and the fact that the staff assigned to it on a full-time basis have expert knowledge of administrative law have been considered beneficial by the stakeholders interviewed in the course of this review. The benefits may be less obvious in the funds and programmes, where most staff perform management evaluation functions on a part-time basis.

121. **Segregation can also bear objectivity gains.** In decentralized settings in particular, administrative review by a headquarters-based unit that is segregated from the local decision maker may be perceived as providing a form of quality assurance for administrative decisions that are taken locally. In organizations with a significant field presence, there seemed to be heightened perception that, because local offices are removed from the more systematic flow of information at headquarters, they would struggle to review administrative decisions with the same degree of objectivity and accuracy as a headquarters-based unit, in particular considering the enhanced power imbalances frequently encountered in field settings.

122. **Role and powers of the Management Evaluation Unit: managing expectations.** The burden placed on the Management Evaluation Unit is significant and multifaceted. The Unit navigates a very thin line between exercising its administrative function from within the structure of one of the two parties to a dispute, while at the same time must maintain a level of objectivity so as to portray itself as quasi-independent in order to maintain its credibility.

123. **Staff are unclear about the set-up.** Some staff representatives indicated that there was some confusion on the part of staff regarding the Management Evaluation Unit's position. Is it an extension of the administration, and thus an inherently biased party, or is it a referee that is expected to act with complete impartiality? Neither view fully reflects the function, but they highlight a greater need for clear communication of the Unit's role vis-à-vis staff in the formal justice system.

5. Professionalization

124. **Professionalization incentivizes rigour at the pre-tribunal stage.** The fact that, in all the organizations that apply it, the officials performing the management evaluation are legally trained is generally considered to be an asset, if not indispensable, by the stakeholders interviewed. Reportedly, one factor that makes it so is the need to anticipate the strict legal standards applied by the judges at the next stage of appeal. The knowledge that the outcome of the management evaluation would have to withstand direct judicial scrutiny without additional intermediary stages of review is considered to have instilled a greater sense of rigour and discipline at the pre-tribunal stage. While such professionalization is positive in principle, it has also made the process more demanding and resource intensive, in particular as concerns legal expertise and capacities.

125. **Is legal expertise indispensable at the initial step of the process?** The incentive for meticulous and bullet-proof legal reasoning may have been less pronounced in the pre-reform context of the administrative review, when an appeal against the outcome of the review was first "filtered" through a panel of peers before reaching an external tribunal. As such, the current professionalization of the management evaluation function is a direct corollary of the professionalization of subsequent stages of appeal. This is not to suggest that an internal review of the propriety of administrative decisions cannot be conducted without legal expertise. Rather, it underscores that an internal justice system that places strong emphasis on scrutinizing the legality and procedural regularity of decision-making, and forcing other contextual, cultural or corporate considerations to retreat into the background, or at least to lesser prominence, imposes more demands on the administration in terms of necessary, but not exclusively, legal capacities.

126. **Matching increased requirements with increased capacities.** For the above reasons, a two-tier judicial system is better served by a fully professionalized pre-tribunal process. The design of the post-2009 system as a "package" with various components, including free legal assistance and representation support from a dedicated function, recognized the additional burden that a more pronounced juridical system would represent. The importance of such emphasis on legal resources may not be as paramount in a system with one final

instance of judicial review, of which one of the implied objectives is to serve as a legal corrective to a process administered to a large extent, if not fully, by lay, not legally trained, persons in order to ensure that outcomes remain firmly anchored in the regulatory framework. However, it is a key consideration for those organizations that have opted to accept the jurisdiction of the United Nations Appeals Tribunal, an appellate tribunal, as their first and sole judicial instance, and a call to be mindful of the requirements of that judicial instance as well as the structures needed to meet them.

127. **Managing liabilities at the expense of the human factor.** The fact that appeals are reaching the tribunal stage earlier, under the management evaluation model, and unmediated – at least in the funds and programmes – by additional layers of review either by quasi-independent units, such as the Management Evaluation Unit, or by peer review, was said by some interviewees to have shifted attention away from providing the staff member with a comprehensive yet plain, explanatory response. Although, as a rule-based system, the answer to whether contested decisions are correct or not necessarily involves review and discussion of the pertinent rules of an organization’s legal framework.

128. This observation coincides with a general sense among administrations and staff in the organizations that are applying the management evaluation model that the process lacks the “human touch” compared to the peer review model. It was also felt that the formalization of the processes, the professionalization of roles, and the emphasis on the technical legal dimension of workplace disputes has rendered the mechanism more rigid, more adversarial, and less geared towards preserving interpersonal working relationships.

129. Conversely, two organizations (UNICEF and UNHCR) stated that they routinely included a consideration of the merits in their responses to management evaluation requests, even when procedural deficiencies – such as missed deadlines or absence of an appealable administrative decision – might have otherwise rendered a case not receivable. In allowing such a departure from the requirements of the law, what weighed heavily for them was the recognition of the need for staff to feel supported in their concerns with the organizations and their management in the resolution of potentially contentious issues affecting morale, staff loyalty and confidence in the genuine intention of their employer to offer relief or, at the very least, a full explanation.

130. In the Inspectors’ view, procedural requirements, including time limits, eligibility requirements, and limitations on what may be considered an appealable decision, are instituted for a good reason and provide important parameters for the individuals subject to a legal regime to know what they can expect and rely on as a matter of law. Routine exceptions that are not foreseen in the regulatory framework may open the door to arbitrariness, favouritism and bias, and undermine the integrity of the system. Therefore, **the Inspectors suggest that customary exceptions to procedural requirements on admissibility of internal appeals be either codified or discontinued.** It may be worth considering that, the persistence of practices which are not provided for in the law and which have become customary exposes a weakness in the mechanism in place, whereas a system that does not provide for flexibilities that emerge as necessary, in practice, naturally invites workarounds and deviations and indicates that something is missing.

6. Accessibility

131. **A significant number of cases dismissed on procedural grounds.** In the course of the review, it was pointed out that a significant number of cases have been dismissed on grounds of receivability, that is, failure to comply with basic procedural requirements for a request to be considered and reviewed on its merits. Official case statistics on receivability are not routinely reported for the management evaluation stage. The latest figures on receivability at the management evaluation stage are contained in the Secretary-General’s report on the administration of justice, and date from 2016. They reflect only the disposition of requests by the Management Evaluation Unit of the United Nations and show that 29 per cent of the requests filed at the time were dismissed as not receivable at the management evaluation stage.⁵⁴

⁵⁴ A/72/204, table 2.

132. Such figures did not feature in subsequent reports, nor did the reports contain disaggregated data on the receivability of management evaluation requests by the funds and programmes. In the preceding years during which receivability figures were published for the management evaluation stage (2012–2015), again for the Management Evaluation Unit only, the share of cases dismissed on receivability grounds was even higher (between 31 and 55 per cent of all cases disposed of by the Unit).

133. **Pattern of cases ruled not receivable persists at the United Nations Dispute Tribunal.** Between 2015 and 2021, the share of cases deemed not receivable by the United Nations Dispute Tribunal (including cases that went through management evaluation and cases that did not require management evaluation such as appeals against disciplinary measures, among others) ranged between 25 and 33 per cent of the total number of cases disposed of with occasional peaks of over 40 per cent (2019).⁵⁵ In other words, on average, in more than one third (34 per cent) of the cases over the past seven years, staff seeking recourse through the post-reform justice system failed to pass the procedural threshold to have the substance of their requests examined by a tribunal. Based on the findings of the present review, the Inspectors express their concern about the large number of cases deemed irreceivable and the implications for staff in respect of access to justice.

134. **Various grounds for receivability.** In 2019 and 2020,⁵⁶ the United Nations Dispute Tribunal rejected approximately 38 per cent and 28.5 per cent, respectively, of cases as being irreceivable. The most frequent reasons why cases were rejected as not receivable were failure to identify an appealable administrative decision; failure to file a management evaluation request when mandatory; failure to submit a management evaluation request within the 60-day deadline; and failure to submit the application to the Tribunal within the 90-day time limit. No figures were reported for 2021.

135. Each of the above reasons presents its own challenges, including fundamental questions regarding the accessibility of the mechanisms in place. In particular, more than a decade since the system became operational, there still seems to be confusion as to what represents an appealable administrative decision, or whether management evaluation is required prior to resorting to the Tribunal. Of cases deemed irreceivable by the Tribunal, the failure to identify an appealable administrative decision applied to approximately 21 per cent in 2019 and showed a strong increase to approximately 46 per cent in 2020. Cases rejected because management evaluation was required prior to resorting to the Tribunal amounted to approximately 34 per cent in 2019 and with a remarkable decrease to 9.5 per cent in 2020, while the number of cases dismissed because the 60-day deadline for management evaluation request was missed increased from 11.5 per cent in 2019, to approximately 16 per cent in 2020.

136. **Possible procedural barriers to access to justice require further examination.** The Inspectors consider these findings striking in a system that has gained considerable repute on account of its professionalized set-up and cadre, as well as the increased clarity and stringency of its regulatory framework. It also begs the question as to the underlying reasons why so many appeals fail to meet the basic receivability criteria. The Inspectors consider it unlikely that this pattern can be exhaustively explained by potential negligence or by frivolousness on the part of staff abusing the system to seek remedies where none are due. Despite significant outreach efforts by, among others, the Office of Administration of Justice and the Office of Staff Legal Assistance, accessing justice still remains an issue in the post-reform system of justice.

137. **Limited number of cases examined on their merits.** The frequency with which cases end up unexamined on their merits may offer some indication as to why, despite significant investment into making the system more transparent and accessible to its clients, many staff members still do not trust its effectiveness in delivering justice on the merits of their appeals. Based on the findings of the present review, the Inspectors consider it worthwhile to examine more closely the reasons underlying the dismissal of cases on receivability grounds. They are of the view that systematic collection of data and regular

⁵⁵ A/75/162, figure IV.

⁵⁶ A/75/162, para. 84 and table 11; A/76/99, para. 82 and table 12.

reporting thereon is necessary to improve how the internal administration of justice is viewed and assessed by staff at large.

138. The present review found that the share of cases that have been upheld (i.e. decided in the administration's favour) following the management evaluation process was close to 72 per cent, on average, over the past four years (2018–2021). Only a limited share of cases (approximately 20 per cent) proceeded to the United Nations Dispute Tribunal over the same period. The share of cases that were dismissed at the Tribunal stage was also comparatively high at 63 per cent.

139. Furthermore, considering the share of decisions that were reversed at the management evaluation stage (i.e. ruled in the staff member's favour) (excluding cases that may have been otherwise resolved, including through withdrawal of the request or settlement), the success rate was lower than 3 per cent, on average. Thus, questions arise as to whether the pre-tribunal stage of the system tends towards confirming the contested decision, and if this is due to an improved decision-making process, or if the system tends towards favouring the administration. The Inspectors acknowledge that the possibility of discerning and further examining such patterns is owed primarily to the availability and systematic collection of official statistics.

140. **Presumption of regularity.** Another, more general, point of concern expressed in the course of the present review has to do with a perceived overreliance by the management evaluation function on the "presumption of regularity", a principle of administrative law that is often invoked in the jurisprudence of both the ILO and United Nations jurisdictional systems.⁵⁷ The principle provides that, in the absence of cogent evidence to the contrary, official acts are presumed to have been regularly performed and administrations are presumed to have acted in compliance with the applicable regulatory framework.

141. **Burden of proof combined with wide administrative discretion.** The notion of imbalance is said to derive from two main factors in the context of presumption of regularity. One factor is the burden of proof. Staff who generally have limited access – or who are unable to request access – to complete administrative case files are at a disadvantage when having to prove subtle infractions against the regulatory framework or improper motives in administrative decision-making. There is, however, a corrective for such a scenario in established jurisprudence, which would reverse the burden of proof in certain situations.⁵⁸

142. The presumption of regularity is compounded by the second factor, namely, the significant – and equally well-recognized – margin of discretion available to administrative decision makers in many employment-related matters. Some of these matters are the subject of intense and frequent contestation at all stages of appeal, for example, appointment-related decisions, such as cases of non-selection or non-promotion, which represented one of the most frequently challenged subject matters before the United Nations Dispute Tribunal over the past four years. Decisions involving separation from service were also frequently challenged.⁵⁹

7. Cost

143. One of the main concerns raised in the context of the post-reform system had to do with its cost. It is beyond the scope of the present review to comment on the overall cost of the full-fledged post-reform internal justice system, which includes not only the pre-tribunal and tribunal instances, but also structures that were set up to safeguard its independent and effective functioning. Those include the Office of Administration of Justice, which houses the registries of the United Nations Appeals Tribunal and the three regional outposts of the United Nations Dispute Tribunal, and provides support to the judges of those tribunals who are appointed by the General Assembly; the Internal Justice Council, an independent advisory

⁵⁷ See for example, ILO Administrative Tribunal, *Ms. H.L. v. World Intellectual Property Organization*, Judgment No. 2915, 14 May 2010, considerations 14 and 24; also United Nations Appeals Tribunal, *Rolland*, Judgment No. 2011-UNAT-122, para. 26; and *Krioutchkov*, Judgment No. 2021-UNAT-1103, paras. 29 and 32.

⁵⁸ See United Nations Appeals Tribunal, *Obdeijn*, Judgment No. 2012-UNAT-201, paras. 5 and 38.

⁵⁹ See fig. II, "Applications received, by subject matter" in A/77/156; A/76/99; A/75/162; and A/74/172.

body that reports on the functioning of the justice system and manages the selection of judges for the tribunals of the two-tier justice system; and the Office of Staff Legal Assistance, which provides legal advice and representation to staff, former staff or affected dependents. All those are integral components of the justice system that was established as a result of the reform and, although elaborate in their staffing and thus costly, are well regarded and indispensable to the system's independent and transparent functioning. Some observations relating to the pre-tribunal stage are offered below.

144. **Staffing requirements have tripled since the reform.** Upon its establishment, the Management Evaluation Unit had one Chief of Unit at the P-5 level, two legal officers at the P-4 level, and three administrative assistants at the general service level – all funded from the regular budget – and general temporary assistance equivalent to one P-4 legal officer,⁶⁰ for a total of seven posts. Those posts were redeployed from the budgets that had already been allocated to the pre-reform mechanisms and therefore did not represent an increase in resources. However, in the approved organizational structure and post distribution for 2022 and 2023, three additional posts were budgeted for the Unit, namely, two P-3 posts and one general service post, for a total of nine regular budget posts.⁶¹ This is complemented by two additional P-3 posts funded from other sources. Accordingly, the number of legal officers handling management evaluation requests for the United Nations Secretariat, its departments and offices and other entities has tripled over the past 12 years, from two to six full-time posts.

145. **Significant caseload that is gradually stabilizing with adequate resource allocation.** The caseload of the Management Evaluation Unit has fluctuated over the past 12 years. Some 900 requests, on average, were received per year after the initial gradual rise in cases following the Unit's establishment in 2009. The case load was more than double in 2017, with 1,888 requests received, and a more-or-less steady decline in cases since then, which appears to be stabilizing at about 650–700 cases a year, since 2019.⁶² Following an extended period of considerable underresourcing, the Unit now considers the current allocation of resources to be adequate. It would allow the Unit to dispose of approximately the same, or a marginally larger, number of cases than it has been receiving on a yearly basis since 2018, when its resources were last increased, and to progressively reduce any backlog.⁶³

146. Requests from staff of the United Nations Secretariat and its departments and offices and other entities, significantly exceed those from all the funds and programmes combined using the management evaluation mechanism, which is also reflected in their much more limited resource allocation: out of the six funds and programmes that use the mechanism, only three (UNHCR, UNICEF and UN-Women) consider that their resource allocation for the pre-tribunal stage is adequate (for further information, see chap. V).

147. **Resource-intensive and complex set-up with significant “hidden” costs.** There are also additional, less obvious, or “hidden”, costs, which are more difficult to quantify with precision. As mentioned earlier, the Management Evaluation Unit relies heavily on inputs from counterpart offices in the entities for its analyses, some of which have dedicated units to gather and channel the requisite information to the Unit on behalf of their decision makers. Where such specialized units exist, for instance at the United Nations Office at Geneva, the United Nations Office at Nairobi and the United Nations Office at Vienna (including UNODC), the resources allocated are more readily quantifiable, even though posts are normally not exclusively dedicated to management evaluation or even administration of justice, but may also involve human resources policy and related support functions. Although the time and effort expended by the decision makers in contributing to requests for information are part of their regular managerial duties, they must also be accounted for if the functioning of the mechanism is to be fully costed in terms of personnel.

148. **Accurate costing of “full and fair consideration of appeals” is difficult.** The necessity of cross-entity and cross-functional collaboration between the administrative, legal and programmatic units highlights the level of administrative effort involved in the process.

⁶⁰ General Assembly resolution 62/228, para. 52.

⁶¹ A/77/6, sect. 29 A, annex 1, charts A and B.

⁶² A/77/156, table 1.

⁶³ *Ibid.*, table 2, for 2021; see also table 2 in A/76/99; A/75/162; A/74/172; A/73/217 etc.

It also illustrates the inevitable complexity of calculating the full cost of a “full and fair consideration” of appeals required by tribunals as the standard to which administrations are often held. Against this backdrop, the difficulty of accurately expressing or even approximating the resources formally allocated against those actually expended on administering internal appeal mechanisms in the decentralized structure of the United Nations Secretariat becomes evident.

C. Peer review as a first-instance mechanism

149. **What is peer review?** Peer review in the context of internal justice mechanisms is the examination of an employment-related matter, normally a contested administrative decision, by a joint body composed of staff members – peers of the appellant – who are designated in equal numbers by management and staff. In the traditional peer review set-up, the peers are tasked with jointly providing advice to the executive head of the organization regarding the action to be taken to resolve the matter that they are reviewing. In its original form, the peer review was an entirely internal mechanism involving solely officials from within the organization, who were embedded in the same corporate culture and regulatory framework as both the decision maker and the staff member requesting the review. A peer review is thus different from a review by technical experts.

150. **Administrative (lay) process.** In the context of standard (as opposed to specialized) internal appeal mechanisms, the peer review is an administrative (i.e. non-judicial) process. The main components of the review closely resemble those of a trial: fact-finding, hearing arguments, evaluating (mainly documentary) evidence, assessing facts against regulatory provisions, and articulating a reasoned opinion on the matter under review. However, the peer review is not performed by judges or lawyers, but by staff members without legal training.

151. **Advisory and complementary role.** Similar to the role of a jury in complementing the technical legal ruling of a judge, the peer review is not intended to provide an expert opinion on the legality of an administrative decision. Although assessing compliance with the regulations, rules and internal processes of the relevant organization is part of its functions, the aim of the peer review is to review a decision taken by the administration, thereby providing an additional layer of collective internal scrutiny. The peers establish and assess the facts and circumstances which served as the basis for the decision and the appeal; and they assist the decision-maker through carefully considered and consolidated advice covering multiple – staff and management’s – perspectives on an issue. The aim of the review is not to impose or substitute the peers’ assessment for that of the executive head.

152. By offering a holistic, as opposed to a purely compliance-centric view of the contested matter, the peer review was designed to offer further contextualization as a corrective for administrative practices within an organization’s specific setting, without impinging on the authority of the executive head of the organization who could choose to uphold the original decision taken by him or her or on his or her behalf. The role of the peer review body was therefore conceived as advisory and complementary to that of the decision maker (a managerial role) and a judge (an independent judicial role). In recognizing the role of internal review bodies, the ILO Administrative Tribunal considered that internal appeal mechanisms were well-placed to undertake a more comprehensive review than the Tribunal and could, in particular, “issue recommendations on the basis of a different assessment or even on grounds of fairness or advisability.”⁶⁴

153. **Staff participation is a key and well-established feature.** The participation of staff in the internal justice system is a long-established feature of this set-up, rooted in the historical beginnings of the internal administration of justice in international organizations, and has been a key feature of related mechanisms since the introduction of the very first regulatory acts. For example, the provisional staff regulations proposed for adoption by the General Assembly in 1946 as part of the first set of texts of the newly created United Nations Secretariat provides that “the Secretary-General shall establish administrative machinery for

⁶⁴ ILO Administrative Tribunal, *F. v. CCC*, Judgment No. 4499, 12 May 2022, consideration 13.

inquiry and appeal in disciplinary and termination cases. This machinery shall provide for staff participation.”⁶⁵

154. That provision is the prototype for many of the regulatory frameworks of the United Nations system organizations that are applied today, which provide for the establishment of administrative machinery with staff participation to advise the executive heads in case of appeals by staff members against disciplinary measures or administrative decisions.⁶⁶ The provision also highlights the original scope of the appeal mechanisms, which focused on aspects of staff management that were considered to have the highest and most severe impact on the employment relationship between the organization and its staff – involuntary separation from service (termination by the employer) and the consequences of wrongful conduct in the workplace. The scope of related mechanisms has evolved considerably, yet their format has been largely preserved.

155. **Peer review used in standard and specialized recourse mechanisms.** Historically, the peer review has been, and continues to be, the default modality for formal dispute resolution in most international organizations within and outside the United Nations system organizations. Even organizations that no longer retain the peer review as the core process of their standard internal appeal mechanism continue to use it in some, if not most, of their specialized recourse mechanisms (see chap. IV). Fourteen JIU participating organizations maintain peer review bodies as a central part of their standard internal appeal mechanisms, including 12 specialized agencies, as well as UNAIDS and WFP, which use the respective mechanisms of their co-sponsoring or “parent” organizations. For details see fig. III.

156. The traditional format of the advisory, fully internal, peer review has evolved over the years. As the shortcomings of the peer review became more evident over time, some of the organizations that use it gradually introduced changes to the traditional set-up in order to improve aspects that had sustained criticism in the past. Three JIU participating organizations (UNESCO, WHO and WIPO) decided to appoint external Chairs with legal qualifications either on a consultancy basis or, in the case of WHO, as a staff member recruited to an independent, time-limited post, open to both external and internal candidates. It was considered that hiring a Chair with a legal background would contribute to professionalizing the process and enable the other members of the peer review body to benefit from legal and procedural guidance, thereby enhancing its independence. For the purposes of the present report, the process in those three organizations is referred to as a “semi-professionalized” peer review.

157. Some organizations (FAO, IAEA, ICAO, ILO, WHO and WIPO) have sought to compensate for the absence of full-time members of the peer review bodies by assigning legally trained officials to assume the functions of impartial secretariats to support the peer review process. Three JIU participating organizations (ICAO, WHO and WIPO) not only recruited external Chairs with legal qualifications, but also created dedicated secretariats with similar qualifications that serve their peer review bodies. The organizations (ICAO and IMO) that have accepted the statute of the United Nations Appeals Tribunal as their sole instance of judicial review, were required to make additional changes to ensure compliance with it. Those changes included professionalization of and bestowing decision-making powers to their existing peer review bodies. For the purposes of the present report, the set-up in those two organizations is referred to as “hybrid” peer review.

158. As a result, there are three main peer review models in the United Nations system organizations:

(a) The “traditional” format of a fully internal peer review by a joint body acting in an advisory capacity to the executive head of the organization – in four JIU participating organizations, namely, IAEA, ITU, UNIDO and UNWTO;

(b) A more “progressive” format of semi-professionalized peer review in five organizations, which introduced adjustments to their set-up without eliminating the lay

⁶⁵ General Assembly resolution 13 (I), annex II, regulation 23.

⁶⁶ See for example, WHO Staff Regulations and Staff Rules, regulation 11.1; UNESCO Staff Regulations and Staff Rules, regulation 11.1; UNIDO Staff Regulations, regulation 12.1, among others.

element of staff participation from the peer review process. Three JIU participating organizations (UNESCO, WIPO and WHO (including UNAIDS)) appoint external Chairs with de facto legal qualifications to head their respective peer review bodies. However, two organizations (FAO (including WFP) and ILO), while having externalized their chairpersons, do not impose a specific legal profile or qualifications for them. In all those organizations, the peer review remains advisory in nature and culminates in a recommendation to the executive head of the respective organization. Once the executive head takes a final decision based on the recommendation of the peer review body, the staff member can proceed to seek external judicial review before the ILO Administrative Tribunal, if necessary;

(c) Lastly, a quasi-judicial category of “hybrid” peer review, where the process has been transformed into a quasi-judicial instance that renders judgment-like decisions that are binding on the executive head of the organization and directly appealable by both the staff member and the administration. This category includes organizations that were required to reconstitute their mechanisms in order to meet the requirements of the United Nations Administrative Tribunal, which they use as their only and last judicial instance. There are three JIU participating organizations (ICAO, IMO and UPU) that have hybrid peer review mechanisms in place.

Figure III.

Set-up of peer review bodies

Peer review body	Traditional (advisory)	Semi-professionalized (advisory)	Hybrid (decision-making)
FAO Appeals Committee (includes WFP)		√*	
IAEA Joint Appeals Board			
ICAO Appeals Board			√
ILO Joint Advisory Appeals Board			
IMO Staff Appeals Board		√	
ITU Appeal Board	√**		
UNESCO Appeals Board			√*
UNIDO Joint Appeals Board	√		
UNWTO Joint Appeals Committee	√		
UPU Appeals Committee			√
WHO Global Board of Appeal (includes UNAIDS)		√	
WIPO Appeal Board		√	

* The Chair is external to the organization (not a serving staff member) and without requirement for a specific legal profile or qualifications.

** In ITU, the Chair can be an active or a retired staff member.

Source: Prepared by JIU.

1. Traditional (advisory) peer review

159. **Only four organizations maintain the traditional, fully internal peer review.** Peer review in its traditional form is a fully internal process performed exclusively by staff members who volunteer their time and serve in a personal and advisory capacity to assist the executive head in making a final decision. This type of peer review is still used in four JIU participating organizations, IAEA, ITU, UNIDO and UNWTO. In these organizations, the set-up, powers and process of the peer review have evolved little over time and the extent to which the respective processes have caught up with developments observed in other organizations of the United Nations system has been limited. Nonetheless, each organization

seems to have taken institutional efforts to keep its internal justice processes as current and responsive as it perceives to be commensurate with organizational needs.

160. **World Tourism Organization.** The internal appeal mechanism at UNWTO, an organization with a staff population of less than 100, is administered by a small team of officials who are spread across legal and human resources functions and who fulfil their internal justice duties on a part-time basis together with other corporate functions. There is no well-defined delineation of responsibilities between the two departments, which work closely together at all stages of appeal. The legal counsel assists human resources during the administrative review and the peer review stages, advises the executive head with regard to the recommendations of the UNWTO Joint Appeals Committee, and provides procedural guidance to the secretariat function of the Appeals Committee. That function is currently assigned, on a part-time basis, to a staff member who also has programme coordination functions. A legal background is not a prerequisite for that role. In the absence of a dedicated training or induction process, newly designated members of the peer review body, as well as the secretary, rely on informal discussions with the legal counsel to familiarize themselves with the applicable law and their respective roles in the process.

161. **Structural challenges affecting the internal appeal function of the World Tourism Organization.** The set-up at UNWTO appears unavoidable given the size of the organization and its limited caseload. However, the internal appeal function is poorly segregated structurally; as a consequence, its objectivity and effectiveness are impacted. Several of the stakeholders interviewed in the course of the present review commented on the efforts made to respect the boundaries of each internal justice role and the difficulties encountered, at the same time, in fulfilling their respective functions with confidence in the absence of specific qualifications, full-fledged legal support or comprehensive procedural guidance in the form of a clearly defined regulatory framework. As a result, the peer review body had occasionally found that it did not have the competence to advise on a matter, which thus precluded, in practice, the substantive consideration of a case on procedural (receivability) grounds.⁶⁷

162. **World Tourism Organization regulatory framework on appeals warrants comprehensive review.** In the absence of legally trained support functions and terms of reference or more detailed rules of procedure for the peer review, the provisions in UNWTO Staff Regulations and Staff Rules guiding the work of the Joint Appeals Committee are general and leave room for ambiguity. The use of antiquated terms in parts of the appeals-related provisions of the staff regulations and rules⁶⁸ is further indication that the set-up and regulatory framework of internal recourse processes at UNWTO warrant comprehensive update, and efforts to identify a more robust solution would be timely. Based on the findings of the present review and for reasons of both a substantive and a managerial nature, **the Inspectors suggest that UNWTO explore options for outsourcing appeal-related functions, ideally to another United Nations organization with a similar internal appeals architecture.**

163. **International Atomic Energy Agency.** IAEA has maintained the traditional peer review set-up without making any significant changes to the appeal mechanisms in place over time. The Chair and the members of the Joint Appeals Board are internal, and a secretary with legal qualifications supports the Board on a part-time basis. The number of appeals that reach the tribunal stage is more or less proportionate to the share of IAEA's staff population among the staff of other organizations under the jurisdiction of the ILO Administrative Tribunal. Overall, the Inspectors found that the internal justice mechanisms at IAEA functioned reasonably well, with a few caveats that became apparent only on closer inspection.

⁶⁷ See, for example, ILO Administrative Tribunal, *G.-B. (No. 4) v. UNWTO*, Judgment No. 4454, 28 October 2021.

⁶⁸ For example, requests for administrative review referred to as "protests", a term that was, until recently, also employed by UNESCO, but now abandoned in favour of more neutral terminology that bears less confrontational connotations, or staff performance labelled as "efficiency", which is still used in the regulatory frameworks of FAO, IAEA, ICAO and UNIDO.

164. **Length of assignment of key internal justice roles.** At the time of the present review, the IAEA Joint Appeals Board was supported by a part-time secretary who had been assigned to the function since 2002. A similar situation was observed concerning other members of the peer review body. Despite the stipulation in the staff regulations and rules regarding renewable three-year terms, once appointed, the Chair and members designated by the executive head usually hold their respective functions indefinitely. Also, since there is no formal renewal of the list of candidates, in practice, unless a post becomes vacant by virtue of the departure of a member from the organization, the same staff members are rotated among panels.

165. **Limitations on rotation of staff-designated members.** The only post that may see some variation in its membership is that of the members elected directly by staff. The Staff Council organizes the elections, but is not involved in designating the members. The Inspectors consider this a good practice, as the role is meant to be impartial and not intended to represent the interests of the staff in the sense of a staff representation function.

166. However, rotation among the five members so elected is all but precluded by an explicit provision in the administrative manual governing joint bodies, which distinguishes between one member and four alternates, who are ranked according to the votes received. In practice, this provision is interpreted in such a way that the same member – the one with the most staff votes – is assigned to every panel, unless there is a specific reason, such as a potential conflict of interest, which would necessitate resorting to an alternate. It was noted also that there is no requirement or practice of issuing activity reports, nor any procedural guidance or training available to staff with regard to the peer review process. **The Inspectors suggest that IAEA review the set-up and functioning of its Joint Appeals Board as a matter of priority.**

167. **United Nations Industrial Development Organization.** With an elaborate, if dated, regulatory framework in place and decreasing human and financial resources available for internal reform efforts, the set-up at UNIDO closely resembles the that was in place at the United Nations Secretariat before the comprehensive administration of justice reform in 2009. In addition to the standard challenges associated with the traditional format of the peer review, there are several aspects of concern about the structure at UNIDO.

168. **Absence of informal avenues has an impact on caseload in the formal process.** UNIDO generates a comparable number of tribunal cases as IAEA (but its staff population is less than one third that of IAEA) and triple the number of cases emanating from WFP (whose staff population is double that of UNIDO). One aspect that must be highlighted in this regard, and which was corroborated in the interviews conducted, is the complete absence of avenues for informal resolution in the organization's regulatory and operational frameworks, hence the tendency to rely on the formal process even for cases that might otherwise be resolved by an amicable settlement. The formal appeal process is thus seen by many staff members as the only avenue for obtaining any form of relief, rather than as a last resort. There seems to be limited interest on the part of the administration for internal settlement or early intervention efforts to avoid escalation of work-related issues. **The Inspectors suggest that UNIDO establish informal avenues to provide for early settlement of work-related disputes and to prevent further escalation of conflicts.**

169. **Peer review mechanism ill-equipped and neglected.** UNIDO is the only organization in the United Nations system that does not have any apparent secretariat function in place for its peer review body. Although the regulatory framework provides for both a biannually rotating presiding officer (different from the Chair who has a two-year term) for the Joint Appeals Board and a secretary to support the presiding officer and the individual panels, neither function exists in an established sense. Reportedly, key staff who had held these functions in the past had never been formally replaced following periods of extended absence. Secretariat tasks are thus performed by different staff members for different panels on an ad hoc basis, with no legal or other support available to the members of the peer review body to guide their deliberations. The fully rotational nature of the secretariat also produced negative ripple effects, including no record of the body's deliberations being compiled on a regular basis, nor statistics being kept of the cases reviewed by the panels. Membership was also reported to be indefinite in practice, despite the definition of renewable terms in the staff regulations, similar to the situation at IAEA. Overall, the Inspectors found a lack of

stewardship of the peer review process at UNIDO, which has had an impact on its functioning. **The Inspectors suggest that UNIDO address, as soon as possible, the deficiencies identified regarding the stewardship of its peer review process, with a view to improving the internal administration of justice.**

170. **Delineation of responsibilities of the legal and human resources departments.** The Inspectors express concern that the roles and responsibilities of the human resources and legal departments at UNIDO were found not to be adequately delineated or respected in practice in the context of internal appeals. The human resources department is responsible for the administrative review and peer review stages of the internal appeal process and represents the administration. The legal office comes in to advise the executive head of the peer review body's recommendation. Once the executive head issues the final decision, the legal office is also called upon to defend it, as respondent, if the case proceeds to litigation before the ILO Administrative Tribunal.

171. While this set-up is not unusual for a specialized agency, there does not appear to be a clear segregation between the involvement of the human resources department and of the legal office in the advice to the executive head on the recommendation made by the peer review body regarding the contested administrative decision. As such, the line between the legal and human resources functions involvement is blurred, which leads to ambiguity about who has the final say in advising the executive head about the outcome of the peer review process. In the Inspectors' view, that role should rest with the organization's corporate legal adviser. **The Inspectors suggest that the corporate legal adviser should be responsible for advising the executive head of UNIDO of the peer review body's recommendation at that stage of the process.**

172. **Multilayered peer review and potentially obsolete processes.** An additional area for enhanced attention by UNIDO is the existence of a specialized peer review process for practically all subject matter. The Inspectors noted that some matters had been "suspended" for over a decade and thus the associated function has not been operational (e.g. the classification appeals committees), while none replace any part of the standard avenue for formal appeal. On the one hand, this has resulted in a variety of processes existing on paper but not in practice, which calls into question the value and purpose of their continued existence. On the other hand, it leads to the prolongation of processes and thus delays by requiring additional procedural steps, some – if not all – of which require multiple reviews by different panels of peers with a high risk of unnecessary duplication without any apparent added value. **The Inspectors suggest that UNIDO conduct a review of its specialized peer review processes, as soon as possible, with a view to streamlining them and, to the extent possible, aligning them with the standard avenue for formal appeals.**

173. **Departure from the recommendation of the peer review body.** The final decision of the executive head is the last step of the internal appeal process after the administrative review and the peer review, and is thus the most important step in the appeal process. It is this final decision that can be impugned before the tribunal. However, one challenge that is common to all the organizations using the peer review is the executive head's potential departure from the recommendation of the peer review body. Most of the organizations reviewed stated that occurrences of departure from the recommendations of peer review bodies were rare, however, the procedural possibility to do was essential for the proper discharge of the executive head's discretionary authority. That authority was felt to be particularly crucial when the recommendation of the peer review body might be based on a legal error or be inconsistent with jurisprudence or otherwise flawed, making it necessary to preserve an opportunity for correction prior to the tribunal stage. Notwithstanding the above, concerns were expressed by some interviewees that executive heads of organizations tended to follow the recommendation of the peer review body when it was to uphold the original decision.

174. **Strength of a less formalized peer review process.** One key strength of the peer review that was highlighted in the course of the present review, was its embedment in the cultural and regulatory context of the organization and the specific institutional knowledge that its members, chosen from among the staff, offered. Knowing better than "outsiders" what to look for and asking the right questions to reveal information that may not be apparent from

documentation alone fulfil an important fact-finding function that enriches the evidence base that tribunals can rely on at a later procedural stage.

175. **Strength of the relative informality of the process.** The fact that the peer review is performed by lay persons was underlined as a distinct advantage as it provides a more familiar setting, employs a less legalistic approach, and is effective in preventing an unnecessary escalation of disputes. Moreover, peer review bodies can rely on broad considerations when determining whether or not a particular decision was sound and the staff member concerned was treated in an equitable and fair manner. Some interviewees considered that this relative informality made the process more accessible for staff, regardless of their professional background or specific knowledge of the rules and procedural requirements. However, that same argument has also been used to restrict the possibility of legal representation during proceedings.

176. **Challenges of the traditional internal peer review.** Three challenges associated with the traditional peer review – that had already been identified by the Redesign Panel in relation to the pre-2009 justice system at the United Nations – were echoed by some interviewees in the organizations that maintain a comparable set-up today:

(a) **Duration and delays.** The first is the duration of proceedings, which often suffer delays. A key – although far from only – factor in this regard is the difficulty of assembling panels composed entirely of volunteers. Staff who volunteer to be on the peer review panels take on internal justice duties in addition to their regular functions, usually without formal release from the latter or compensation for the time and effort invested (except at WIPO, which grants members of panels up to two days of special leave with full pay at the end of their two-year term). Furthermore, the members may not always be available at the same time to review the cases, which makes convening panels and coordinating meetings a challenge, and significantly contributes to delays and prolongation of the process.

(b) **Conflicts of interest and bias.** The second is the high risk of conflicts of interest and potential bias in having a fully internal membership, in particular in smaller organizations, where most staff members have some sort of professional ties with each other. Selecting members of a panel who satisfy the requirement of impartiality is a challenge in such settings, and further exacerbates the difficulty of convening duly composed panels in a timely manner or even at all.

(c) **Professional competence.** The third is the lack of professionalization among members of the panel. Volunteer members of a peer review panel are not normally required to have any specific qualifications. The composition of the panels necessarily reflects the demographic of the organization's staff, and legally trained staff may not always volunteer to serve on them. At the same time, requiring that members of the panels have a legal background is not advisable, as it would aggravate the problem of identifying suitable members, who must not only be available but also free from perceived or actual conflicts of interest.

177. **Training or induction briefings for peer review bodies.** The Inspectors are of the view that training, or at least an induction briefing, could alleviate the adverse effects of the lack of legal support for the peer review process. The present review found that training for members of peer review bodies is available mostly in those organizations that have semi-professionalized their peer review bodies. In ILO, WIPO and WHO, the secretariats of the peer review bodies provide training for their members on a regular basis. Furthermore, ILO and WHO as well as FAO have briefing packages containing relevant documents to guide the members of their peer review bodies. ILO and WHO complement the packages with actual briefings provided by a resource person, while UNESCO and UNWTO provide training on an ad hoc, informal basis, but often not going beyond the distribution of rules and the possibility of discussing questions. At ITU, the Chair of the peer review body gives a briefing to the other members on an ad hoc basis. Based on these findings, the Inspectors are of the view that there is a dire need to expand the provision of guidance and induction briefings in this area.

178. **Training and rotation recommended.** In the Inspectors' view, the traditional, fully internal peer review that is performed and supported exclusively by staff volunteers on a non-compensated part-time basis is no longer tenable. Adjustments must be made to the

format in order for it to yield more consistent, timely and cost-efficient results. The Inspectors consider that training as well as replacement and rotation of members are important steps that would contribute to enhancing the credibility of the peer review process and alleviate the burden on each individual member. **The Inspectors suggest that the bare minimum of professionalization requires, as a matter of priority and, ideally, as an interim measure towards semi-professionalization, the provision of induction briefings and periodic training for members of the peer review bodies, preferably by legal professionals. They also suggest that measures be introduced to ensure regular renewal or replacement of the members of the peer review bodies, as well as sufficient rotation among them in their assignment to individual cases.**

2. Semi-professionalized (advisory) peer review

179. **Professionalizing the peer review.** The push for a degree of professionalization of the peer review process in many specialized agencies can be attributed to the realization that a process relying entirely on the goodwill and commitment of staff volunteers cannot deliver the justice sought by aggrieved staff in a sustainable manner over time. In response to the criticism levelled at the traditional peer review set-up, in terms of its competence, the timeliness of its processes, and the consistency and predictability of its outcomes, several organizations sought to professionalize either the membership of the peer review bodies – focusing primarily on the function of the Chair – or its secretariat support or both, with the aim of improving the overall functioning of the mechanism.

180. **Semi-professionalization through a legally trained Chair or secretariat.** A fully professionalized appeal mechanism would imply that all members of the appeal body are legally trained and exercise a quasi-judicial function, similar to the United Nations Dispute Tribunal as a first instance process composed entirely of judges. In contrast, a peer review mechanism is a lay body, which can be considered semi-professionalized if either the function of the Chair or that of the secretary is performed by a legally trained official or external expert hired for that purpose. The peer review set-up in most of the United Nations system organizations already reflects this criterion, including IAEA, which continues to apply the traditional form of internal peer review, and ICAO, IMO and UPU which apply a “hybrid” form of peer review.

181. **External Chair for semi-professionalized peer review body.** For the purposes of the present review, semi-professionalized (advisory) peer review bodies imply an element of externalization that sets them apart from the traditional, internal peer review bodies. IAEA is therefore excluded from this category because it does not have any external element in its set-up; neither does ITU – although the Chair of its peer review body can be a retired staff member (as such, external to the organization), but with no requirement of a legal background.

182. The set-up at FAO (and WFP) is included in the category of semi-professionalized (advisory) peer review given its quasi-external Chair and the availability of part-time secretariat support with legal qualifications, although its set-up reflects certain peculiarities that merit closer inspection. The peer review bodies of ICAO, IMO and UPU form a separate category as they are not advisory in nature. By default, the set-up in those organizations involves a high degree of professionalization owing to the decision-making powers granted to their peer review bodies and the binding nature of the outcome of the process on the executive heads, which eliminates the possibility of further managerial discretion.

183. Overall, arrangements concerning the functions of the Chair and the secretariat vary significantly across the organizations and are shown in figure IV below.

Figure IV.

Chair and secretariat arrangements in peer review bodies

Peer review bodies in the JIU participating organizations	Chair	Secretary/ Secretariat	Legal background	
			Chair	Secretary
FAO Appeals Committee (including WFP)	External	<i>Part time</i>	X	√
IAEA Joint Appeals Board	<i>Internal</i>	<i>Part time</i>	X	√
ICAO Appeals Board	External	<i>Part time</i>	√	√
ILO Joint Advisory Appeals Board	External	Full time	X	√
IMO Staff Appeals Board	External	<i>Part time</i>	√	X
ITU Appeal Board	<i>Internal*</i>	<i>Part time</i>	X	X
UNESCO Appeals Board	External	Full time	√	X
UNIDO Joint Appeals Board	<i>Internal</i>	<i>Part time</i>	X	X
UNWTO Joint Appeals Committee	<i>Internal</i>	<i>Part time</i>	X	X
UPU Appeals Committee	External	<i>Part time</i>	√	X
WHO Global Board of Appeal (including UNAIDS)	External**	Full time	√	√
WIPO Appeal Board	External	Full time	√	√

* The Chair of the ITU Appeal Board can be either an active or retired staff member.

** The Chair of the WHO Global Board of Appeal is recruited to an independent, time-limited post as a staff member of WHO.

Source: Prepared by JIU.

184. **Secretariats with legal expertise.** There are only six organizations whose peer review bodies are supported by legally trained secretaries or secretariats in practice (FAO, IAEA, ICAO, ILO, WHO and WIPO), although legal qualifications are not an explicit requirement of the function in some cases. In only three organizations, namely ILO, WHO and WIPO, the secretaries or secretariat staff serve on a full-time basis in that capacity and are required to be lawyers by training.

185. The other three organizations, FAO, IAEA and ICAO, have de facto legal experts assigned on a part-time basis as and when cases arise, and who are required to fulfil their appeal-related functions in addition to their regular duties. At FAO, the secretariat (and alternate) functions are performed by staff of the organization's Legal Office, similar to ICAO, where staff of the Legal Bureau act as secretary and alternate secretary of the Appeals Board in addition to their other legal duties. At IAEA, the secretary of the Joint Appeals Board is legally trained, while the alternate secretary is not.

186. **Secretariats without legal expertise.** In comparison, the peer review bodies of IMO, ITU, UNESCO, UNIDO, UNWTO and UPU are not supported by secretaries with legal qualifications. While UNESCO has a staff member assigned to the function on a full-time basis, the secretaries supporting the peer review bodies in the other organizations do so in addition to their regular functions. For example, at ITU, the secretariat function is performed part time by the administrative assistant of the Ethics Office; at UPU, the secretariat duties are performed by a human resources assistant; and at UNWTO, a programme coordinator who also serves as the oversight focal point for the organization.

187. Alternative arrangements apply at IMO, where two case administrators are appointed biennially and they alternate in supporting individual review panels during that period. They are required to be "qualified staff members of highest integrity"⁶⁹ and appointed jointly by the executive head and the staff representative body. At UNIDO, different staff members

⁶⁹ IMO Staff Regulations and Rules, rule 111.1 (e bis), introduced in September 2022.

provide secretariat support to individual review panels on a rotational basis, similar to the members of the panels who participate in the deliberations. Although the regulatory framework provides for the position of secretary to support the peer review body (rather than individual review panels), it appears that none exist in practice.

188. **Secretariat function required by most regulatory frameworks.** While all regulatory frameworks of the 12 organizations using the peer review mechanism detail the function and modalities of appointing the Chair (and members) of their peer review bodies, most also contain explicit provisions on the role, or existence, of a secretariat function. The staff rules of 10 organizations expressly provide for the appointment of a secretary to support the appeal mechanism.

189. Of the two others, the staff rules of ICAO only refer implicitly to a secretariat function, stating that certain documents must be submitted to the secretary; while, until recently, the staff rules of IMO did not contain any reference to a secretariat function at all. However, that lacuna was addressed in a recent amendment that came into effect in September 2022 and which provides for the biennial appointment of two case administrators.

190. In practice, every organization has found ways to provide secretariat support akin to a registry function to their peer review bodies, with two thirds of the organizations relying on members of their staff to provide such support on a part-time basis. With some exceptions, these appeals-related functions are not systematically reflected in the staff members' job descriptions or performance appraisal documents, with the added complexity that they often have dual reporting lines – to their line managers with respect to their full-time functions, and to the Chairs of the respective peer review bodies for the appeal-related functions.

191. **Complementarity of the Chair and secretariat functions.** While the role of a secretariat is fundamentally different from that of a Chair, it is nonetheless complementary. While Chairs are called upon to lead the substantive work of the peer review bodies, guide their deliberations, including the assessment of evidence presented to them, and ultimately bear the responsibility for the findings, conclusions and recommendations relating to the appeal, secretaries do not participate in deliberations, nor do they have voting rights or any stake in the substance and outcome of appeals.

192. **Significant legal dimension of secretariat function.** Secretaries are often required to act as custodians of the procedural aspects of processes, such as the observance of time limits, the orderly and timely exchange of the parties' submissions, ensuring transparency in arranging for equal accessibility of documents to all sides, arranging meetings and hearings, coordinating and overseeing the establishment of individual review panels, including ensuring respect for conflict of interest safeguards and confidentiality requirements. They therefore fulfil an indispensable support function with a significant legal dimension. Their ability to discharge such functions, while not necessarily requiring legal expertise, would certainly be greatly facilitated by legal training.

193. At the same time, where the Chair is external and has legal qualifications, the demands on the secretariat to provide neutral and impartial legal or procedural guidance to the members of the peer review body and to individual review panels will naturally be lower. Conversely, where the Chair does not have legal qualifications, the demands on the secretaries' ability to navigate as well as competently steer the lay members of a panel, including the Chair, through the procedural aspects of a case increase.

194. **Either a Chair or a secretary with legal background is indispensable.** Based on the findings of the present review, the Inspectors consider it important to ensure the availability of legal expertise to each individual review panel. That is best achieved by requiring relevant qualifications as part of the profile of either the Chair or the secretary – or ideally both – considering their complementary roles.

195. The state of the functions of Chair and secretary in organizations that use peer review as their standard first-instance mechanism of the internal appeal process is outlined below:

(a) Only two organizations – WHO, including UNAIDS, and WIPO – have professionalized their peer review mechanisms by employing external Chairs with a legal background, who are also supported by full-time, legally trained secretaries or secretariat personnel. This set-up provides for independence of the peer review process, and assurance

that the related activities will be competently and efficiently dispatched. It also reflects the investment that these organizations and their member States were prepared to make to equip their standard internal appeal mechanism with adequate (full-time and legally trained) human resources. Such a set-up may not be attainable in equal measure across all the organizations.

(b) Other organizations also have fully external Chairs with a legal background, namely, ICAO, IMO, UNESCO and UPU; however, only ICAO provides secretariat support with legally trained staff, albeit on a part-time basis only, owing to its very limited case load. UNESCO provides full-time secretariat support to its peer review mechanism, but not through legally trained staff, while IMO and UPU also provide part-time secretariat support without specific legal training. As long as the Chair of the peer review body possesses legal qualifications, in the Inspectors' view, this set-up can be considered adequate and merits categorization as a "semi-professionalized" mechanism.

(c) The Chairs of the peer review bodies at ILO and FAO (including WFP) are neither actively serving staff (and thus not internal) nor legal experts specifically hired to exercise the function of Chair. To counterbalance the absence of the requirement for legal qualifications, their secretariat support is provided by legally trained staff (on a full-time and part-time basis, respectively). At ITU, neither the Chair nor the secretary is required to be legally trained, and secretariat support is provided on a part-time basis.

(d) Among the three organizations whose Chairs are internal to the organization, IAEA provides legal support through a part-time secretary, while the peer review bodies of UNIDO and UNWTO currently do not have legal expertise at their disposal; neither their Chairs nor their part-time secretariats have legal training.

196. In conclusion, the review found that most of the organizations using the peer review as part of their standard internal appeal mechanisms had upgraded or were in the process of upgrading their set-up in order to introduce an element of professionalization. The Inspectors consider such professionalization as an important and promising development across the United Nations system, one that is worth pursuing further without eliminating the lay element of the peer review. At the same time, it was clear that not all the organizations had achieved comparable degrees of professionalization, and some exhibited less advanced attempts to do so than others. **Based on the findings of the present review, the Inspectors suggest that organizations that use the peer review as part of their standard internal appeal mechanisms examine the possibility of professionalizing their review bodies.**

197. The Inspectors are concerned that neither the Chair of the Appeal Board nor the part-time secretariat function at ITU is required to have legal qualifications, although the work of the peer review body in its current composition was considered professional by both the organization's staff and administration. However, **to ensure that the internal appeal process can deliver the justice sought by staff in terms of competence and consistency, the Inspectors suggest that ITU introduce the requirement of legal expertise for either the Chair or the secretariat function of its peer review body.**

198. FAO has a unique practice whereby its Council appoints the Chair and two alternate Chairs of the Appeals Committee, as stipulated in the staff regulations. Since the establishment of the Appeals Committee in 1949, the Chair and two alternate Chairs have been appointed from among accredited representatives of the member nations of FAO, although there is no such requirement in the staff regulations. Regarding the qualifications and professional experience of candidates for Chair and alternate Chairs of the Appeals Committee, no specific requirements were found in the relevant legal framework. Furthermore, the provisions relevant for the Appeals Committee do not spell out which specific professional experience and competencies are required for the positions.

199. The review found that FAO considers the long-standing practice of appointing representatives of its member nations as Chairs and alternate Chairs of the Appeals Committee an ingrained feature of its peer review mechanism. However, the Inspectors express reservations regarding this practice, which involves representatives of the member nations of FAO in internal administrative processes, such as the handling of internal appeals made by individual staff members. This practice raises questions regarding the independence and segregation of duties between the governing body and the executive management of the organization. **Therefore, the Inspectors suggest that the practice of appointing**

representatives of its member nations to the FAO Appeals Committee be discontinued and that the organization consider making changes to the functions of the Chair and the alternate Chairs with a view to avoiding any actual or perceived conflict of interest between the governing body's oversight role and the management of the organization.

200. The Inspectors consider the secretariat support function to be a fundamental component of the efficient, professional and impartial functioning of the peer review mechanism in the internal appeal process. The importance of this role is generally recognized by the legislative organs and governing bodies of the organizations. As such, explicit provisions are set out in the regulatory frameworks of most of the organizations, stipulating that dedicated secretariat support should be at the disposal of the appeal bodies.

201. The following recommendation is expected to enhance transparency and accountability:

Recommendation 3

The executive heads of United Nations system organizations should, where applicable and by the end of 2025, establish terms of reference or similar instruments for the Chairs and secretaries of their peer review bodies that set out the required qualifications, including legal expertise, their functions and reporting lines, in order to provide the safeguards necessary for their structural independence and impartiality.

3. Hybrid peer review (with decision-making powers)

202. **Decision-making authority relinquished to quasi-judicial body.** The feature that distinguishes the hybrid peer review from other forms of the mechanism is the binding nature of the outcome of its deliberations owing to the decision-making power bestowed upon the body performing the review. Under this modality, authority to conclusively determine a contentious matter on behalf of the organization is relinquished by the executive head and transferred to another internal body composed of peers from among its staff, and typically chaired by an external expert acting in a quasi-judicial capacity. While the decision taken by such a body is binding on the executive head of the organization as well as the staff member, it also permits appeal against it by either party before an external tribunal. Since the executive head no longer has discretionary authority to depart from the recommendation of the peer review body, a high degree of professionalization is needed to guarantee the soundness of the decision taken and the strength of the associated procedural safeguards. As such, organizations that have opted for the hybrid peer review have also professionalized their processes significantly.

203. **Appeals against judgments not executive decisions.** An important difference between the statutes of the United Nations Appeals Tribunal and the ILO Administrative Tribunal lies in the object of the appeal submitted to it. The appeals that the ILO Administrative Tribunal is called upon to adjudicate are directed against executive decisions, not judicial decisions. In accordance with its statute, the ILO Administrative Tribunal is competent to hear appeals challenging a "final" decision, that is, a decision taken by an authority,⁷⁰ including the executive head of an organization, after consideration of advice from an internal review body. As such, the object of the appeal is not the conclusion of the deliberations of the internal review body, but rather the decision taken by the executive head subsequent to the conclusion. With regard to the United Nations Appeals Tribunal, the object of the appeal is essentially a judgment. This is a key feature of the Appeals Tribunal that is not mirrored by any comparable provision in the statute of the ILO Administrative Tribunal, namely, its competence to adjudicate appeals by the administration, rather than only by staff, against the outcome of the first instance process.⁷¹ Such an avenue of appeal by the

⁷⁰ A decision can be challenged even if it was taken by an inter-governmental body, see ILO Administrative Tribunal, *B. v. Organisation for the Prohibition of Chemical Weapons (OPCW)*, Judgment No. 2232; *G. (No. 3) v. UPU*, Judgment No. 3928; and *G. (No. 3) v. UPU*, Judgment No. 4077.

⁷¹ Statute of the United Nations Appeals Tribunal, art. 2 (2).

administration is rendered moot where the first instance process is advisory in nature and the final decision rests with the executive head of the organization, that is, the administration itself.

204. Major shift in the jurisprudence of the United Nations Appeals Tribunal concerning the neutral first instance process. In 2019, the United Nations Appeals Tribunal declined to exercise its appellate jurisdiction in certain cases owing to the absence of a neutral first instance process in the organizations against which appeals had been filed. It was noted that the issue would arise only for organizations that recognized the jurisdiction of the Appeals Tribunal and had concluded separate agreements to that effect. In practice, it has affected four JIU participating organizations, namely ICAO, IMO, UPU and WMO.

205. Landmark judgments that explained the issue. In a series of landmark judgments issued in its October 2019 session and subsequently,⁷² the United Nations Appeals Tribunal took issue with the set-up of advisory peer review processes, which it deemed incompatible with the requirements of its statute. The Tribunal found that “even if what was issued by the [peer review body] was a ‘decision’, it was nevertheless only advisory or recommendatory. It gave advice to the [executive head], who cannot himself be regarded as a neutral part of the process. That is because he is both the employer’s representative and the original decision-maker appealed against”.⁷³ Elaborating the argument in another case, the Tribunal held that “[a]lthough there was such a [neutral first instance] process on the way to making a decision [...], the decision [...] was not a part of that neutral process. [...] Although it did not happen in this case, it has in others that the opinion or recommendation of the neutral body in favour of the staff member is not accepted by the [organization]. That possibility exists under the [organization’s] regime and illustrates the fundamental flaw in the process adopted”.⁷⁴

206. Incompatibility of the advisory peer review with the requirements of the United Nations Appeals Tribunal confirmed. The Tribunal’s shift in jurisprudence also confronted organizations (among them ICAO and IMO), which had taken the decision not to adopt the full-fledged two-tier judicial system of administration of justice early on, with the question as to whether the advisory processes they continued to use as their standard internal appeal mechanisms were compatible with the much more restricted appellate review carried out by the United Nations Appeals Tribunal than that of its predecessor, the United Nations Administrative Tribunal. In the wake of the Appeal Tribunal’s latest series of judgments in its March 2022 session, the matter can now be considered settled.⁷⁵ It was confirmed that internal justice systems using advisory peer review mechanisms were not compatible with the United Nations Appeals Tribunal as a sole judicial instance.

207. Options for organizations using the advisory peer review mechanism. That determination left the organizations using such mechanisms with three options (see fig. V). Option 1: the advisory peer review mechanism must be reconstituted as a quasi-judicial first instance body that delivers judgment-like final decisions that can be appealed by both parties – the staff member and the administration. Option 2: the advisory mechanism must be abolished and replaced with an actual first instance tribunal of independent judges, such as the United Nations Dispute Tribunal or UNRWA Dispute Tribunal. Option 3: the peer review mechanism must be placed under the jurisdiction of a judicial instance that is less limited in its scope of review and that does not provide or require an avenue of appeal for the original decision maker, who retains the final decision following the internal process, but must accept to surrender the ultimate authority over the settlement of an internal dispute to an external judicial instance such as the ILO Administrative Tribunal.

⁷² United Nations Appeals Tribunal, with regard to IMO: *Spinardi*, Judgment No. 2019-UNAT-957, *Sheffer*, Judgment No. 2019-UNAT-949, *Dispert and Hoe*, Judgment No. 2019-UNAT-958, *Fogarty*, Judgment No. 2021-UNAT-1117; with regard to WMO: *Rolli*, Judgment No. 2019-UNAT-952; with regard to ICAO: *Hefberger*, Judgment No. 2020-UNAT-1012; with regard to the International Seabed Authority: *Webster*, Judgment No. 2020-UNAT-983; and with regard to the International Tribunal for the Law of the Sea: *Savado*, Judgment No. 2021-UNAT-1123.

⁷³ United Nations Appeals Tribunal, *Spinardi*, Judgment No. 2019-UNAT-957, para. 26.

⁷⁴ United Nations Appeals Tribunal, *Hefberger*, Judgment No. 2020-UNAT-1012, para. 13.

⁷⁵ United Nations Appeals Tribunal, with regard to IFAD: *Ajay Sud*, Judgment No. 2022-UNAT-1217.

Figure V.

Approach taken by specialized agencies that recognize the jurisdiction of the United Nations Appeals Tribunal

Organization	Recognition of the jurisdiction of		Lead UNAT judgments* on “neutral first instance process”	Approach taken	Revised internal arrangements
	ILOAT	UNAT			
ICAO	-	July 2009	<i>Hefberger</i> (2020-UNAT-1012)	Option 1	May 2021
IMO	-	July 2009	<i>Spinardi</i> (2019-UNAT-957) <i>Fogarty</i> (2021-UNAT-1117)	Option 1	July 2022
UPU	1965	May 2021	No cases as at November 2022	Option 1 (Until 2021 Option 3)	February 2022
WMO	1953	July 2017	<i>Rolli</i> (2019-UNAT-952) <i>Abrate et al.</i> (2020-UNAT-1031)	Option 2 (Until 2017 Option 3)	January 2020

* Initial case and resolution, where applicable.

Source: Prepared by JIU.

208. **Hybrid, non-advisory peer review mechanism (option 1).** The result of the almost three-year period of uncertainty between the first set of judgments regarding the issue of a “neutral first instance process” delivered by the United Nations Appeals Tribunal in its October 2019 session and those of the March 2022 session, during which the Tribunal’s jurisprudence evolved, was a new form of hybrid, internal pre-tribunal justice mechanism constituted as quasi-judicial peer review bodies that were no longer advisory in nature. The decision-making powers bestowed upon these peer review mechanisms removed the “final decisions” from the purview and authority of the respective executive heads, and necessitated further investments to upgrade their competence and independence, build their capacities and strengthen the procedural safeguards of the processes. That is the situation at ICAO and IMO. Having accepted the jurisdiction of the United Nations Appeals Tribunal in 2021, UPU has been confronted with the same issue.

209. **Neutral first instance process precipitated new generation of peer review.** Among the JIU participating organizations, three specialized agencies – ICAO, IMO and UPU – have enshrined the hybrid peer review format in their regulatory frameworks.⁷⁶ For all three organizations, the need to adjust their internal appeal procedures was precipitated by the jurisprudence developed, as of 2019, by their sole judicial instance, the United Nations Appeals Tribunal, regarding the requirement contained in its statute to exercise appellate jurisdiction over the outcome of a neutral first instance process. In the wake of that jurisprudence, a new generation of peer review bodies was conceived to satisfy the condition of administering a process that included a written record and a written decision providing reasons, facts and law – in other words, a process for which the outcome was a decision – rather than a recommendation of a course of action to be taken by an executive decision-making authority.

210. **Arrangements instituted in response.** ICAO, IMO and WMO had been explicitly admonished by the United Nations Appeals Tribunal in a series of judgments for the absence

⁷⁶ In the wider United Nations system, IFAD and the International Tribunal for the Law of the Sea have also adopted hybrid peer review set-up as a result of the same jurisdictional developments of the United Nations Appeals Tribunal.

of a neutral first instance process in their regulatory frameworks. In response, WMO, which had switched from the jurisdiction of the ILO Administrative Tribunal to that of the United Nations Appeals Tribunal in 2017, decided to accept the United Nations Dispute Tribunal as its first instance tribunal. Other organizations, including ICAO, IMO and UPU – the latter pre-emptively, in anticipation of being compelled to do so by the Tribunal – chose to confer decision-making powers upon their existing peer review bodies, and to make adjustments to their internal appeal frameworks to secure compliance with the statute of the United Nations Appeals Tribunal.

211. International Civil Aviation Organization and International Maritime Organization. Prior to the reform of the administration of justice in 2009, ICAO and IMO as well as other specialized agencies had already recognized the jurisdiction of the United Nations Administrative Tribunal (the predecessor of the United Nations Appeals Tribunal). Therefore, when the tribunal was abolished in December 2009, they had to decide whether to continue with the system, replace it or switch to the jurisdiction of another tribunal. ICAO and IMO chose to accept the jurisdiction of the United Nations Appeals Tribunal, but opted not to recognize that of the United Nations Dispute Tribunal. Initially, both organizations retained their respective peer review bodies, namely, the Advisory Joint Appeals Board at ICAO, and the Staff Appeals Board at IMO.

212. Following the series of judgments handed down by the United Nations Appeals Tribunal in 2019, ICAO moved to reconstitute its Advisory Joint Appeals Board as an Appeals Board, eliminating the advisory element and giving it decision-making powers. IMO did the same, albeit initially through the institution of interim measures, whereby the executive head sought to suspend the application of staff rules relating to the advisory nature of the internal appeal process, and at the same time decided to hire an external expert as Chair of the peer review body, which was granted interim decision-making powers. At the same time, IMO initiated a comprehensive review of its staff regulations and rules, which was still under way at the time of drafting the present report.

213. Universal Postal Union. UPU switched to the United Nations Appeals Tribunal in 2021 and was therefore spared an explicit statement of non-compliance by the Tribunal. Having had time to note the Tribunal’s jurisprudence in relation to other organizations and take action to revise its internal appeals framework by granting its Appeals Committee decision-making powers, the compliance of its peer review set-up with the Tribunal’s statute has yet to be tested. In contrast to its Disciplinary Committee, which was retained with the option provided for in the staff rules to appoint an internal or external Chair to lead it eventually, UPU decided to professionalize its Appeals Committee by appointing an external independent jurist with relevant experience as Chair, in 2022.

214. Framework at the International Civil Aviation Organization replete with good practices. A very elaborate, comprehensive set of rules of procedure was adopted by ICAO, which very closely resembles a judicial process. It contains detailed evidentiary rules, provisions for all procedural eventualities and guidance on how to deal with them, including some of the most progressive, well-articulated and balanced safeguards for the parties’ “equality of arms”, the confidentiality of proceedings, and other aspects, which warrant emulation by other organizations. The framework also enshrines the inquisitorial principle in the mode of operation of the peer review body, conferring it with the responsibility of elucidating the truth and providing guidance to the parties appearing before it on the necessary input and evidence.

215. Resource requirements likely augmented by increased formality of process. One drawback of the framework at ICAO, which comprises 78 rules, is the dramatic formalization of the process, which is now conducted by judges of the former administrative tribunal as external Chairs of the peer review body. The new framework is unique in that it accords the Chair full powers to take a decision practically unilaterally; the members (peers) of the body do not have voting rights and their role is explicitly to assist the Chair in an advisory capacity. The enhanced formality of the process has placed a heavy burden on the part-time secretariat of the reconstituted Appeals Board, which is managed by legal experts in the organization’s legal affairs bureau.

216. **Fine-tuning is necessary.** IMO and UPU have also seized the opportunity to amend their provisions and address some structural weaknesses and lacunae in their processes by upgrading their systems. One notable change is the explicit provision in IMO's staff rules for the appointment of two qualified staff members on a biennial basis to act as case administrators to assist the Staff Appeals Board. For its part, UPU has assigned the secretariat function of its hybrid mechanism to the human resources function. In the Inspectors' view, that may not prove to be the most conducive set-up for the impartial dispatch of the function. Examples of necessary fine-tuning will no doubt continue to emerge as the frameworks mature over time.

217. **Ongoing evolution of internal justice mechanisms.** While it can be considered that the big hurdle of achieving compliance with the jurisdictional requirements of the organizations' tribunal of choice has been overcome, the institutional arrangements and the practices of the newly constituted peer review bodies will continue to evolve in the coming years and they will need to adjust their operations in the light of more predictable demand and accumulated experience. After considerable turmoil in the internal justice landscape over the past few years – in particular for the staff of ICAO and IMO, among others, seeking justice from their respective employers and left stranded for some time while the organizations sought solutions to jurisdictional problems that they had not anticipated – there is reason to be confident about a more stable, more responsive and more adequately functioning internal appeal process emerging in those organizations. Despite the variety of peer review and internal justice modalities now available to staff of the United Nations system organizations, the perfect system is arguably still awaiting discovery.

D. Special cases

218. **United Nations Relief and Works Agency for Palestine Refugees in the Near East.** UNRWA, as ICAO and IMO, did not adopt the full "package" of the 2009 reform. Instead, it accepted only the United Nations Appeals Tribunal as its appellate instance, but established its own internal justice process modelled on the United Nations example. In addition to the UNRWA Dispute Tribunal as the first (judicial) instance, it set up the Legal Office of Staff Assistance (LOSA), which provides free legal assistance and representation services to UNRWA staff. It also adopted a "decision review" process in lieu of a management evaluation, which is more akin to the administrative review process practiced by most of the specialized agencies.

219. In these respects, the UNRWA model differs from that of the other funds and programmes and the specialized agencies. The decision not to join the United Nations Dispute Tribunal was mainly due to the high cost it would have generated for UNRWA. The United Nations Dispute Tribunal is funded mostly through contributions from the organizations, calculated on the basis of their staff complement. With a total of some 29,000 staff members, UNRWA would have been the largest contributor to the Tribunal.

220. **Serious challenges regarding administration of justice.** Based on the findings of the desk review and the data analysis, and confirmed by the interviews conducted, UNRWA is facing some serious challenges relating to internal appeals at both the pre-tribunal and tribunal levels. At the time of the present review, the Agency had started to introduce changes, for which it had received additional funding from its donors in support of its Dispute Tribunal, and had created new posts in the Department of Internal Oversight Services and the Ethics Office, as well as an ombudsman function. Furthermore, management had initiated changes in the reporting lines and in the procedure for requesting a decision review, and its Internal Justice Committee had commissioned an external review of the administration of justice in UNRWA, which was concluded in April 2021.

221. **Main findings of an external review of the administration of justice system.** The main findings of that external review,⁷⁷ carried out by a consultant, were that UNRWA has an old-fashioned, over-legalized internal dispute resolution system, with too many cases

⁷⁷ Chis de Cooker, *Review of the administration of justice system in the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA")* (Prévessin, 2021).

going before the formal judicial system. The report contains a number of recommendations aiming at improving the system, such as the creation of staff advisers to support the newly created ombudsman function, the restructuring and professionalization of the procedure for requesting a decision review, and the creation of an independent Office for Administration of Justice, among others. In response to the recommendations of the report, UNRWA management has taken a number of steps.

222. **Handling of requests for decision review.** The present review found that, over the past few years, the process by which reviews of contested decisions have been handled at UNRWA has changed several times. Prior to December 2019, the review of contested administrative decisions was carried out by the Deputy Commissioner-General. In December 2019, General Staff Circular No. 05/2019 on delegation of authority was issued (in the absence of a Deputy Commissioner-General), and stated that contested administrative decisions taken by the Field Office Director in respect of field office staff would be reviewed by the Director of Human Resources; and those of headquarters staff or where any conflict of interest obtruded, by the Director of Health.

223. The latest General Staff Circular on the subject, which was issued in June 2022, announced that the Deputy Commissioner-General would retain the authority to carry out decision reviews pursuant to Area staff rule 111.2 (4) (A) and International staff rule 11.2 (d) (i), thereby reverting to the original mechanism for handling requests for decision review and the related decision-making.

224. **Role of the Department of Legal Affairs.** Since quite recently, the Department of Legal Affairs had been supporting the Deputy Commissioner-General in reviewing and making decisions on contested administrative decisions. The fact that UNRWA Field Legal Offices have only a hypothetical, not a formal, reporting line to the Department of Legal Affairs poses a challenge, as they are assisting the Field Office Directors in making administrative decisions. In order to improve the internal appeal process, the Department of Legal Affairs proposed that an “administrative revision and dispute intervention unit” be established to provide advice on pre-tribunal matters, but not to represent the Agency at the tribunal level. **The Inspectors support the proposal and suggest establishing such a unit, as, in their view, it would enhance the internal administration of justice in the Agency.**

225. **The Internal Justice Committee of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.** The UNRWA Internal Justice Committee was created in 2010 and has seven members: the directors of the Legal Affairs Department and the Human Resources department; one international and one area staff representative; and three external jurists. Although it was established more than 10 years ago, the Committee has only recently established its draft terms of reference and rules of procedure. No activity reports have been produced to date, although this is stipulated clearly in the International and Area staff rules. **The Inspectors suggest, in order to make the UNRWA Internal Justice Committee a more viable and accountable body, to address the lacunae regarding its responsibilities identified in the course of the present review.**

226. **The need for more consistency and efficiency in internal appeal processes.** The overall view in UNRWA, and which was confirmed by the findings of the present review, is that the pre-tribunal appeal process needs to be more consistent and efficient as too many cases are going before the UNRWA Dispute Tribunal and the United Nations Appeals Tribunal, both of which are very costly.⁷⁸ Both staff and management recognize that the Agency has a litigious culture. However, all the stakeholders interviewed stated that UNRWA was moving in the right direction regarding the functioning of its administration of justice system and that changes and improvements were being made to address the large number of requests for decision review and cases that are taken before the UNRWA Dispute Tribunal. The Inspectors share the widely held opinion that, in addition to revising its procedures, it is important that the Agency improve outreach and communication, translation services, and inclusivity and accessibility to internal justice.

⁷⁸ In the period from 2018 to 2021, UNRWA staff appealed 290 cases before the UNRWA Dispute Tribunal, and 76 cases before the United Nations Appeals Tribunal.

227. **World Meteorological Organization: the only specialized agency subscribing to the full United Nations internal justice “package”.** The internal justice framework of WMO differs from that of other United Nations system organizations in two key aspects. First, it is the only specialized agency that has adopted the entire “package” of the United Nations two-tier judicial system, comprising the United Nations Dispute Tribunal as first instance tribunal (since 2020) and the United Nations Appeals Tribunal as the appellate instance (since 2009). It is also the only specialized agency whose staff have access to the services of the Office of the Staff Legal Assistance, pursuant to an agreement concluded with the United Nations Secretariat specifically for this purpose, as well as to the United Nations Ombudsman and Mediation Services.

228. Second, WMO applies the management evaluation as the first step in its standard internal appeal process, which is outsourced to UNICEF under an inter-agency agreement (“UN Agency to UN Agency exchange of letters”). The arrangement is unique across the United Nations system regarding formal internal justice processes. The agreement, signed in October 2021, came into effect retroactively on 1 July 2021 for an initial period of one year, and has since been extended for a three-year period until 30 June 2025.

229. **Advantages: cost-efficiency and objectivity safeguards.** The arrangement has two key advantages for WMO. On the one hand, by using the existing mechanisms of another United Nations system organization, WMO benefits from significant cost efficiencies considering (the Inspectors’ calculation of) the average cost per case system-wide, which amounts to an average of \$8,545. UNICEF charges \$5,000 per case and costs are generated only when an actual request for management evaluation is filed. That eliminates the necessity for WMO to maintain a dedicated function, especially since it has a comparatively small staff population (326 in 2021)⁷⁹ and its caseload is very limited. Therefore, the outsourcing arrangement seems an efficient solution. The second major benefit of this arrangement is that it provides safeguards of objectivity owing to its complete segregation and thus quasi-independence from WMO management.

230. **Perception of lack of ownership of resolution efforts and quicker escalation.** However, one point that was highlighted in the course of the present review was the perception by WMO staff that, by outsourcing the handling of its workplace disputes the organization is displacing the problem and avoiding dealing with them internally. It was perceived that outsourcing contributed to a quicker escalation of already overly “legalized” workplace disputes and further reduced opportunities for informal resolution, which had already been perceived as lacking before the internal justice set-up was revised in 2020. The gap was not considered to have been adequately closed by the procuring of the mediation services of the United Nations Ombudsman and Mediation Services.

231. **Entrusting the internal justice function to an external entity should be matched with enhanced efforts to manage non-legal aspects of a dispute internally.** The management evaluation function is, by its nature, intended to provide an opportunity for internal correction and de-escalation. Even if outsourcing the appeal process is intended to ensure that it is managed as objectively as possible, the matter under appeal remains inherently administrative and thus internal. Outsourcing of the appeal process may be an efficient solution for small organizations, as it avoids conflict of interest situations and enhances the confidentiality and neutrality of the process. However, managerial accountability requires commitment to enhanced internal engagement in informal resolution and prevention efforts, so that outsourcing does not give the impression that the aim is the disposal of the dispute and not the resolution of the issue.

232. **International Maritime Organization: a four-step appeal process with unique features.** Irrespective of the issues regarding the jurisdiction of the United Nations Appeals Tribunal over its appeals in final instance, the standard internal appeal process at IMO has some unique features which, in the Inspectors’ view, merit consideration. IMO is the only JIU participating organization that has made it mandatory for staff to attempt an informal resolution of an issue, in the form of a dialogue, before resorting to a formal means of redress.

⁷⁹ WMO Executive Council, Human resources report, EC-75/INF. 6.4 (1), (Geneva, 20–24 June 2022), p. 2.

It is the only organization that has a four-step appeal process, including the mandatory dialogue; a management evaluation; a non-advisory peer review by its Staff Appeals Board; and final appeal before the United Nations Appeals Tribunal.

233. **Initial step: informal resolution through dialogue.** In lieu of an administrative review or management evaluation in the form applied in other United Nations system organizations, the first and mandatory formal step in the standard internal appeal process at IMO starts with a dialogue. If the dialogue proves successful within the designated period of a maximum of four weeks, a written settlement agreement, precluding further appeal is signed by both parties; if unsuccessful, the staff member can proceed to request a management evaluation or appeal directly to the Staff Appeals Board, in certain cases.

234. **Strengths and weaknesses of mandatory informal resolution.** The concept of forcing the parties to the table is controversial in itself and contradicts the well-recognized principle of voluntariness of informal dispute resolution processes. There are also matters that may not lend themselves to informal resolution, in particular those in which alleged misconduct is involved. In the case of IMO, given the flexibilities built into the dialogue phase, including the low threshold requirement of having attempted an amicable resolution, the risk that cases would be unnecessarily caught in a procedural quagmire or compromise the parties' rights, positions or liberty to engage in a formal process seems in the Inspectors' view to be appropriately mitigated, if not minimized, which makes this feature a good model to follow.

235. **Informal resolution model at the International Maritime Organization merits system-wide consideration.** Both management and staff representatives at IMO reported that, in practice, the dialogue is a positive experience. The requirement to attempt an informal resolution, with the administration driving the process within strict temporal limits, has facilitated reaching settlements and satisfactory outcomes for both parties that could have otherwise escalated quickly and unnecessarily. However, cases for which an informal resolution process was unlikely to produce satisfactory results reportedly became apparent rather quickly, and the staff concerned were allowed to proceed to the next, formal stage without delay.

236. Given the increasing realization by the organizations reviewed that the future of internal justice mechanisms lies in shifting the focus towards more prevention, early intervention and informal conflict resolution, the Inspectors consider that the informal resolution model applied by IMO in its internal appeal process is worth broader consideration. **The Inspectors suggest that the feasibility and desirability of requiring a low-threshold attempt at informal resolution of contested administrative decisions before formal processes are engaged be studied at the system-wide level.**

237. **A different brand of management evaluation in the International Maritime Organization.** The management evaluation that follows the attempt at an informal resolution at IMO differs significantly from this form of review practiced in other organizations. At IMO, the management evaluation consists in a review performed by a panel of five Directors or senior officials designated by them from their respective Divisions.⁸⁰ The Management Evaluation Panel considers the facts and circumstances of the case and formulates an opinion on the contested administrative decision. Based on the outcome of the evaluation, the Director of the Administrative Division will inform the staff member whether the decision will be amended or not. The management evaluation step is not required when a decision is taken upon the advice of a "technical body", for example, regarding reclassification-related appeals or appeals against disciplinary measures. In such cases, the staff member concerned can appeal directly to the Staff Appeals Board and subsequently to the United Nations Appeals Tribunal, if necessary.

238. Apart from its set-up, a distinct feature of the IMO management evaluation process is its focus on the managerial rather than legal aspects of the appeal. The officials interviewed at IMO could not recall any instances in the past in which management evaluation panels had concluded that a decision should be reversed. The utility of the process is thus not readily apparent. Moreover, the criteria applicable to the composition of the panel had reportedly

⁸⁰ IMO Staff Regulations and Staff Rules, rule 111.2 (f).

created significant challenges in the past. In sum, the Inspectors found no compelling arguments to support the retention of this format of management evaluation, which seems costly, labour-intensive and duplicative, considering that another peer review body within the organization, namely, the Staff Appeals Board, will review the same decision at the next procedural stage. **Therefore, the Inspectors suggest that IMO consider reviewing the necessity of retaining management evaluation in its internal appeal process.**

239. **Procedural aspects: possibility of suspending action for duration of the process.** Another exceptional feature of the regulatory framework of IMO is the possibility for staff to request that the implementation of a contested decision be suspended (“suspension of action”) while the appeal is ongoing. IMO is one of six specialized agencies (along with ICAO, ILO, UNIDO, WIPO and WMO) that provides for this possibility in their rules on internal appeals. At IMO, the staff member concerned can request the suspension of action at both the management evaluation stage and the first instance appeal stage to the relevant review body, which will recommend to the IMO Secretary-General whether or not to suspend the implementation of the contested decision. By providing for suspension of action, IMO is more closely aligned with the procedural frameworks of specialized agencies that have accepted the jurisdiction of the United Nations Appeals Tribunal.

IV. Specialized recourse mechanisms

A. Internal specialized recourse mechanisms

240. **Terminology.** In addition to standard formal, internal appeal mechanisms, most organizations have specialized mechanisms that provide their staff with internal recourse options in respect of certain employment-related matters. The term “recourse” rather than “appeal” is used because not all of the mechanisms are formal appeal processes within the meaning of the organizations’ staff rules on appeals or dispute resolution. For example, performance review rebuttals are explicitly listed as a form of appeal in a few organizations, such as WIPO, but excluded or regulated separately in others, and even considered an informal process in some. Also, some processes are not technically “appeals” in the sense of a contestation of a decision that has already been made, but rather build the elements of a review performed by another body into the decision-making process itself, which may affect subsequent stages of the appeal (e.g. the peer review in disciplinary cases).

241. **Why a specialized recourse mechanism?** The rationale for the existence of specialized recourse mechanisms is two-fold. On one hand, specialized mechanisms are tailored to address issues that require specific technical expertise that those who usually perform standard internal appeal functions do not normally have (e.g. the capacity to re-assess disputed medical determinations or the correctness of the reclassification of job categories, roles and grades according to common classification standards). On the other hand, specialized mechanisms allow work-related disputes that may not directly affect the terms of employment of a staff member, for which a less formal, more conciliatory type of dispute resolution (e.g. with regard to performance-related disagreements) may be suitable, to be managed outside the standard internal appeal process. Moreover, some processes operate to a large extent outside of organizations’ individual regulatory and operational frameworks (e.g. mechanisms governed by the regulations of the United Nations Joint Staff Pension Fund or falling within the purview of an independent ethics function) and are distinct and specialized in that sense.

242. **Six main types of specialized recourse mechanisms.** At least six specialized recourse mechanisms were identified in most JIU participating organizations (see annex III for more details). These are: (a) performance review rebuttals, when a staff member disagrees with the appraisal of his or her performance; (b) appeals relating to job reclassification or grading processes; (c) appeals in disciplinary matters, including the requirement in some organizations to conduct a preliminary (peer) review of the proposed disciplinary measure before it is imposed; (d) appeals against decisions involving medical determinations, such as approval of sick leave or award of compensation for injury, illness or death attributable to the performance of official functions; (e) appeals concerning pension matters and related benefits; and (f) recourse against determinations of non prima facie cases of retaliation against whistle-blowers.

243. **What is considered a specialized recourse mechanism?** For the purposes of the present review, mechanisms that either follow a modified process path compared with the standard formal internal appeal process or involve additional administrative bodies or independent technical experts in the resolution process, are categorized as specialized mechanisms of recourse. Minor adjustments to the standard appeal process, such as modified submission deadlines for staff or a shorter time frame for the administration’s response, while following the same process path and involving the same bodies or appeal instances were not considered by this review to transform the appeal mechanism into a specialized one. Conversely, if the standard appeal body performs specialized functions on top of its regular ones (e.g. the ILO Joint Advisory Appeals Board or the UNWTO Joint Appeals Committee acting as an advisory body in disciplinary matters), it would be considered as a specialized recourse mechanism for the relevant subject-matter. As a result, the categorization may not always coincide with that of the JIU participating organizations.

244. **Level of formality also a determinant.** Some organizations may not consider certain processes as sufficiently formal or mandatory – in terms of procedural prerequisites for further appeal – to be specialized mechanisms, in particular when they rely on increased

managerial intervention or dialogue, with or without third-party facilitation. However, the level of formality may be relatively high in terms of defined time limits for submissions, conditions of receivability, rules for the composition of the bodies participating in the process, and provisions governing the effect and documentation of the outcome. Such procedures are therefore treated in the present review as formal specialized mechanisms and included in the analysis of the case, even if they are not categorized as such by the organization.

245. **At least one specialized mechanism in every participating organization.** All JIU participating organizations reviewed maintain at least one specialized mechanism. Some specialized mechanisms are a pre-requisite before initiation of the standard formal internal appeal mechanism and are thus additional to it; others may replace one or several procedural steps of the standard internal appeal mechanism; and yet others may operate in almost complete isolation and parallel to the standard appeal mechanism. The variety of specialized mechanisms reflects, in most cases, the individual regulatory choices made under the exclusive authority of the executive heads of the organizations. Only a few specialized mechanisms are anchored in the staff regulations and rules (e.g. rules governing compensation for service-incurred illness or injury and related avenues of recourse are usually found in an appendix to staff regulations and rules); most are set out in lower-level administrative issuances.

246. **Proliferation and fragmentation of recourse mechanisms.** The review found a considerable degree of proliferation and fragmentation of recourse mechanisms within and across the United Nations system organizations. Not all of the specialized recourse mechanisms may seem warranted, nor may be generally well-known to staff trying to identify the correct avenue of appeal for the matter they seek to challenge. At the same time, in some organizations, the absence of a specialized recourse mechanism might represent a gap in available recourse options potentially requiring additional mechanisms or outsourcing arrangements. For example, FAO, IMO, ITU, UNWTO and UPU outsource performance rebuttals, while ITU, UNWTO, UPU and WIPO outsource compensation-related appeals.

247. **Risk of inefficiencies.** The benefits of engaging more and differently skilled or qualified reviewers to provide the most objective and comprehensive hearings possible are generally compelling from the point of view of due process, access to justice and maximizing the chances of obtaining effective remedies. At the same time, since most specialized recourse mechanisms involve similar methods and purposes of review as the standard formal internal appeal process, are frequently managed by the same officials or functions and, in some cases, are activated on the advice of similarly constituted advisory bodies, the Inspectors consider that there is a high risk of prolonging or duplicating the steps of the processes without any distinct added benefit. Some of the mechanisms encountered in the course of the present review seemed to be iterations of a same process in only marginally different constellations, and may potentially unnecessarily delay access by the staff member concerned to an independent tribunal for conclusive adjudication of a dispute.

248. **Areas highlighted for further examination.** The most obvious areas for a critical examination of the continued need for specialized review bodies and processes are those where several similarly constituted bodies are called upon to advise on the same matter during the process (e.g. double peer review, whereby peers advise on the initial decision, then the same or other peers advise again on the appeal); or the same function or official being called upon to revisit his or her own decision for different reviews (i.e. double administrative review). This may occur even in cases where an elaborate process, including the participation of technical experts or advisory bodies, may have preceded the original decision, thereby reducing the likelihood of a different outcome upon a second review by the same instance.

249. **Maximum of three procedural steps advisable.** In the Inspectors' view, there should be no more than three procedural steps in any recourse mechanism, unless there are seriously compelling reasons for additional steps linked to the effectiveness of the remedies or due process for the staff member concerned. The first step may generally afford the original decision maker the opportunity to reconsider an earlier decision and reach a different conclusion, with the aim of minimizing litigation; the second step may enable an alternative perspective through a more objective, quasi-independent assessment by a structurally segregated body or expert; and lastly, the third step should be the one in which the staff member presents his or her case to a judicial instance.

250. The following recommendation is expected to enhance the effectiveness of the administration of justice.

Recommendation 4

The legislative organs and governing bodies of the United Nations system organizations should request their respective executive heads who have not yet done so to undertake a thorough review of their regulatory frameworks and practices concerning internal specialized recourse mechanisms, with a view to assessing their continued utility and adequate functioning within the broader framework of internal appeal mechanisms, including eliminating duplicative or ambiguous process paths in the interest of procedural efficiency, and to report to them thereon, no later than 2025.

B. Performance rebuttals

251. **What is performance rebuttal?** A performance rebuttal is the process by which a staff member contests the appraisal of his or her performance as assessed by his or her direct supervisor. In some organizations, only a negative performance rating (i.e. “unsatisfactory” or “partially satisfactory”) may be subject to rebuttal (e.g. in the United Nations Secretariat and UNIDO); in others, any appraisal, including a positive one, may be rebutted, if only to challenge discrepancies between the rating given and the accompanying comments (e.g. UNFPA). In a few organizations, the institution of a performance improvement plan – a time-bound work plan agreed between the staff member and the supervisor to address performance shortcomings – as well as its outcome can be contested in a rebuttal process (e.g. UNICEF, with regard to the outcome of a performance improvement plan).

252. **Distinct specialized processes in two thirds of the JIU participating organizations reviewed.** Specialized processes to rebut performance appraisals existed in 20 JIU participating organizations. Among the remaining organizations, four (FAO, IMO, UNWTO and UPU) do not have a specialized recourse mechanism for performance-related disputes, while another four (ILO, ITU, WHO and WIPO) use their standard appeal process with a few adjustments or caveats for that purpose.

253. **Peer review-based performance rebuttal.** The majority of United Nations system organizations that have instituted a specialized process to challenge performance appraisals select a dedicated peer review body for this purpose. Sixteen organizations employ a peer review process for performance rebuttals, including the United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC and ITC; four funds and programmes – UNDP, UNHCR, UNRWA and UN-Women; four specialized agencies – ICAO, UNESCO, UNIDO and WMO; as well as WFP and UNAIDS. However, FAO and WHO, the “parent” or co-sponsoring organizations of WFP and UNAIDS respectively, do not have a specialized process for performance rebuttal.

254. **Composition is the main distinguishing factor.** The main distinguishing factor of peer review bodies or panels for performance rebuttal processes is their composition, in particular who selects the panel members to review a specific case and whether the members must meet any specific conditions to serve in that capacity. Most performance rebuttal peer review panels are assembled from lists of representatives designated by staff and management in equal numbers, with the Chairs normally appointed by the executive heads.

255. **Diversity of rules on the composition of case-specific rebuttal panels.** Some organizations allow the staff member concerned to determine the composition of the case-specific panel by selecting its members from lists provided for that purpose (e.g. the United Nations Secretariat); in others, the panels are assembled by the human resources department (e.g. UN-Women and UNDP); and yet others require one nomination each from the staff member seeking rebuttal and the first reporting officer whose appraisal is being challenged (e.g. ICAO), with various arrangements for selecting the third member of the panel. Most organizations require that members of the panels be at the same level as or higher than the first reporting officer whose appraisal is being challenged and they must not be in the same

department or team as either of the parties in the rebuttal process. However, those conditions are not explicitly included in the frameworks of all organizations.

256. **United Nations Children’s Fund external reviewer model.** In 2016, UNICEF adopted a different model and decided to engage external reviewers to conduct the performance rebuttal process. It opted to select retirees with experience in human resource management and conflict resolution for that purpose, more specifically former officials who had served at the director level in a United Nations system organization other than UNICEF, so as to provide further assurances of the independence and competence of the review panel. This model was in the process of being introduced at UNOPS during the preparation of the present review.

257. **Core of performance-related disputes more amenable to informal resolution.** In the view of many of the stakeholders interviewed for this review, performance-related disputes are rarely about matters of substance or process that lend themselves to successful resolution through formal means. Rather, they are believed to be more often symptomatic of interpersonal and intercultural communication challenges that are more amenable to informal resolution efforts and sustained support to both managers and staff throughout the performance cycle. While the emphasis in performance-related disputes should, in the Inspectors’ view, be towards increased early intervention and informal resolution, the possibility of formal contestation should not be neglected.

258. **Informal or no mechanism in four organizations.** Of the four JIU participating organizations (FAO, IMO, UNWTO and UPU) that do not have a formal recourse option for performance appraisal-related disputes, FAO, IMO and UNWTO rely exclusively on informal dialogue, mediation or higher-level managerial intervention. In FAO and UNWTO, “the substantive question of efficiency” (the latter denoting “performance” in somewhat antiquated terminology used in most organizations’ founding instruments, including the United Nations Charter⁸¹) is even explicitly exempt from the scope of competence of the relevant standard appeal bodies.⁸²

259. **Regulatory lacuna worth closing.** At FAO and UNWTO, the appeal process is not only limited to examining whether the administrative decision of unsatisfactory performance was “motivated” (FAO) or “affected” (UNWTO) by prejudice or other extraneous factors. Indeed, the regulations preclude any formal, independent recourse concerning the substance of a potentially erroneous or unwarranted negative performance appraisal. At IMO and UPU, there are no explicit regulatory provisions concerning performance-related dispute resolution. **The Inspectors are of the view that the complete absence of any formal avenue for challenging performance appraisals on their substance is a regulatory lacuna, and therefore suggest that such an avenue be established.**

260. **Performance rebuttals through the standard process.** In most of the organizations that use the standard appeal process for appeals against negative performance ratings, appeals are considered irreceivable on the grounds that the outcome of a performance appraisal does not constitute an appealable administrative decision. A performance appraisal, in and of itself, is considered not to affect the contractual relationship and terms and conditions of service between the staff member and the organization until an actual administrative decision with direct effect is taken on the basis of it (e.g. the decision to terminate a staff member’s service owing to unsatisfactory performance). As such, a formal appeal against the performance evaluation report (not a decision taken on the basis of it) would, in most systems, be considered premature and thus not receivable.

261. **Good practice: procedural economy at the Joint United Nations Programme on HIV/AIDS and the World Intellectual Property Organization.** The standard appeal mechanism is engaged for performance-related disputes at UNAIDS and WIPO. In those organizations, the performance rebuttal process replaces the first procedural step of the standard appeal process, namely, the administrative review. It is followed by the peer review of the standard appeal process. At UNAIDS, the performance rebuttal process is a stand-alone

⁸¹ Article 101 (3) of the United Nations Charter.

⁸² See, for example, FAO staff rule 303.1.12; and UNWTO Staff Regulations and Staff Rules, annex 2, paragraph 5 (b).

process involving the Global Rebuttal Panel, which is composed solely of UNAIDS staff. In the case of an appeal of the decision of the Rebuttal Panel, the appeal proceed to the next stage of the standard appeal process, that is, review by the WHO Global Board of Appeal. A unique element of the performance rebuttal process at WIPO is that it requires a response from the staff member's supervisor or the reviewing officer, before a decision is taken on the rebuttal filed by the staff member. In both organizations, the opportunity for a dedicated contestation of the performance appraisal itself, rather than an administrative decision only, is preserved without multiplying the stages of the process or the instances of review. The Inspectors consider that set-up to be good practice.

262. **Semi-formal resolution process.** At WFP, an elaborate semi-formal resolution process has been instituted with the involvement of a Review Group and communications are channeled through the "staff relations" functions established within the Human Resources Division. Although it is considered an informal process, the review is tied to numerous procedural requirements, including strict time limits, exchanges of written statements and other formalities. At the same time, the process is entirely optional, and is immediately aborted and superseded if a standard formal appeal is launched in parallel. The performance rebuttal process at WFP does not replace any stage of its standard appeal process. Accordingly, once the performance rebuttal process is completed, its outcome can be further challenged through the standard appeal mechanism, including an administrative review followed by a peer review.

263. At IAEA and UNDP, performance rebuttals require the involvement of senior officials either as a preliminary step or by placing the onus for resolution efforts entirely on senior management. At IAEA, all rebuttal cases are directly managed by the Deputy Director-General, and staff have the option of seeking advice from the Human Resources Department and/or staff representatives during the process. At UNDP, a newly introduced system requires mandatory submission of a performance rebuttal request to the country-office Talent Management Review Group, which is composed of local senior managers, before it goes for review by a centrally managed rebuttal panel at Headquarters.

264. Regarding the set-up at IAEA and UNDP, the Inspectors consider that the involvement of senior officials in performance-related disputes is a significant deterrent for staff to engage with the process. In addition, the time (and cost) involved for senior managers in such processes should not be underestimated. The arguments for these set-ups included the opportunity to resolve issues close to the source of conflict at the local level, avoiding escalation and increasing managerial ownership of performance evaluations, and savings in processing time. The Inspectors were not persuaded by the allegedly positive impact of senior-level reviewers in the process.

265. **Attempt at informal resolution before formal rebuttal is advisable.** The Inspectors are of the opinion that an informal review by the first reporting officer of discrepancies in the performance appraisal or equivalent attempts at informal resolution, with or without third party facilitation or intervention, is a reasonable avenue of recourse that would allow the organization to reassess the appraisal without the need for escalation. This is already the case at IAEA, UNAIDS, UNFPA and UNICEF, for example, where steps taken towards informal resolution must be demonstrated before a formal rebuttal process can be initiated. **The Inspectors suggest that this approach be instituted across the board as a way of preempting the escalation of such disputes to a formal process. They also suggest that access to the formal appeal stage be allowed after just one unsuccessful attempt at informal resolution, as any mandatory additional steps would be an excessive burden and unnecessary obstacle to justice.**

C. Job reclassifications

266. A Classification Appeals Committee is involved in job reclassification at the United Nations Secretariat, its departments and offices and other entities, with the Assistant Secretary-General for Human Resources Management responsible for making the final decision. That decision can be appealed directly before the United Nations Dispute Tribunal, so that for job reclassification-related decisions, the standard management evaluation step is

not required. The Inspectors found that to be appropriate, as adding that stage in the process would result in delays, given the low likelihood that the administrative decision would be reversed in a second internal evaluation. The United Nations funds and programmes (UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UNRWA and UN-Women, except WFP) do not have specialized recourse mechanisms for job reclassification.

267. Among the specialized agencies, staff at FAO, including WFP, UNESCO, UNWTO, UPU and WIPO wishing to challenge job reclassifications must follow the standard appeal process in its entirety. Policies providing for specialized recourse mechanisms to challenge job reclassifications exist at UNIDO, WHO and WMO. UNIDO suspended the process in 2014, while at WMO, the function was never operational. At the time of the present review, IMO was in the process of outsourcing its job reclassification function to One HR.⁸³ Its Classification Committee, which handled reclassification procedures, was to remain operational up to the end of 2022.

D. Medical determinations

268. A jointly appointed “medical referee” with technical expertise is usually involved in the process of medical determinations, that is, making decisions on compensation for service-incurred sickness, injury or death, termination of service for health reasons, payment of disability benefits, among others.

269. The United Nations Secretariat has established an Advisory Board on Compensation Claims to provide advice on decisions regarding such claims. The Board is centrally managed in New York, and can be accessed by UNCTAD, UNEP, UN-Habitat, UNODC and ITC, as well as by UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UN-Women and ITU. The Medical Services Division has delegated authority to determine whether *de minimis* compensation claims should be paid, without consideration by the Advisory Board. The Inspectors consider that a good practice, as it is quicker and therefore more efficient. Requests for review of compensation claims are forwarded by the secretary of the Advisory Board to the Medical Director, and staff are entitled to engage an independent medical practitioner in the review procedure. IAEA has been experimenting with a similar framework.

270. UNWTO, UPU and WIPO are the only JIU participating organizations that have not set up dedicated bodies for compensation claims. At WIPO, staff may challenge medical determinations before either a single medical practitioner or a medical board. The organization sees advantage in not having a permanent body, given the fact that medical practitioners with special expertise can be called upon depending on the nature of the medical dispute. In contrast, ICAO, ILO and UNESCO do not have specialized processes for challenging compensation claims. The related appeals follow the standard appeals process consisting of an administrative review and a peer review.

271. At FAO, WFP and WHO, appeals concerning disagreement over the medical basis of a decision must be submitted to their respective Advisory Committees on Compensation Claims for review, which requires inputs from a medical board regarding the medical aspects. FAO, WFP and WHO staff must follow the entire standard appeal process in the case of appeals against decisions taken by their executive heads upon the recommendations by their respective Advisory Committees. In contrast, UNIDO allows its staff to appeal the decisions of its executive head upon the recommendations made by its Advisory Committee be appealed directly at the ILO Administrative Tribunal claiming that a further review through the standard appeal process has little value to add to a medical dispute.

E. Disciplinary measures

272. **What is a disciplinary measure?** A disciplinary measure is a sanction imposed by the executive head of an organization or an official with delegated authority on member of

⁸³ One HR is a network of United Nations organizations working together to offer advisory services for cost-effective and risk-informed acquisition and management of talent across the United Nations system.

staff who is found to have engaged in misconduct, normally based on the results of an investigation.

273. Majority of organizations dispense with the first procedural step of their internal appeal process. In the United Nations Secretariat, its departments and offices and other entities, as well as the funds and programmes and the one specialized agency, WMO, that follow the United Nations two-tier system of justice, appeals relating to disciplinary matters are explicitly exempt from the requirement of management evaluation. Decisions imposing a disciplinary measure can therefore be appealed directly before the United Nations Dispute Tribunal, without going through the internal appeal process. A similar foreshortening of the process path is followed in a number of other organizations, mostly specialized agencies (IAEA, ILO, IMO, ITU, UNIDO, WHO, UNAIDS and WIPO), where the administrative review (and, in the case of IMO, its management evaluation) or the entire internal appeals process (IAEA and ILO) is skipped. Accordingly, more than two thirds of the organizations reviewed dispense with the first procedural step of the internal appeal process when administrative decisions on disciplinary measures are challenged, which considerably reduces the duration of the process and the number of internal procedural steps before staff can resort to the judicial review.

274. Full-fledged standard appeal process still required in some organizations. In seven JIU participating organizations, namely, FAO, WFP, ICAO, UNESCO, UNRWA, UNWTO and UPU, appeals against disciplinary sanctions are subject to the entire standard appeal process without any adjustments. To contest a disciplinary measure, staff must first submit a request to the executive head of the organization for administrative review of the measure imposed in order to be allowed to proceed to the next stage of appeal, which normally entails an internal peer review followed by a judicial review (except in UNRWA, where the judicial review by the UNRWA Dispute Tribunal follows the decision review).

275. Utility of administrative review in disciplinary appeals. The Inspectors find it questionable whether an administrative review performed by the same authority that imposed the disciplinary measure is likely to yield a different outcome or increased opportunities for informal resolution. In contrast to appeals against routine administrative decisions taken by managers, the decision by an executive head or an official with delegated authority to impose a disciplinary measure is taken after an – often lengthy – investigation, following which the advice of the corporate legal adviser would typically also have been sought. Any decision to take disciplinary action is thus already the product of elaborate internal checks and balances. In the Inspectors' view, the performance of yet another internal measure of scrutiny at the appeal stage, such as an administrative review, would unnecessarily prolong the appeal process without providing significant results. **The Inspectors encourage organizations that continue to perform an administrative review or an equivalent mechanism for appeals against disciplinary measures to revisit their set-up with a view to streamlining the appeal process, and consider providing staff with the option of skipping such a review on a voluntary basis, in the interest of procedural expediency and their right to an effective remedy.**

276. Special role of peer review bodies in disciplinary matters. A special feature of the disciplinary process in a handful of organizations in the United Nations system is the advisory role of peer review bodies prior to the decision on imposing a disciplinary measure, which constitutes an additional step in the disciplinary process. This role is either performed by a dedicated disciplinary committee or a board created for that purpose (e.g. at IAEA, IMO, ITU, UNIDO, UPU and WHO⁸⁴) or by the peer review body acting in the capacity of an ad hoc advisory body on disciplinary matters beyond its appeal-related functions (e.g. at ILO and UNWTO).

277. Double peer review. In these eight organizations, the respective executive heads must first seek the advice of their peer review bodies on the planned sanction before taking a decision on imposing a disciplinary measure on a staff member. In case of appeal against the disciplinary measure so imposed (which may differ from the recommendation of the peer

⁸⁴ At WHO, such peer reviews are only performed for cases of harassment, discrimination and abuse of authority under the WHO policy on abusive conduct.

review body), the same or a different peer review body may be seized of the matter as part of the standard internal appeal process where applicable. Thus, such matters become subject to double peer review.

278. At UNIDO, a dedicated joint disciplinary committee is tasked with performing a preliminary review of any proposed disciplinary sanction, except summary dismissal, and to make a recommendation to the executive head. This process, however, does not preclude the Joint Appeals Board reviewing an appeal against the decision of a disciplinary measure under the standard internal appeal mechanism, while an administrative review is not required.

279. At UNWTO, the Joint Appeals Committee also gives advice on the proposed sanction and may review the disciplinary measure imposed in case it is appealed. In addition, an administrative review (“protest”) is required if the disciplinary decision is contested. UNWTO is the only organization in which the same body, namely the Joint Appeals Committee, is involved in the same matter twice.

280. At ITU, prior to the imposition of a sanction, the Joint Advisory Committee, acting as a disciplinary committee, reviews the matter and makes a recommendation to the Secretary-General, who takes the final decision. To appeal the decision, an administrative review is not required because disciplinary decisions are directly appealable to the ITU Appeal Board.

281. At IMO, the Joint Disciplinary Committee reviews and advises the executive head on the proposed sanction before the decision is taken to impose it. Upon appeal, the mandatory informal dialogue is still required, while management evaluation is not. However, the appeal still needs to go to peer review by the Staff Appeals Board.

282. UPU adjusted its standard appeal mechanism following the switch from the jurisdiction of the ILO Administrative Tribunal to that of the United Nations Appeals Tribunal, yet retained its Disciplinary Committee to advise the executive head on proposed disciplinary sanctions. Since May 2021, the appeal process at UPU involves both an administrative review and a peer review by the Appeals Committee. With regard to summary dismissals, for which the Disciplinary Committee is not normally called upon to provide an opinion before it is imposed, staff members appealing a decision of summary dismissal can request that the Disciplinary Committee review the measures retroactively.

283. At WHO, peer review is required to advise on a proposed disciplinary sanction before it is imposed. WHO provides for a special peer review body (the Global Advisory Committee on Abusive Conduct) that reviews investigative reports before a decision is taken whether or not to initiate disciplinary proceedings regarding cases of harassment, discrimination and abuse of authority under the WHO policy on abusive conduct. Administrative review is not required to appeal a disciplinary measure because the decision can be appealed directly at the WHO Global Board of Appeal. The same applies to UNAIDS.

284. At IAEA, the default scenario is to consult the Joint Disciplinary Committee before taking the decision to impose a disciplinary measure. In that case, if the sanction is appealed by the staff member concerned, both the administrative review and peer review are bypassed and the matter can be submitted directly to the external judicial instance. ILO takes a similarly economical approach to appeals against disciplinary action, by allowing staff to appeal directly before the ILO Administrative Tribunal and bypass an administrative review, if the proposed sanction had already been referred to the Joint Advisory Appeals Board for review and advice prior to its imposition.

285. Ultimately, only IAEA and ILO have default arrangements in place to avoid the involvement of their peer review bodies in more than one stage in disciplinary matters and thus prevent them from reviewing the same matter twice, which can serve as examples of good practice that are worth replicating. Combined with the elimination of the administrative review in disciplinary appeals, the process path is significantly shortened, without altogether renouncing the peer review in disciplinary matters.

286. **Good practice: eliminating duplication of peer review in disciplinary matters.** The Inspectors consider the repeated involvement of peer review bodies in disciplinary matters of limited value and an unnecessary prolongation of the appeal process. Therefore, it would be a prudent choice and good practice to eliminate duplicative procedural steps to

facilitate a more expeditious appeal process. **The Inspectors suggest that organizations that retain peer review in disciplinary matters choose either to retain the involvement of the peer review body before a disciplinary measure is taken, or to retain it as part of their standard internal appeal mechanism if the measure is appealed, but not both so as to avoid duplication and minimize delays in the appeal process.**

287. **Why retain a peer review in disciplinary matters?** Most of the organizations that maintain a peer review in disciplinary matters reported doing so with the firm support of their staff, who value the participatory element and would likely resist proposals to change the recourse modality. Arguments put forward in favour of retaining the peer review in disciplinary matters include the allegedly increased confidence of staff in the objectivity, transparency and proportionality of sanctions owing to the participation of peers who “know the business” best in the process; the notion of “keeping tabs” on the administration through staff participation; and its educational value, in particular for staff who experience the disciplinary process through their involvement in assessing the conduct of their colleagues. Participation in the disciplinary process is believed to have a deterrent effect on potential perpetrators of misconduct, as well as inspire a greater sense of organizational accountability and collective ownership of outcomes achieved.

288. **Concerns about peer review in disciplinary matters.** The main concerns about staff participation in the disciplinary process have to do with insufficient confidentiality safeguards; the potential for bias and conflicts of interest among colleagues; and the lack of specific professional qualifications to process and evaluate evidence as well as to draw legally sound conclusions. Whether or not an organization prefers to retain the peer review element in disciplinary matters is ultimately a matter of corporate choice, based on the pros and cons related to this specific matter.

F. Pension-related claims

289. All JIU participating organizations, except UPU, are members of the United Nations Joint Staff Pension Fund (UNJSPF). The regulations of the Fund require each member organization to have its own staff pension committee as the first instance for administrative appeals concerning pension-related matters. FAO and WFP have a joint staff pension committee, and the United Nations Staff Pension Committee serves the United Nations Secretariat, its departments and offices and other entities, the United Nations funds and programmes and UNAIDS.

290. There are three standard avenues of appeal under the purview of the Pension Fund, one for disability benefits only, the second for the remaining matters affecting active staff, and the third for retirees and their beneficiaries. There is a well-organized three-step process for active staff: the secretaries of the staff pension committees in the respective member organizations make decisions on the eligibility for benefit entitlements of active staff (the Chief Executive of the Pension Administration acts as secretary of the United Nations Staff Pension Committee); decisions made by the secretaries of the staff pension committees can be appealed first to the respective staff pension committee,⁸⁵ then to the Standing Committee of the Fund, and finally before the United Nations Appeals Tribunal.

291. For matters relating to disability benefits only, the respective staff pension committee makes the decision to award benefits, which can be submitted to the same committee for review if contested, then appealed before the Standing Committee of the Fund, and finally before the United Nations Appeals Tribunal. Administrative rule H.1 (a) provides for decisions on award of disability benefits where the staff pension committee is not unanimous to be referred to the Standing Committee for decision. The decisions made by the Standing Committee can be appealed directly before the United Nations Appeals Tribunal as the single and final judicial instance.

292. Appeals concerning benefit entitlements of retirees and their beneficiaries follow a two-step process. Given that retirees and their beneficiaries are not active participants of a

⁸⁵ The secretaries of the staff pension committees only determine benefit entitlements, but are not voting members of the committee, and thus not involved in the decision-making on appeals.

member organization, they are not administered by a specific staff pension committee; thus, the Chief Executive of the Pension Administration makes decisions on their benefit entitlements. Those decisions can be appealed directly before the Standing Committee and further appealed before the United Nations Appeals Tribunal.

293. UPU has its own pension fund – the Provident Scheme of UPU – which is under the supervision of the Federal Social Insurance Office of Switzerland. Participants in the Provident Scheme are entitled to request the management board of the Scheme to review its decisions, and appeals against those decisions can be filed with the United Nations Appeals Tribunal.

G. Determination of non prima facie retaliation

294. All JIU participating organizations reviewed have whistle-blower protection policies in place that include provisions to protect whistle-blowers against retaliation. The majority of these policies date from 2017 or later when revisions were undertaken in the light of new developments and to implement the recommendations set out in the JIU report on its review of whistle-blower policies and practices in United Nations system organizations”.⁸⁶ Only two organizations have policies in place that were adopted earlier: UNIDO (2010) and UNWTO (2013).

295. The Inspectors reiterate that whistle-blower protection policies apply to personnel who report the failure of one or more staff members to comply with their obligations, such as alleged misconduct or wrongdoing that would be manifestly harmful to the respective United Nations system organization, and who provide information or evidence to support a reasonable belief that misconduct has occurred or who cooperate in good faith with a duly authorized audit or investigations. These activities are considered “protected activities”.

296. Individuals who believe they are being subjected to any direct or indirect detrimental action because they engaged in protected activities can request protection from retaliation through the ethics function of their employing organization. The ethics function reviews complaints of retaliation and determines whether the complaint is sufficiently substantiated to warrant an investigation and to recommend whether protection should be provided to the complainant (determination of a prima facie case of retaliation) or not (non prima facie case of retaliation).

297. The Inspectors examined whether a complainant could request further review if the ethics office determined that he or she had not raised a prima facie case of retaliation and whether those determinations were considered administrative decisions. They found that a complainant at the United Nations funds and programmes, including WFP, could request the Chair of the Ethics Panel of the United Nations, who is the Director of the United Nations Ethics Office, to further review the decision. A complainant in the departments and offices of the United Nations Secretariat could submit a request for further review from to the alternate Chair⁸⁷ of the Ethics Panel. The Chair or alternate Chair of the Ethics Panel will conduct an independent review after consultation with the Panel, and determine whether the complainant has raised a prima facie case of retaliation or not.

298. The policies of the above organizations stipulate that the recommendations of the ethics offices and the Chair or alternate Chair of the Ethics Panel, as well as of independent external reviewers, do not constitute administrative decisions per se and are not subject to appeal under the provisions for internal appeals in the respective staff rules. However, most policies provide that the action or non-action of an organization’s administration on a recommendation made by an ethics office is a contestable administrative decision under the applicable staff rules if it has direct legal consequences on the terms and conditions of appointment of the complainant, and may be contested within the deadlines specified in those rules.

⁸⁶ JIU/REP/2018/4.

⁸⁷ Panel members serve as alternate Chairs on a rotating basis.

299. The situation regarding the specialized agencies is more diverse. On one hand, they do not have an inter-agency body such as the Ethics Panel of the United Nations at their disposal for a second review and, on the other hand, some agencies (IMO, ITU, UNESCO, UNIDO, WHO and UNAIDS) consider the determinations by their ethics offices or by the second reviewer to be administrative decisions that can be appealed through the standard appeal mechanisms.

300. Most of these organizations provide for a second review after the first determination made by their ethics offices. The related organizational arrangements, however, differ considerably. ICAO and WIPO procure the services of the United Nations Ethics Office; FAO and ILO depend on external second reviewers; while UNWTO and UPU do not have formal arrangements in place as yet. At FAO and UNIDO, requests for further review of the determinations made by the respective ethics offices must be addressed to the executive heads for decision.

301. What transpires from the assessment is that, in some organizations, there is no opportunity for personnel reporting misconduct or wrongdoing and cooperating with duly authorized audits or investigations to request an independent review of non prima facie retaliation. Regardless of whether the determinations (recommendations) of the ethics offices can be considered as administrative decisions or not, the Inspectors are of the view that, when a non prima facie case of retaliation is determined in the first review, the opportunity for a second review is indispensable for the protection of whistle-blowers against retaliation.

302. As already stated in the JIU report on its review of whistle-blower policies and practices in United Nations system organizations,⁸⁸ “there are clear deficiencies in protection against retaliation policies and practices and/or the competency of functions who implement them”. Furthermore, the report indicated “the need for participating organizations (primarily specialized agencies) that do not have an appeals mechanism in their policies for non-determination of prima facie cases to develop one in order to provide additional checks and balances for ethics offices.”

303. The Inspectors are of the view that whistle-blower protection policies should clearly indicate how and to whom to request a second review of a non prima facie case of retaliation. To avoid undue influence and conflict of interest situations, such requests should be made through the ethics offices and not to the executive heads of the organizations. Furthermore, to ensure coherence and equal treatment of whistle-blowers across the system, second reviews should be undertaken by ethics offices of other United Nations system organizations.

304. **The Inspectors stress the need to implement formal recommendation 2 contained in the report of JIU on its review of whistle-blower policies and practices in United Nations system organizations,⁸⁹ and suggest that the organizations that have not yet done so revise their policies accordingly, as soon as possible. They also suggest that the organizations concerned conclude agreements with the ethics offices of other United Nations system organizations for the provision of services of second review of non prima facie cases of retaliation.**

⁸⁸ JIU/REP/2018/4, para. 192.

⁸⁹ JIU/REP/2018/4.

V. Capacity and performance

305. For the purposes of the present chapter, “capacity” refers to the workforce available to support formal internal appeal mechanisms at the pre-tribunal stage within the organizations reviewed, including standard appeal and specialized recourse processes, where applicable. “Performance”, which is related to productivity, is measured by the number of cases disposed of across all the processes and stages of internal appeal over the four-year period from 2018 to 2021.

306. The analysis is based on the information provided by the organizations regarding the estimated number of cases received, disposed of and outstanding, and the number of staff working in appeal-related functions, either full or part time, disaggregated by category and grade, over the specified period. The information received was mostly approximative, owing mainly to two factors: (a) the lack of records on backlogs, production achieved and time spent on the function by staff of the respective entities; and (b) the absence of a pre-existing common terminological and methodological framework for examining internal appeal mechanisms system-wide.

307. Consequently, the accuracy of the information received varies across organizations; as some have supplied more complete and detailed data than others.⁹⁰ This lack of precision must be borne in mind when interpreting the results of the present analysis, which represents only a partial description of the actual situation. Nonetheless, the results provide a conceptual framework to render aspects of the utilization of capacity in formal internal appeal mechanisms and their associated outputs transparent and comparable across organizations.

A. Capacity

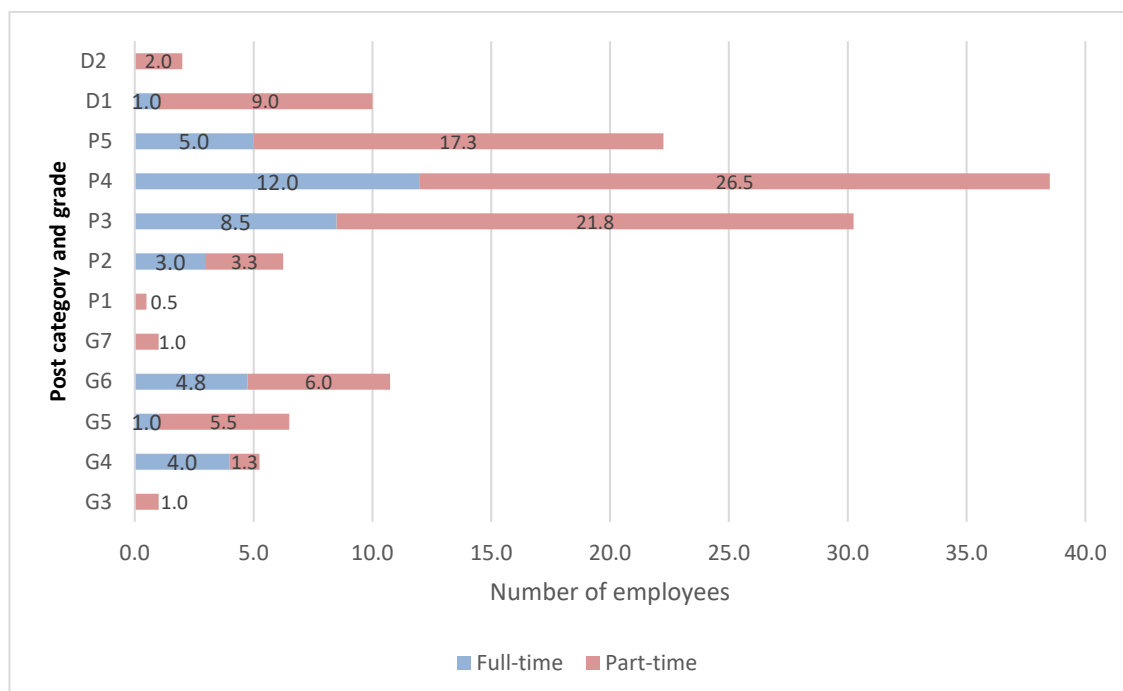
308. Based on the information provided by 22 participating organizations, staff working on internal appeals are generally assigned to the related functions on a part-time basis (95 out of 134 staff members, i.e. 70.9 per cent), and belong to all categories and grades, from G-3 to D-2, with most at the P-4 level (27 staff members, or 28.4 per cent), followed by those at the P-3 level (22 staff members, or 23.2 per cent), then those at the P-5 level (17 staff members, or 17.9 per cent). There are 39 staff members assigned to such internal appeals-related functions on a full-time basis across the organizations, mainly at the P-4 (12 staff members, or 30.8 per cent) and P-3 levels (8.5 staff members, or 21.8 per cent) (see fig. VI). The relevant calculations exclude organizations that provided incomplete data or no data at all (namely, ITC, UNCTAD, UNEP, UN-Habitat and UNODC) or data that represented a significant outlier in statistical terms, the inclusion of which would risk distorting the overall result (e.g. UNRWA).⁹¹

⁹⁰ For example, the data may reflect divergences in what each organization considered relevant in response to “Number of budgeted staff posts in human resources and legal departments working on appeals”, in the questionnaire addressed to the organizations. Since there are different funding sources, some organizations may have given all posts working on appeals, especially in cases of predominant, if not exclusive, reliance on extrabudgetary resources, while organizations that differentiate between budget allocations for regular and temporary resources may have included only information on regular budget posts or a combination of both. The question on “Resources allocated to work on internal recourse mechanisms” raises questions about the exact delineation of the processes that make up internal recourse mechanisms as well as whether inputs from support offices, advisory roles or the sign-off process often administered by senior representatives of executive heads are factored into the estimated resource allocations given. Regarding cases at FAO/WFP and WHO/UNAIDS, teams at the parent or co-sponsoring organization usually process the appeals of the other organization, even if only for one stage of appeal, which may also affect productivity-related estimates in favour of one or the other organization.

⁹¹ The data provided by UNRWA suggests that the equivalent of 0.6 full-time staff member at the P-4 level resolved 161 cases on average per year between 2020 and 2021. Using the productivity index defined below, this would amount to 268.28 cases resolved annually per one P-4 homogenized staff member at UNRWA, which significantly exceeds the average 17 resolved cases per full-time staff member at the P-4 level in the organizations reviewed.

Figure VI.

Total number of part-time and full-time staff assigned to internal appeal mechanisms, by category and grade, as reported by the participating organizations*



* Namely, FAO, IAEA, ICAO, ILO, IMO, ITU, the United Nations Secretariat, UNAIDS, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNIDO, UNOPS, UN-Women, UNWTO, UPU, WFP, WHO, WIPO and WMO.

Source: Prepared by JIU.

309. In order to aggregate the different staff groups and make them comparable across the organizations and duty stations, they were reduced to a common measurement unit, namely, their full-time equivalent cost.⁹² Calculations were made as follows: (a) staff working part time were expressed in annual terms as a fraction of a full-time staff member in their own category/grade; (b) the calculated number of full-time equivalent staff of the different categories/grades was homogenized by applying a cost index (see fig. VII)⁹³ that represents the cost at the United Nations, New York,⁹⁴ of each post in each category/grade expressed as a percentage of one P-4, step 1, post.

Figure VII.

Staff-cost index as a percentage of a P-4 post, United Nations, New York

Grade	D-2	D-1	P-5	P-4	P-3	P-2	P-1	G-7	G-6	G-5	G-4	G-3	G-2	G-1
Cost index (%)	129.31	122.44	111.50	100.00	86.87	72.67	72.67	46.26	40.71	40.71	40.71	40.71	40.71	40.71

⁹² Due to the lack of comprehensive cost-based data or analytical accounting for the services examined, the homogenized cost of staff has been used as a proxy. It was assumed that other direct and overhead costs of this function are distributed homogeneously across the organizations, so they would not have a critical effect on the calculations.

⁹³ For example, according to this index, one P-3 is equivalent to 86.87 per cent of one P-4, while one P-1 is equivalent to 72.67 per cent of one P-4. If an organization has one P-4 staff member working 50 per cent of the time on internal appeals, in addition to one P-3 and one P-1 working full time, it therefore has 0.5 P-4 + 1 P-3 + 1 P-1 = 0.5 P-4 + 0.87 P-4 + 0.73 P-4 = 2.1 staff at the P-4 level.

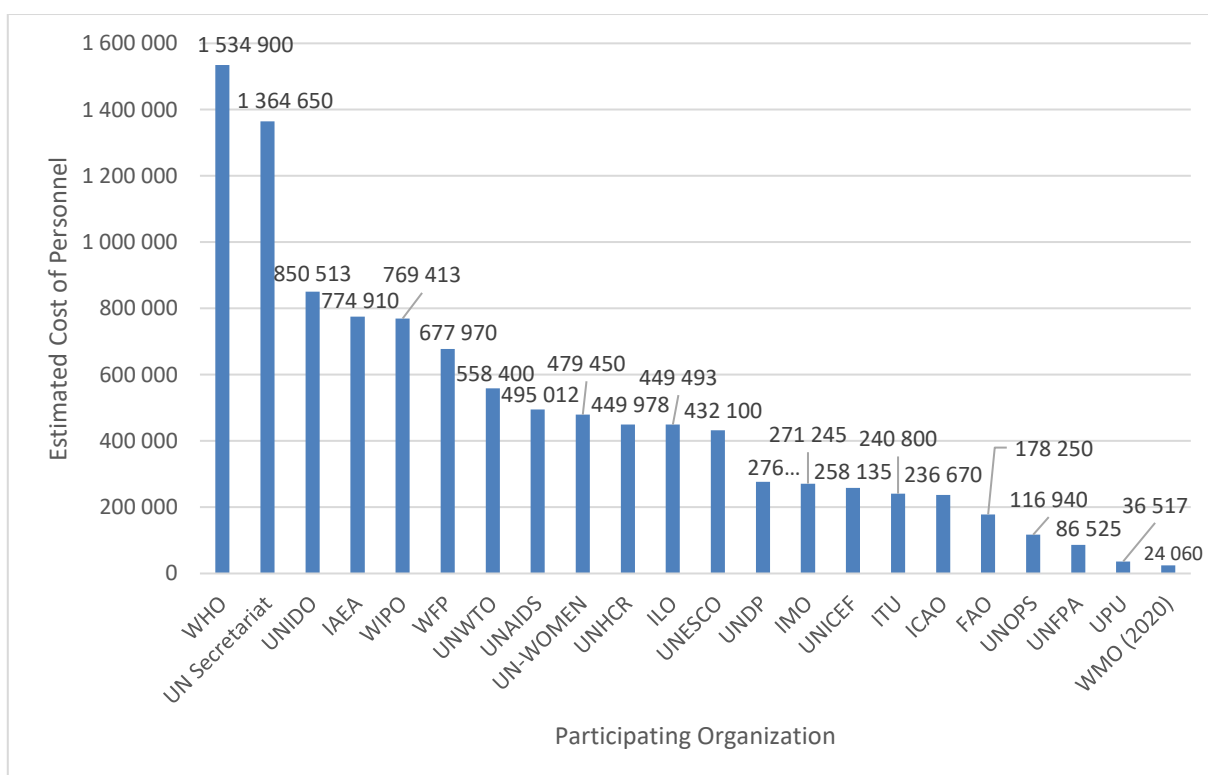
⁹⁴ In order to level out duty station-based differences, the full staff-cost table for United Nations, New York, was used. The table, which was provided by the Office of the Under-Secretary-General for Management Strategy, Policy and Compliance, is routinely applied for the budget estimates of the United Nations Secretariat.

310. With those methodological considerations and caveats in mind, the 22 participating organizations reviewed have the equivalent of 54 staff members at the P-4 level assigned full-time to internal appeals-related functions, with an average of just below 3 (2.4) staff members per organization. In terms of the overall staff population of the organizations reviewed, which totaled 101,611⁹⁵ on average yearly, in 2018 to 2019, staff equivalent to 54 full-time P-4 staff performing related functions represented only 0.5 staff member working on internal appeals per 1,000 staff members.

311. Using the New York standard cost per P-4 post, the estimated cost of the workforce supporting internal appeal mechanisms would amount to \$10,611,000 per annum for the 22 participating organizations reviewed, resulting in an average cost of almost \$482,318 per entity reviewed (see fig. VIII).

Figure VIII.

Estimated cost of workforce assigned to support internal appeal mechanisms in homogenized terms
(United States dollars)



Source: Prepared by JIU.

B. Productivity

312. The productivity indicator, defined as the number of cases disposed of annually per homogenized P-4 staff member, was used as a means of comparing overall results across organizations. The cases considered for the purposes of this indicator included all types of internal appeals – standard and specialized processes – in both the first and, if applicable, second pre-tribunal instance.

313. The simplification involved in calculating this indicator implies, among other things, that all types of cases disposed of were included in the equation without distinction, that is, regardless of the subject matter, the mechanism or stage of the process, the authority responsible for resolving the case, whether the case was deemed receivable or not, or the procedural, legal, evidentiary or technical complexity of each case. The calculations are

⁹⁵ See JIU/REP/2021/5, annex XI, parts I and II. This figure does not include consultants and other non-staff personnel, as the appeal mechanisms considered in the present review do not apply to them.

therefore based on the statistically plausible assumption that the level of complexity is evenly distributed across all organizations considered, i.e., it is reasonable to expect that the proportion of difficult and simple cases is similar across the board.

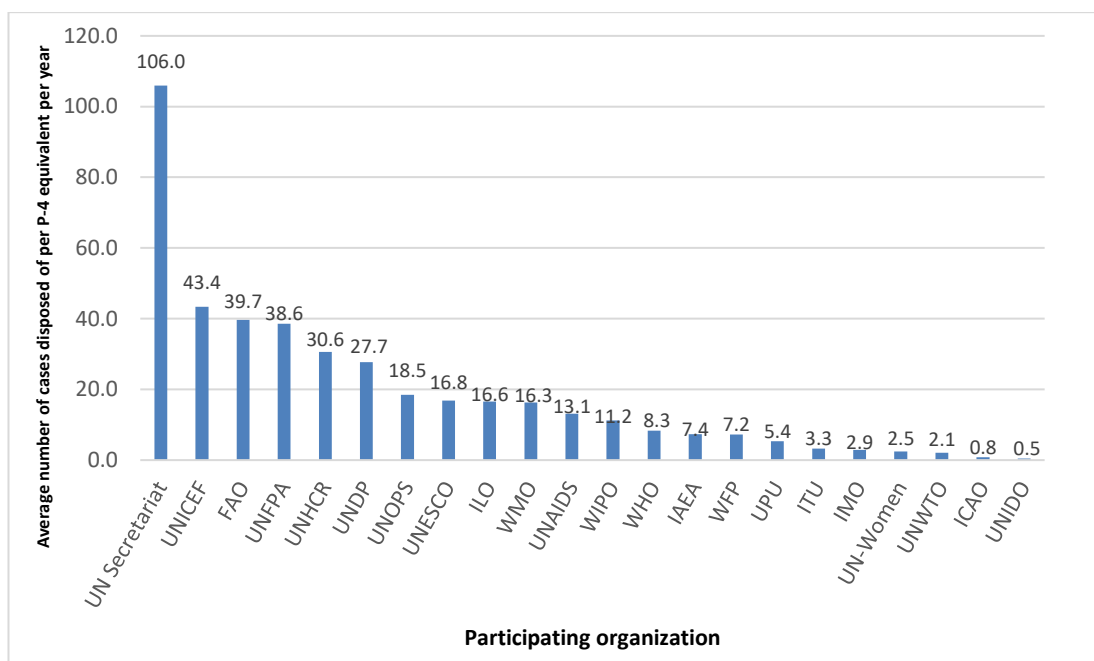
314. Under that assumption, the indicator allows the comparison of the degree of efficiency achieved by each organization in disposing of cases within the deadlines set by the respective regulatory framework. It does not assess the quality of the outputs, which is outside the scope of this review and is also assumed to be uniform for the purposes of the calculations, including any other circumstance specific to any organization.

315. Taking those determinants into account, as well as the relevant information provided by the organizations, a total of 1,263 cases were disposed of each year, an average of just above 57 cases per organization per year during the period considered. Consequently, the organizations' productivity indicator was 23.5, meaning that each P-4-equivalent full-time staff member supporting such mechanisms processed an average of 23.5 cases a year (or 2.1 cases per month, considering 11 months of activity per year). In other words, and considering the above-mentioned staff cost table, the estimated cost of personnel for each case file processed would average \$8,545.⁹⁶

316. Although the estimated productivity indicator for all the 22 participating organizations reviewed was 23.5 cases disposed of per year by each P-4-equivalent full-time staff member, a closer look at the individual organizations revealed that four organizations, namely, the United Nations Secretariat (with 106 cases, i.e. almost six times the average), UNICEF (43.4 cases), FAO, including WFP at the peer review stage (39.7 cases) and UNFPA (38.6 cases), stood out as most "productive", based on the data provided and the methodology developed for this chapter (see fig. IX).

Figure IX.

Estimate of the productivity of the workforce dedicated to internal appeal mechanisms, on average (2018–2021)



Source: Prepared by JIU.

C. Case management

317. To gauge the caseload of the standard appeal and specialized recourse mechanisms across the organizations and gain better insight into their case management practices, the Inspectors requested the organizations to provide estimated case statistics for the different

⁹⁶ Calculation: (64 P-4 staff x \$196,500) ÷ 1,263 cases = \$8,545 per case.

stages of the respective appeal processes. If the pre-tribunal stage involved a one-step process, such as a management evaluation (to be followed by two judicial reviews at the tribunal level), statistics were requested for that first and only step of the pre-tribunal stage. If the pre-tribunal stage involved a two-step process, such as an administrative review followed by a peer review, separate statistics were requested for each of the two steps.

318. In most cases, the data collected represented estimates, as most participating organizations did not track their case management in statistical terms. If data were missing, the most plausible figures available were used. For example, if no data were provided for a given year, the average for the years for which data were reported was used. Since this has happened in just a few cases, the respective values were low, and therefore the impact of the assumptions was very limited for the purpose of the calculations.

319. In the Inspectors' view, all the organizations should endeavour to maintain a systematic record of internal appeals, if only to keep track of the number of appeals submitted, the subject matters and outcomes of the appeals, including information on cases that were deemed irreceivable, the reasons therefor, and information relating to the demographics of the applicants, including their gender, geographical location, staff category and grade. The type of information collected by the peer review bodies of ILO, WHO and WIPO, as well as the information contained in the Secretary-General's annual report on the administration of justice at the United Nations with regard to the management evaluation as the first and/or only pre-tribunal stage of the appeal process are useful examples that other organizations could follow. Furthermore, such systematic data collection efforts should track not only the cases submitted through the standard appeal mechanisms but also those reviewed by the specialized recourse mechanisms.

320. The following recommendation is expected to enhance accountability and transparency.

Recommendation 5

The legislative organs and governing bodies of the United Nations system organizations should request their respective executive heads who have not yet done so to report to them annually, starting in 2025, on the functioning of their formal internal appeal mechanisms, including the specialized recourse mechanisms. The reports should include details on the number, subject matter and outcome of appeals, including cases deemed irreceivable, information on the demographics of applicants and information on whether the appealed decisions were upheld or revised, disaggregated by type of procedure, as applicable.

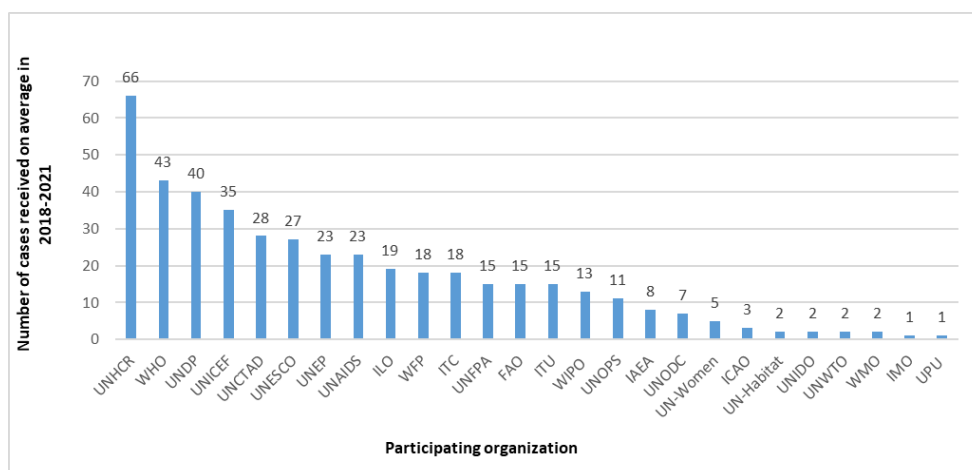
1. First or single step of pre-tribunal internal appeals

321. The number of cases received on average per year during the four-year period from 2018 to 2021 for the first or only step of the process across the standard internal appeal mechanisms amounted to 1,321 cases for the 23 JIU participating organizations that provided relevant data.⁹⁷ That number was roughly the same as the number of cases disposed of, therefore no significant backlog accumulation was identified.

322. With the exception of the United Nations Secretariat and UNRWA, whose caseloads were significantly higher in absolute terms (more than 700 and 150 cases, respectively, received and disposed of on a yearly basis), no organization had a caseload that exceeded 70 cases per year. More specifically, 22 organizations had received and disposed of fewer than 30 cases per year and, of those, 10 organizations received and disposed of 8 or fewer cases (see fig. X).

⁹⁷ Namely, FAO, IAEA, ICAO, ILO, IMO, ITU, the United Nations Secretariat, UNAIDS, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNIDO, UNOPS, UNRWA, UN-Women, UNWTO, UPU, WFP, WHO, WIPO and WMO. The following organizations did not submit data: ITC, UNCTAD, UNEP, UN-Habitat and UNODC.

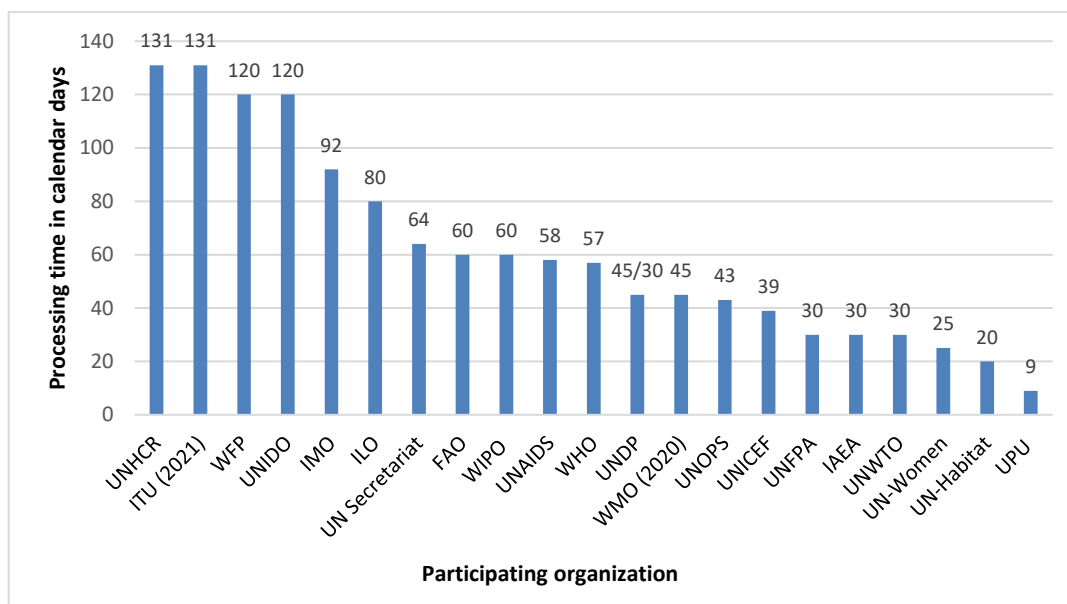
Figure X.
Caseload per year by participating organization



Source: Prepared by JIU.

323. Based on information provided, the average (estimated) processing time taken by the 21 JIU participating organizations that provided data was just over 60 days. Many organizations aligned their estimations with existing statutory time limits applicable to the administration's response in the appeal process; four organizations took twice as much time or more, and seven organizations gave the maximum processing times (30, 45 and 60 days) established by their internal rules (see fig. XI).

Figure XI.
Average processing time for appeals at the first or single step of the pre-tribunal internal appeals



* The 131-day average for UNHCR included cases that had been put on hold for a significant period of time pending informal dispute resolution.

Source: Prepared by JIU.

2. Second step of the pre-tribunal internal appeals

324. Data provided by the participating organizations concerning the second step of the internal appeal process, typically a peer review, were much less consistent and complete,

with only 11 organizations having provided data.⁹⁸ Based on the information provided, the total number of cases received amounted to just under 10 per year on average over the period considered. No organization significantly deviated from the average in absolute terms, and no backlog accumulation was reported in the same period.

325. Regarding average processing time, the second procedural step took more than five times the time required for handling appeals at the first procedural step, i.e., 325 days, according to the data provided, with two organizations reporting taking up to 519 and 837 days, respectively. The Inspectors find these delays unacceptable in terms of reasonable staff expectations regarding the delivery of internal justice.

326. Among the reasons given for the delays, especially in the context of the peer review mechanisms, were not only operational challenges linked to the composition of the review panels, but also several procedural factors. While all the organizations impose time limits for the submission of a staff member's appeal and, at least implicitly, the administration's response, few organizations regulate the time limit for the peer review process. Some organizations stipulate time limits for the deliberations of the peer review panel; other organizations set a time limit for the preparation of the report once the parties have pleaded their cases and the deliberations thereon have been concluded; yet others require the composition of panels to be completed within a specific time frame. Some organizations do not tie the peer review process to any specific time limits at all, stating only "as soon as possible", although some of them impose a time limit for the executive head to make a final decision based on the peer review body's recommendation. Needless to say, the time limits vary across the organizations, from one month to three months and anything in-between.

327. Moreover, most of the regulatory frameworks allow for an extension of the time limits, often without stipulating any criteria as to justification for seeking or granting an extension. Stakeholders confirmed that, in practice, multiple extensions have been granted in the peer review processes, and some organizations have sought to improve on procedural delays by limiting the number of extensions and/or the rounds of pleadings that are admissible, by attaching conditions and requiring justification of exceptional circumstances. Under the staff regulations and rules of the United Nations, the deadline in the appeal process may be extended by the Secretary-General if informal resolution efforts with the assistance of the Office of the United Nations Ombudsman and Mediation Services are under way. That represents the other extreme and may not adequately address situations of potential hardship.

328. The following recommendation is expected to strengthen transparency and accountability.

Recommendation 6

The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, review the procedural rules governing formal internal appeal mechanisms regarding the time limits applicable to the administrations' responses at different stages of the internal appeal processes, and specify the conditions for extending the time limits, with a view to reducing associated delays and fostering legal certainty and accountability.

329. The issue of administrative silence – that is, failure by the administration to respond to requests for administrative review or management evaluation, or by the executive head to take a final decision following the peer review process – merits attention. The review found that, in both the ILO and United Nations jurisdictional systems, the tribunals have allowed appeals against the absence of an administrative decision. Furthermore, the regulatory frameworks of most of the organizations do not require the decision to be communicated in writing, while the rules of seven specialized agencies (IAEA, ICAO, IMO, UNIDO, UPU,

⁹⁸ The estimations may not provide a reliable depiction of the reality on the ground. In fact, only the peer review bodies at ILO, WHO and WIPO are required by their regulatory framework to produce annual activity reports.

WHO (including UNAIDS) and WIPO) contain the explicit requirement that notification of administrative decisions must be in writing in order to be appealable.

330. In practice, that issue has not generally presented any challenges, as most of the regulatory frameworks contain a fallback clause which allows the appeal to proceed to the next stage if a written response has been requested but not provided within a given time limit. ILO Staff Regulations provide that, if an express decision is not taken within the deadline, the peer review body shall provide the official and the administration with a copy of its report and the official shall be entitled to imply acceptance of the recommendations contained in the report (see art. 13.3 (4)). The Inspectors consider such a provision to be good practice and an important incentive for administrations to deal with internal appeals expeditiously.

VI. Legal advice and representation

331. **Legal support as a key pillar of internal appeal mechanisms.** An important aspect of the adequate functioning of internal appeal mechanisms is the ability of staff to access legal advice before engaging formally with their employer on a contentious matter, and the opportunity to have their rights and interests represented effectively when seeking recourse through formal internal appeal mechanisms. The absence of legal support to either party of a dispute is likely to have an adverse impact on the efficiency of a process, its accessibility, as well as the credibility of its outcome in terms of objectivity, competence and due process.

332. **Legal advice.** Legal advice may precede or accompany legal representation services or be sought independently. The objective of legal advice is to help the parties to identify and understand different options available for dispute resolution, including but not limited to avenues of formal recourse; clarify and navigate the relevant procedural steps and requirements; and realistically assess possible outcomes of each option, including their respective prospects of success. In line with its preparatory and informal character, legal advice can be obtained from anybody, at any time and stage of the process without restriction. Furthermore, legal advice is confidential: it does not have to be declared. The extent to which legal advice is available to staff of the United Nations system varies across organizations.

333. **Legal representation** involves the participation, in writing or orally, of a legally trained professional in the proceedings of the formal justice mechanism, acting on behalf of a party to the dispute, normally under power of attorney. Legal representation normally requires a formal declaration to the effect that the person acting as legal counsel is exclusively authorized to communicate on behalf of the party represented in relation to the case. The availability of legal representation, when permitted, for staff of the United Nations system varies across organizations.

334. **Full legal support available to administrations by default.** Both legal advice and legal representation services are, by default, available to the executive heads and managers of the organizations through the legal offices operating under the authority of the respective executive head. One of the duties of the legal office is to advise the executive head on internal justice matters and to act as legal counsel representing the administration in formal appeal processes on behalf of the executive head. In several organizations, the legal offices also perform the initial review of contested administrative decisions and thus provide legal support to the administration through all stages of the formal appeal process.

335. **Legal advice available to staff through other sources.** The same source of support is not available to staff who wish to seek legal advice in an individual capacity. To avoid conflicts of interest, staff are generally precluded from obtaining advice on internal justice matters from the legal offices of their organizations. Since the legal offices are bound to defend the interests and position of the administration, it is generally not appropriate for them to advise staff on individual cases. Similarly, staff representatives seeking legal advice on issues of collective concern to staff cannot expect the legal advisers of their management counterpart to act in an impartial advisory capacity in their regard. The staff representative bodies of ILO and WFP have hired full-time legal advisers,⁹⁹ funded from the membership dues of their respective staff representative bodies, among others, to fill that gap. However, that option may be beyond the reach of most of the staff representative bodies, in financial terms.

336. **Two different worlds in terms of legal support.** In general, while all the administrations rely on trained lawyers from within their ranks to defend them in formal processes, about half of the 28 JIU participating organizations provide similar legal assistance to their staff at no additional cost, while staff in the other half are largely left to seek their own legal support, as well as bear any associated financial burden. Mirroring the divide relating to internal justice matters between organizations applying an administrative review and a peer review and those applying a management evaluation followed by the two-tier

⁹⁹ It should be noted that the lawyer hired by WFP Professional Staff Association can only legally represent the constituency of the Association, that is, international professional staff and national officers.

judicial review system, there are two main approaches to legal advisory and representation services available to staff in the United Nations system.

337. **Free legal advice and representation services through the Office of Staff Legal Assistance and the Legal Office for Staff Assistance.** Based on agreements specifically concluded for these purposes, staff of the United Nations Secretariat, its departments and offices and other entities, and the United Nations funds and programmes (with the exception of WFP) and WMO have access to free legal advice and representation services through the Office of Staff Legal Assistance of the United Nations. Staff of UNRWA have access to legal advice and representation through the Legal Office for Staff Assistance.

338. **Restricted legal support for staff of specialized agencies.** The staff of most specialized agencies (with the exception of WMO) as well as of WFP and UNAIDS must rely on disparate and diverse legal support: (a) from their respective staff representative bodies, where such support is available and accessible to them, and subject to certain conditions; (b) the services of an external legal counsel engaged at their own expense, and to the extent permitted under the regulatory frameworks of their employer organizations; or (c) the assistance of voluntary legal counsel, who they can selected from a restricted circle of individuals, such as former or active staff of certain organizations only. The accessibility of legal support for the staff of United Nations system organizations can thus be described as uneven at best.

Figure XII.

Legal representation services available to staff of JIU participating organizations

Organizations	Access to the services of the Office of Staff Legal Assistance – free of charge for staff	Legal assistance available from staff representative bodies (conditional)	Unrestricted choice of representation, at own cost	Representation restricted to current or former staff only		Representation explicitly precluded in regulatory framework
				<i>of any United Nations system organization</i>	<i>of same organization</i>	
United Nations Secretariat, its departments and offices	United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC	United Nations Secretariat, UNODC	United Nations Secretariat, UNODC			
Funds and programmes	UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UN-Women, UNRWA*	UNHCR, WFP**		WFP		
Other United Nations entities	ITC	UNAIDS**	UNAIDS			
Specialized agencies and IAEA	WMO	FAO, IAEA, ILO, IMO, ITU, UNIDO, UPU, WIPO, WHO (HQ only)	IMO, UPU, WHO, WIPO	IMO, WHO	IAEA, UNIDO; ICAO (HQ only), UNESCO, UNWTO (current staff only)	ITU (all offices) ILO, UNESCO (external legal counsel only)

* UNRWA has its own Legal Office for Staff Assistance.

** UNAIDS and WFP apply the mechanisms of WHO and FAO, respectively.

Source: Prepared by JIU.

A. Office of Staff Legal Assistance of the United Nations Secretariat

1. Institutional arrangements and conditions of support

339. **A new and unique source of independent legal support for staff.** In an unprecedented move in the history of internal justice mechanisms in international organizations, the Office of Staff Legal Assistance was created in 2009 as one component of the comprehensive “package” of measures and mechanisms introduced through the reform of the administration of justice system adopted by the General Assembly for the organizations

applying the United Nations staff regulations and rules. In the light of the overall “professionalization” of all aspects of the internal appeal process, including the establishment of two tiers of judicial review by external, independent tribunals, it was felt that a more adequate means of legal support for staff was needed rather than the volunteer-based Panel of Counsel that existed earlier. In the words of the General Assembly, “professional legal assistance is critical for the effective and appropriate utilization of the available mechanisms within the system of administration of justice.”¹⁰⁰ The Office of Staff Legal Assistance (together with the Legal Office for Staff Assistance at UNRWA) is unique in that no other comparable mechanism exists for staff of international organizations wishing to avail themselves of affordable legal assistance on employment-related matters.

340. **Functionally and operationally independent.** To ensure its independence from the legal and administrative structures of the organizations it serves, the Office of Staff Legal Assistance was placed within the newly created Office of Administration of Justice of the United Nations Secretariat, which plays a coordinating role for various mechanisms of the post-reform justice system and reports directly to the Secretary-General. The Office of Staff Legal Assistance is therefore functionally and operationally independent from human resources and legal functions, as well as from the executive heads and the staff representative bodies of its client organizations; in particular, it also does not report to the Office of Legal Affairs. The Office has a purely administrative reporting line to the Executive Director of the Office of Administration of Justice and fulfils a mandated function as decided by the General Assembly in its resolution 62/228 (paras. 12–15).

341. **Free professional legal assistance for staff since 2009.** The Office of Staff Legal Assistance is staffed by trained lawyers with specialized knowledge and experience in the administrative law of the United Nations. Any staff member who requires legal assistance or support can avail himself or herself of the services offered by the Office, free of charge, irrespective of the stage, duration or outcome of the appeal process. The costs incurred by the Office are generally borne by the regular budgets of its client organizations, with some exceptions.

342. **Scope of assistance includes all stages of appeal.** Legal assistance can be provided at all stages of the appeal process, including the provision of preliminary advice before formal proceedings are instituted; the preparation of management evaluation requests; litigation assistance before the tribunals; formal and informal interaction with representatives of the administration; and the negotiation of out-of-court settlements. Although the staff rules expressly provide for the Office to assist staff in their defence in the disciplinary process and in the presentation of their cases before the tribunals,¹⁰¹ management evaluation matters and the provision of summary advice on various matter have, since its inception, represented the biggest share of its workload.¹⁰²

343. **Coverage of organizations.** Among the 28 JIU participating organizations, 12 organizations are covered by the services of the Office of Staff Legal Assistance by virtue of their adherence to the United Nations staff regulations and rules (see fig. XIII). Those organizations include the United Nations Secretariat, its departments and offices and other entities, as well as the United Nations funds and programmes (except WFP and UNRWA). WMO is the only specialized agency that benefits from the services of the Office based on a special agreement it has concluded with the United Nations Secretariat.

¹⁰⁰ General Assembly resolution 62/228, para. 12.

¹⁰¹ United Nations staff rules 10.3 (a), 11.4 (d) and 11.5 (d).

¹⁰² See A/77/156, table 10 (p. 14).

Figure XIII.

Access to the services of the Office of Staff Legal Assistance for staff of JIU participating organizations¹⁰³

Organizations		Access to OSLA
United Nations Secretariat, its departments and offices	United Nations Secretariat, UNCTAD, UNEP, UN-Habitat, UNODC	✓
Funds and programmes	UNDP, UNFPA, UNHCR, UNICEF, UNOPS, UN-Women	✓
	WFP	x
Other entities	ITC	✓
	UNAIDS	x
Specialized agencies and IAEA	FAO, ICAO, ILO, IMO, ITU, UNESCO, UNIDO, UNWTO, UPU, WIPO, WHO, IAEA	x
	WMO	✓

Source: Prepared by JIU.

344. **Services tied to the two-tier tribunal system.** The services of the Office of Staff Legal Assistance were not intended to be procured in isolation and are tied to the use of other components of the United Nations administration of justice framework (the “package”). The “package” includes acceptance of the jurisdictions of both tribunals of the two-tier judicial system – the United Nations Dispute Tribunal and the United Nations Appeals Tribunal – and the access to the Office of the Ombudsman and Mediation Services to complement the formal aspects of the system with options for informal dispute resolution.

345. **Funding mechanism.** In budgetary terms, the Office is funded mainly from the regular budget of the United Nations Secretariat. In addition, a cost-sharing arrangement is in place with the funds and programmes that use its services. In 2013, the General Assembly decided to implement, on an experimental basis, a voluntary payroll deduction from staff of its client organizations as a percentage of their salaries in order to supplement the funding of the Office. Since then, the voluntary mechanism, which operates on an opt-out basis and has been extended several times by the General Assembly while options to improve it continue to be studied, provides much needed additional extrabudgetary resources for the Office to enable it to meet its workload.

346. **Arrangements for specialized agencies.** Unlike ICAO, IMO and UPU, which accepted the jurisdiction of the United Nations Appeals Tribunal, but not of the Dispute Tribunal, WMO has recognized the jurisdictions of both tribunals and avails itself of the services of both the Office of Staff Legal Assistance and the Office of the Ombudsman and Mediation Services. Those services are provided to WMO against an annual flat fee, which reflects the size of the organization’s staff complement and its expected caseload. The fee remains subject to review on an annual basis. In 2020, WMO, with a staff complement of a little over 300 staff was charged \$49,500 for the services of the Office.

2. Strengths and weaknesses

347. **A model to aspire to.** The provision of access to qualified, professional and full-time dedicated legal support at no extra charge for staff wishing to clarify their legal standing and the merit of their cases, and the possibility for staff to benefit from legal representation at all stages of the appeal process, have transformed the internal justice landscape and standards in the United Nations system organizations. Together with the Office of the Ombudsman and Mediation Services which has the capacity to provide dedicated informal dispute resolution services, the Office of Staff Legal Assistance can be considered one of the most innovative and important components of the 2009 administration of justice reform. It serves as a model

¹⁰³ Staff of other United Nations entities which are not JIU participating organizations also have access to the services of the Office of Staff Legal Assistance.

for other organizations to aspire to, even as it struggles to keep up with the demand for its services.

348. **Resource constraints: the main challenge.** The single most critical challenge faced by the Office, as expressed by both the Office and its clients, is the continued insufficiency of resources to adequately manage the constant stream of requests for legal advice and representation. With just seven professional staff and three general service staff funded from the regular budget, the Office's core funding is insufficient to run its operations, given the well over 1,000 requests for assistance submitted to it on a yearly basis (1,500 on average per year between 2019 and 2021, excluding the peak in 2018 with the post adjustment appeals submitted by Geneva-based staff) and some 25,000 staff who have access to the Office's services at any given time.¹⁰⁴ While the voluntary supplementary funding mechanism has enabled the Office to almost double its arsenal of professional legal staff, most are employed on temporary contracts owing to the unpredictability of the funding source and the sustained level of opt-out rates among the staff of its client organizations.¹⁰⁵ The Office's management has confirmed that there is a high attrition rate in the Office.

349. **Limited responsiveness perceived by staff.** Staff representatives interviewed in the course of the review mentioned that the Office's clients had complained about the shortage of human resources, in particular. While the competence and quality of the legal advice and representation services rendered was undisputed, there was a sense of unavailability and difficulty in establishing contact with individual staff for legal advice that had emerged recently and had been perceived to have increased of late.

350. **Delays explained by workload.** The Office estimated that it takes the legal team three to four working days to respond with a preliminary assessment of each case submitted, except for disciplinary cases, which take longer and usually involve processing voluminous documentation, even for a basic assessment. That appears to be a reasonable time frame for an initial response. However, with an average of 1,500 cases per year and assuming that there are 13 professional lawyers working on the cases throughout the year without breaks, each member of the legal team has to conclusively (not preliminarily) dispose of a minimum of two cases per week in order to avoid a backlog. Therefore, delays in response times are not surprising given the amount of resources available to the Office.

351. **High staff turnover.** Another related observation by staff representatives was the high turnover that had afflicted the Office's legal team in recent years. The reasons were not apparent to the staff who had observed the high number of vacancies and their counterparts changing. Some had remarked on the fact that many of the OSLA lawyers had left to join the legal offices of other organizations.

352. **Limited opportunities for career progression.** The structure of the Office is such that it offers limited or no opportunities for career progression, as most of the staff remain at their entry level of their posts. There is one P-5, several P-3 and one P-2 posts among those funded from the regular budget. The options for staff for upward career mobility are mostly, if not exclusively, outside the Office.

353. **Selective acceptance of cases reflects duties of legal counsel.** One of the most frequently raised issues about the Office has to do with its case intake, which was perceived as being selective in accepting cases for the purpose of pursuing them through the formal channels. In principle, the Office is required by the staff regulations and rules to represent staff who turn to it for assistance, which is clear from the mandatory language used regarding disciplinary as well as non-disciplinary matters ("staff members shall have the assistance", "the right to seek assistance"). However, the Office is also duty-bound by the principles of conduct associated with its role as counsel representing staff in litigation, to "advise the client staff member if his or her case is unlikely to succeed on legal merits which would make it inadvisable to pursue a formal legal remedy".¹⁰⁶

¹⁰⁴ See A/77/156, table 10.

¹⁰⁵ See A/75/162, annex III, for latest available data on opt-out rates.

¹⁰⁶ Guiding Principles of Conduct for Office of Staff Legal Assistance Affiliated Counsel in the United Nations, para. 4.

354. The ability of the Office’s legal staff to make such an assessment was among the arguments put forth by the Secretary-General in advocating for the establishment of the Office: “Qualified counsel, through training and professional ethical obligations, are best positioned to assess and refuse to pursue claims that are frivolous or vexatious, thus diminishing the overall litigation load. Furthermore, it is likely that informed professional counsel will discourage litigation that has little chance of success and will advise resolution through the informal system, wherever possible.”¹⁰⁷

355. **“Reasonable prospects of success”.** In practice, the Office uses the criterion of “reasonable prospects of success” when deciding whether to accept or decline legal representation of a case. The assessment is conducted by the legal officer assigned to examine the request for assistance and approved by the Chief of the Office, who can refer the case for further examination in the case of disagreement with the legal officer’s assessment.

356. **Statistics and estimated figures on rejected cases.** In general, only about half of the requests for assistance submitted to the Office require more than legal advice. Regarding the other half, which are requests for legal representation, the Chief of the Office estimated that about one third is turned down by the Office, including on the basis of lack of merit, but also the requestor’s lack of standing before the internal justice system (e.g. non-staff categories of personnel) or the Office’s lack of the mandate to represent staff of certain organizations. The Office does not currently publish detailed statistics in that regard. In his latest report on the administration of justice in the United Nations, the Secretary-General stated that 79 per cent of cases submitted to the Office were resolved informally or otherwise concluded by the Office through summary advice, settlement or by the Office’s determination that legal proceedings would not have a reasonable prospect of success.¹⁰⁸

357. **Staff representatives provide alternative assistance for cases rejected by the Office.** Most of the stakeholders attributed the Office’s rejection of a large portion of cases to its limited resources. To provide an alternative means of assistance to staff, at least two staff representative bodies have made retainer arrangements with external lawyers and subsidize the cost of external legal assistance for their staff, where needed. This has been possible because the system, which assigned the Office the primary responsibility of acting as legal counsel for staff before the internal justice system, is flexible with regard to accepting all possible legal representation before its instances, including self-representation, the hiring of external legal counsel and voluntary representation by colleagues or former staff.

358. **Geographical presence of the Office.** A final challenge highlighted in the course of the present review was the limited physical presence of the Office worldwide. The Office of Staff Legal Assistance currently has branch offices in six duty stations, namely, Addis Ababa, Beirut, Entebbe, Geneva, Nairobi and New York, and undertakes significant outreach efforts to inform staff of its service catalogue, including through duty travel to different locations and offices. Notwithstanding, many staff members reportedly were unaware of the possibility of resorting to the Office for legal assistance, including at duty stations like Vienna, where the Office does not have a physical presence, but is covered by the Geneva branch of the Office. Staff representative bodies in Geneva have instituted their own, albeit limited, legal assistance scheme to subsidize the legal support needed by staff in many small and large United Nations Secretariat departments and offices and other entities based there.

359. **Office of Legal Staff Assistance: an attractive option for organizations with a hybrid peer review.** Despite the challenges faced by the Office of Staff Legal Assistance, it remains an attractive option for staff as well as for organizations wishing to secure reliable, professional and well-regulated options for legal advice and representation for their staff. This is evidenced by the fact that all JIU participating organizations that have accepted the jurisdiction of at least one of the two United Nations tribunals, namely, ICAO, IMO and UPU, confirmed that they were considering subscribing to the Office’s services. IMO had explored the possibility in more concrete terms, but could not afford to fund or cost-share a legal officer post by itself.

¹⁰⁷ A/62/294, para. 27.

¹⁰⁸ A/77/156, para. 47.

B. Legal Office for Staff Assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

360. The Legal Office for Staff Assistance of UNRWA was established in 2011 as a mechanism to provide legal assistance and advice to all staff appealing administrative decisions in UNRWA. It is considered to be technically independent as it reports to the executive office. Its role is supposed to be similar to that of the Office of Staff Legal Assistance in the United Nations Secretariat in providing legal advisory and representation services to its staff. However, the Inspectors found that the UNRWA Legal Office was still working without a policy or terms of reference that spelled out its mandate and other details of its functioning.

361. Like other UNRWA administration of justice-related functions, the Legal Office is underresourced. It is currently operating with one legal officer at the P-4 level and one legal consultant for the entire staff complement at UNRWA, has limited office space, and a very small travel budget which impedes visits to the five field areas. To fill the resource gap, the Legal Office has applied for five new posts: one P-3 legal officer at headquarters in Amman, and four assistant legal officers for each of the field areas. At the time of the present review, the approval of the request was still pending.

362. In the period from January to June 2020 alone, the Legal Office worked on a total of 402 active cases and provided advice to 1,270 clients. However, it should be noted that most appellants represent themselves at the Tribunal level, because the services of the Legal Office are not available to them owing to resource constraints. Furthermore, the Inspectors found that the high degree of self-representation was to a certain extent linked to the limited knowledge about the functioning of internal appeal mechanisms in the Agency and the lack of translation of related materials into Arabic.

C. Legal support for staff of the specialized agencies

1. Institutional arrangements and conditions of support

363. **Legal support is limited for staff of specialized agencies.** Staff of the specialized agencies, as well as those at UNAIDS and WFP, have more limited options for obtaining legal support than their peers in organizations under the United Nations administration of justice system. All the specialized agencies (except for WMO) use a model of the peer review as their standard internal appeal mechanism. In those structures, the baseline approach is that legal support, including legal representation, is not necessary to effectively engage with the process, although some agencies (e.g. WFP and WHO) were open to the idea of creating a resource similar to the Office of Staff Legal Assistance, with pooled funding so as to render qualified legal support affordable to their staff.

364. Among the organizations that seemed to be less convinced of the need for such a service were the very organizations that currently have some of the most restrictive provisions on the possibility of external representation for staff in internal proceedings. They are also those organizations that would benefit from some modernization of their processes, in line with the trend of “professionalization” of traditional forms of peer review, as suggested by the Inspectors in the present report. These include IAEA, ITU, UNIDO and UNWTO.

365. **Arguments against the “over-judicialization” of the pre-tribunal stage.** During the interviews for the present review, IAEA, ITU, UNIDO and UNWTO highlighted that financial constraints were a potential obstacle, and pointed to the lack of a comparable level of formality in their internal appeal mechanisms that would warrant the establishment of dedicated legal support for staff. Some organizations also felt that the involvement of lawyers at the pre-tribunal stage ran a high risk of “over-judicializing” the process and was likely to contribute to a rapid escalation of the dispute between the administration and the staff member, and preclude further opportunities for an amicable settlement. In addition, some organizations expressed the view that internal appeal processes, as opposed to formal litigation before external tribunals, should be accessible to lay persons without requiring specialized legal assistance or expertise.

366. **Restrictions on legal representation.** It is based on this understanding of the nature of peer review that the regulatory frameworks of eight specialized agencies continue to impose explicit restrictions on the ability of their staff to seek representation for the internal appeal process:

(a) UNESCO and UNWTO allow their staff to be represented exclusively by colleagues in active service within their own organizations (therefore, retirees of the same organization are excluded);

(b) IAEA, UNIDO and ICAO have widened the circle to include their current as well as former staff (including retirees). However, ICAO explicitly limits representation to those “serving or residing at the duty station where the hearing is conducted”;

(c) FAO¹⁰⁹ (including WFP) and ILO have further expanded the pool of potential volunteer counsel to include a serving or former staff of another United Nations organization (FAO) or of the United Nations or a specialized agency (WFP) or a Staff Union representative (ILO). In that way, external representation is kept within the wider United Nations family;

(d) Although both UNESCO and ILO allow representation in principle (UNESCO internally only, ILO internally and externally), their regulatory frameworks on appeals state that neither party (administration or staff member) shall have the right to external legal representation before the Appeals Board. While this provision seemingly ensures a level playing field in the internal appeal process for both parties, it could be viewed as prejudicial against the staff member as the administration, by default, has access to legal counsel internally;

(e) Lastly, ITU precludes any form of representation at all stages of internal appeal, and merely allows staff to be “assisted by a person of his or her choice”.

367. **Freedom of choice of representation in a minority of specialized agencies.** Only four specialized agencies – IMO, UPU, WHO, including UNAIDS, and WIPO – accord their staff unrestricted freedom to select their representation according to their personal preference, whether external (including legal) counsel or any other person of their choice, albeit at their own cost. To avail themselves of freely chosen legal advice and representation, staff would generally have to pay the associated costs out of pocket and upfront.

368. **Impact of restrictions downplayed.** It is worth noting that administrations and many staff representatives were quick to point out how the restrictions have been overcome in practice. For example, at ILO, the full-time legal adviser hired by the ILO Staff Union on a staff contract acted as a legal representative in appeals based on that contract having been administratively issued by the organization, making her a serving ILO official for the purposes of the relevant provision, rather than an external legal counsel, who would have been precluded from representing staff in that capacity. Similar workarounds were practiced in other organizations and presented as evidence of the limited impact that the restrictions had in real terms on staff access to justice.

369. **Prohibition of legal representation untenable.** It is one issue to expect staff to self-fund their adequate representation in what can, despite all caveats and nuances, only be considered as proceedings of a formal character with legal implications for them; it is quite another to prohibit them from doing so, even at their own expense. In the Inspectors view, as a matter of principle, and regardless of whether the process in question is legal, administrative, or even informal, it is not becoming of any justice system to deprive its stakeholders, by law, of the possibility of seeking competent representation of their legal interests, even less so given that they are required to bear the cost.

2. Assistance provided through staff representative bodies

370. **Staff expected to self-fund legal costs individually or collectively.** In the absence of institutionalized legal support for staff in internal appeal processes, most specialized agencies rely on their staff representative bodies to provide assistance, including financial

¹⁰⁹ At the time of preparing the present review, FAO was reviewing its system of internal justice with a view to updating and modernizing its internal appeals procedures to be implemented in early 2023.

assistance. The type of assistance provided by such bodies varies greatly in scope and value, but it is often directly proportionate to the size of the staff population represented.

371. **Types of assistance offered.** A common means of support offered by staff representative bodies is the compilation of a list of lawyers who may be able to provide assistance with individual cases, but without any financial support attached. Another is the provision of free legal consultation sessions based on agreements with local law firms or individual external lawyers. The number of such free sessions is limited to a few hours per year per staff member, ranging from as few as two 30-minute sessions per year for IAEA staff, one single free session for UNAIDS staff, or up to five hours per year for fee-paying members of the staff association at WIPO.

372. For more continuous support, the staff member concerned may hire the respective lawyer at his or her own expense. In some organizations, the legal expenses incurred by staff may be covered by legal insurance schemes up to a certain amount. Some staff use the legal insurance plan set up by the Federation of International Civil Servants' Associations (FICSA), in cooperation with a Swiss insurance company, that covers legal costs up to SwF 15,000 per individual per case. The staff representative bodies of a few organizations, including FAO, IMO, ITU and WHO, offer a limited amount of financial support towards legal costs, ranging from \$2,500 (which can be topped up once to \$3,000) at the United Nations Office at Vienna and UNODC, \$4,000 at IMO, to \$10,000 at WHO, which are paid directly from the funds of the respective staff representative bodies, subject to certain conditions.

373. The most comprehensive assistance is provided by WFP (for international professional staff and national officers only) and ILO through the full-time legal advisers in their staff representative bodies, who also provide legal representation services for staff at no additional charge. Conversely, at UNESCO, UPU and UNWTO, there is no assistance whatsoever available from the staff representative bodies, owing to limited or no resources and the inability to afford even participation in existing legal insurance schemes.

374. In organizations where some form of assistance does exist, it is normally contingent, at the outset, on dues-paying membership in the respective staff representative bodies. Many staff representative bodies confirmed that they allowed staff to join as members on an ad hoc basis (and they may later withdraw); other bodies, such as the IAEA Staff Association, are more restrictive and make support conditional on at least two consecutive years of dues-paying membership, combined with at least a 50 per cent chance of success of the case, as assessed by one of two external lawyers on retainer with the Association.

375. Since most financial assistance is financed from membership dues, and far from all the staff of a given organization are members of their respective staff representative bodies, resources are generally scarce and subsidies towards legal costs of any individual (dues-paying) staff member are tied to additional conditions. Such conditions may include sufficient prospects of success, the potential impact of a ruling on groups of staff beyond the immediate scope of the individual case (strategic or interest litigation) or repeated requests for assistance from the same staff member who may have already availed himself or herself of such assistance, in which case subsequent requests may be denied.

376. There are also considerable differences among staff representative bodies regarding who decides, for example, whether a particular case will be taken on by the lawyer of the established association; which lawyer will be assigned if several are on retainer; whether and how much of a financial subsidy will be provided; or whether the conditions – regardless of an established or ad hoc nature, and whether they are defined, agreed or consistently applied – are considered to have been met. In some organizations, the President or Chair of the staff representative body decides alone (e.g. at UNAIDS and WHO); in other cases, a committee, with or without established voting or decision-making rules may make or influence decisions. In general, there is a high degree of unpredictability regarding if a staff member, whether or not a dues-paying member, will be able to count on assistance from the staff representative body.

377. Additional restrictions include the fact that assistance may be available to staff at the headquarters location of an organization, but not to staff in field offices. Although several specialized agencies in Switzerland seem to be using the legal insurance scheme arranged by FICSA, it is unclear whether that scheme applies outside Switzerland. Furthermore, not all

the specialized agencies are affiliated with FICSA, and not all the agencies that are affiliated can afford to participate in the insurance scheme, which requires a headcount of at least 1,000 members.

378. **No coherent system of legal support in place for staff of specialized agencies.** In sum, despite their intention of working in the best interests of the staff, and efforts expended by some to provide the best assistance possible, most staff representative bodies in the specialized agencies are not offering sufficient legal support to their members. Against this backdrop, any claim by organizations that their staff are sufficiently provided for in terms of legal support, therefore no further action is required, does not hold, in the Inspectors' view.

D. Bridging the gap

1. Towards an “equality of arms” between administrations and staff

379. “Equality of arms”, a key component of the right to a fair trial, refers to the principle that equal opportunity must be afforded to the parties of a dispute to present their case under conditions that do not place them at a disadvantage vis-à-vis the other party. The principle derives from international human rights law and criminal law and has been established also in the jurisprudence of the administrative tribunals as applicable to internal justice processes, mostly in the context of ensuring equal access by staff and the administration to critical information and evidence.¹¹⁰

380. **“Equality of arms” should not be precluded at any stage.** Some of the stages of the internal appeal process are not meant to be adversarial (e.g. the administrative review and the management evaluation) and would not, in principle, suggest a need for legal representation. At the same time, it is difficult to understand why such representation should not be permissible. The setting in which legal representation seems indispensable is an adversarial set-up where two opposing parties must plead their cases before an impartial instance. Although that set-up is more characteristic of tribunal proceedings, it does not have to exclude peer review processes that are set up in a similar way without being fully or at all professionalized.

381. In fact, for any contentious matter that proceeds beyond the first step of internal reconsideration by the administration of its own decision, the way in which an appeal is framed already at the initial step can be a determinant of the course and outcome of the appeal – whether legally, factually or psychologically. Accordingly, the Inspectors see no harm in permitting legal support, including representation, at any stage of an internal appeal process, if so desired by the staff member.

2. Minimum level of accessibility to legal support system-wide

382. **Disparate accessibility to legal support across organizations.** What is evident from the comparison of legal support options and their accessibility by staff of the United Nations system organizations is the disparity in the level of legal support and protection available, and permissible, depending on which side of the internal justice divide a staff member is serving. One part of the system has formalized the appeal process dramatically, and provide their staff with the necessary assistance to effectively plead their cases. The other part is in the process of gradually “professionalizing” their approach, while maintaining the semblance of a less formal procedure, and failing to equip their staff with consistent and reliable options to defend their legal interests.

383. **Trend towards “professionalization” requires matching legal support options.** Although differences in the approach to internal appeal mechanisms persist across the United Nations system, the trend is undeniably towards increased “professionalization” and thus more demand for competent legal advice and counsel for staff. As the majority of the organizations that maintain the peer review format of standard internal appeal have taken

¹¹⁰ ILO Administrative Tribunal, *O v. WHO*, Judgment No. 3586, consideration 17; *K v. FAO*, Judgment No. 4412, 7 June 2021, consideration 17; also United Nations Dispute Tribunal, *Morin*, Judgment No. UNDT/2011/069, paras. 40–42; *Kostomárova*, Judgment No. UNDT/2016/009, para. 79.

steps to externalize, if not “judicialize” their mechanisms, better and more consistent options of legal support for staff must ensue.

384. **Case for freedom of choice in legal representation.** Against that backdrop, the persisting restrictions on legal representation fail to adapt to the times and the changing landscape of internal justice in the United Nations system. Therefore, the Inspectors consider it inappropriate to continue to pretend that formal internal appeals are not, at their core, law-based processes that should be decided on the basis of regulatory provisions and legal principles, even if those are not the only valid considerations to be taken into account. As such, the pre-tribunal stage processes would be well-served by the ability of staff to access legal advice and, if need be, representation assistance when engaging with them. Therefore, in the Inspectors view, staff should be able, at a minimum, to choose their counsel freely and without restrictions if they wish to rely on assistance, including representation. Corresponding adjustments to the regulatory frameworks of those organizations that continue to impose restrictions in that regard are overdue.

385. The following recommendation is expected to strengthen coherence and harmonization.

Recommendation 7

The executive heads of the United Nations system organizations who have not yet done so should, by the end of 2025, adjust the regulatory frameworks of their organizations and remove all restrictions regarding legal representation of their staff in internal justice processes, with the aim of allowing staff to choose their legal counsel freely and without restriction.

VII. System-wide aspects of internal appeal mechanisms

386. **No formal inter-agency mechanism on pre-tribunal internal appeal matters.** There is currently no formal system-wide inter-agency mechanism dedicated to the administration of justice as a distinct topic, nor any mechanism specifically covering processes at the pre-tribunal stage, neither for standard internal appeal, nor for specialized recourse processes, irrespective of the subject matter.

387. **Aspects covered by the United Nations System Chief Executives Board for Coordination Human Resources Network.** Some aspects of internal appeal processes, in particular those related to specialized recourse mechanisms, may be covered by the Human Resources Network and task forces under the auspices of the United Nations System Chief Executives Board for Coordination (CEB). Since such processes are normally attached to specific subject matters or policies regulating an area of human resources management, recourse matters would fall within the broader policy framework relating to the specific subject matter, such as performance management (including rebuttals), job classification (including related appeals) or compensation for service-incurred illness, injury or death (including related appeals).

388. **Limited coverage by the networks of legal advisers of the United Nations system organizations.** Some aspects of internal appeal processes may be covered in the discussions among the legal advisers of the United Nations system organizations, who meet annually to exchange information, experiences and practices on legal issues of common interest and concern. However, the Inspectors found that the meetings of the two networks, namely, the network of the Legal Advisers of the specialized agencies and the related and other organizations of the United Nations system, and the network of the Legal Advisers of the United Nations Offices, Funds and Programmes, including their joint sessions, rarely touch upon matters of internal justice.

389. **Ad hoc working groups and task forces on internal justice.** Internal justice matters are usually discussed in ad hoc settings convened for specific purposes. Recent examples of such ad hoc mechanisms are:

(a) The Working Group of the United Nations Legal Advisers networks on the review of the jurisdictional set-up of the United Nations common system, created in July 2021 to advance work on related proposals presented by the Secretary-General in his reports on the same subject;¹¹¹

(b) The consultative working group on proposed amendments to the rules of procedure of the United Nations Dispute Tribunal;¹¹²

(c) The Administration of Justice Task Force that convenes, with a fluctuating membership depending on the topics to be covered in a given year, for the preparation of the Secretary-General's annual report to the General Assembly on the administration of justice at the United Nations;¹¹³

(d) The consultative meeting of legal advisers and staff representative bodies of organizations under the jurisdiction of the ILO Administrative Tribunal, held in October 2019 at the initiative of the President of the Tribunal.¹¹⁴

390. **No need for a dedicated formal inter-agency consultative mechanism.** In the light of the availability of several, if informal, forums for consultation, exchange and debate on internal justice matters, the Inspectors do not see the need to establish a formal inter-agency mechanism dedicated to pre-tribunal appeal, as such. The present review found that this aspect of the internal administration of justice, although understudied and perhaps not

¹¹¹ See A/77/222.

¹¹² Referenced in A/77/156, annex I.

¹¹³ Chaired by the Executive Director of the Office of Administration of Justice at the United Nations and including the organizations covered by the report (typically, the United Nations Secretariat, the funds and programmes, and any other organizations under the jurisdictions of the United Nations Dispute Tribunal or the United Nations Appeals Tribunal).

¹¹⁴ Referenced in ILO Governing Body document GB.338/PFA/11/1, paras. 26–27.

accorded the attention it deserves, is not readily amenable to being subsumed under one single heading for the purpose of facilitating exchange, harmonization or closer alignment of practices or regulatory solutions. This was also confirmed by the vast majority of the organizations reviewed, which considered that the mechanisms currently available to them were generally useful and sufficient in meeting their needs.

391. **Differentiation between standard and specialized mechanisms.** Standard and specialized mechanisms operate in relative isolation from each other. They are normally regulated in different sections or policies of the regulatory frameworks, entrusted to differently composed bodies or functions, and some specialized mechanisms tie in with, replace certain steps of or complement the standard appeal processes, as highlighted earlier in the present report (see chap. IV).

392. Although the key procedural review steps in each mechanism are conceptually comparable, the lessons learned from a management evaluation, for example, would be difficult to apply to a panel-based performance rebuttal, just as the benefits derived from the involvement of independent classification experts in job classification or grade-related appeals would probably not be replicable in the context of a peer review-based assessment of disciplinary measures or appeals against them. In the Inspectors' view, trying to bring all these pre-tribunal processes and mechanisms under one inter-agency mechanism would not be conducive to facilitating coordination or shared solutions.

393. **Differentiation according to office in charge of process.** Regardless of the set-up of pre-tribunal mechanisms, some processes, in particular specialized ones, are often entrusted from start to finish to a single office or function (e.g. the human resources function), whereas standard appeal mechanisms tend to differentiate between the different stages of the process and are thus managed by different offices depending on the stage (e.g. first step, first instance or final instance of appeal). Some are managed or supported by the human resources function, others by the legal function, yet others by independent experts, quasi-independent (structurally segregated) offices, or offices providing support through informal avenues of dispute resolution. Internal appeal mechanisms are thus not administered by a homogeneous group of practitioners or functions. Determining the most appropriate membership of a formal inter-agency mechanism for all pre-tribunal processes would also present significant challenges, with no clear outcome in terms of performance, efficiency or effectiveness.

394. **Scope for improved coherence and alignment.** Notwithstanding the challenges outlined above, the Inspectors are convinced that there is scope for improved coherence and alignment among certain elements of the internal appeal mechanisms. Less strict categories of convergence across the recourse mechanisms and types of organizations, may enable the conception of different formats and forums for exchange and knowledge-sharing, which may complement existing training and induction efforts as well as provide a pool of system-wide internal expertise to advise on ongoing reform efforts.

395. Ideas for enhancing inter-agency exchange among select stakeholders with regard to pre-tribunal appeal mechanisms are presented below:

(a) **Forum of officials who participate in administrative review and management evaluation processes.** Given the similarity of the two functions and the diverse set-up for managing them across the United Nations system, important lessons and practical insights could be shared to enable administrations that have less developed or resourced functions to draw from existing practices and approaches pioneered by other organizations in the system. One aspect might be how the coordination of inputs from managers and administrative decision makers can be set up efficiently.

(b) **Forum of secretaries or officials who perform secretariat functions in support of peer review bodies.** Such a forum could discuss practical and procedural aspects of the role, scope of the review, institutional positioning, functional and administrative reporting lines, case management, rules of engagement, interaction with members of peer review bodies, staff and the administration, among others. While some aspects may require segregation according to the substance of the specific process (e.g. standards or burden of proof and evaluation of evidence through peer review as part of the standard appeal mechanism, in disciplinary matters, in performance rebuttal cases etc.), others are common

to all processes (e.g. rules and practice of safeguards against conflict of interest through declarations, recusal or removal of members etc.).

(c) **Forum of personnel who support specialized recourse mechanisms, by subject matter.** While exchange on various subject matters already takes place, mostly within the context of the CEB Human Resources Network, emphasis is rarely placed on the recourse aspect. As a result, delegations may not always involve the persons who actually deal with the related contentious procedure. There is considerable scope for comparing notes among, for example, officials involved in compensation-related recourse mechanisms, those administering medical boards, performance rebuttals or other subject matter-specific forms of formal or informal recourse and dispute resolution processes.

(d) **Forum of Chairs of peer review bodies and tribunal judges and registrars.** As the outcomes of the deliberations of the peer review bodies will eventually be reviewed by a particular judicial instance, it would make sense to draw the line according to the jurisdiction of the respective tribunals. The Registrar of the ILO Administrative Tribunal piloted an outreach programme for the Chairs, as well as members of peer review bodies under the jurisdiction of the ILO Administrative Tribunal to meet members of the Tribunal in order to enhance their understanding of procedural and jurisprudential requirements linked to law and practice of the Tribunal. A similar approach could be envisaged for peer review bodies whose decisions (rather than recommendations) may be subject to judicial review by the United Nations Appeals Tribunal (e.g. ICAO, IMO and UPU).

396. **Experienced, adequately resourced organizations to lead the way.** Providing increased opportunities for such cross-functional exchanges in an inter-agency setting can benefit the United Nations system as a whole, but would prove particularly helpful for smaller, less well-resourced organizations, as well as those that have more limited access to communities of practice in the absence of other organizations headquartered or present in the same duty station. In the light of scarce training budgets and the limited accessibility and affordability of external expertise, organizations with more resourced and experienced appeal functions, such as the United Nations Secretariat, UNICEF, WIPO or WHO, should consider offering their support by facilitating such informal exchange opportunities, periodically or as a one-off or pilot endeavour, to be replicated by others as needed.

VIII. Conclusions and way forward

397. Overall, and notwithstanding the diversity of the internal appeal mechanism landscape, the present review found that both systems of internal appeals generally work well. The findings show that the existing mechanisms provide sufficient avenues of recourse without any significant lacunae identified, although each has its advantages and disadvantages, and both may need improvement in certain aspects of their functioning, as outlined in the present report.

398. These findings were echoed by interviewees whose sentiments were mixed as to whether the fully professionalized system could be considered better equipped or superior in any respect to the peer review followed by a single instance of judicial review. In particular, staff who had experienced both standard internal appeal modalities highlighted several redeeming qualities of the peer review model, which were less obvious to those who had served exclusively in the “professionalized” system.

399. However, in the Inspectors’ view, the benefit of legal certainty and impartiality (i.e. less ambiguity and unpredictability) of outcomes when the law is applied by trained lawyers subject to strict professional rules of ethics outweighs the benefit of outcomes resulting from a scheme whose main trait is membership with joint representation, but without independence and legal expertise.

400. In fact, the main criticisms levelled at the pre-reform administration of justice system at the United Nations Secretariat were not aimed primarily at the nature of the peer review, but rather the manner in which it was managed. It was seen as an underresourced mechanism that relied on full-time staff volunteering their time in addition to their regular duties, without expert guidance and/or administrative support, and insufficient consideration given to structural enablers of bias and conflict of interest in the absence of, or with very limited, safeguards for the independence of the process.

401. Many of those issues have been resolved or are being gradually addressed by the organizations that are still using the peer review mechanism today. The Inspectors consider that the general trend of “professionalization” of pre-tribunal appeal mechanisms should be welcomed as it will surely prove helpful in sustaining the credibility of the process. In their view, the less professionalized peer review models of some organizations should be upgraded to meet contemporary expectations regarding legal expertise, independence and predictability of outcomes, while keeping the peer component as a way of factoring in the cultural specificities of the organization. This may also involve rethinking the way in which staff-management relations are set up so as to move towards enabling greater participation and consultation of staff representative bodies in shaping justice and accountability in the workplace.

402. As evidenced by the increased investment by some organizations into the pre-appeal (rather than just the pre-tribunal) stage, in particular with regard to improving administrative decision-making and the availability of informal dispute resolution mechanisms, there is more recognition of the importance of prevention, early intervention and a focus on more information and more effective communication. The Inspectors firmly believe that the resolution of workplace disputes should rely much more on prevention than is currently the case. That would involve the strengthening of training and coaching opportunities for staff assuming managerial and thus decision-making responsibilities, and enhancing informal resolution mechanisms. Leveraging ombudsman and mediation services as well as other similar resources will be key to the success of such efforts.

Annex I

Set-up of formal internal appeal mechanisms (standard process)

	Organization	Internal, administrative process					External, judicial process		
		First step Procedural prerequisite for further appeal			Second step First instance mechanism of appeal			Third step Final instance judicial review	
		Management evaluation	Administrative review	Final decision	Peer review		Judicial review	UNAT	ILOAT
					Peer review body	Final decision	UNDT		
United Nations Secretariat ^a and its departments and offices	United Nations	Yes	No	Under-Secretary-General, Management Strategy, Policy and Compliance	N/A	N/A	Yes	Yes	No
	UNCTAD	See United Nations	See United Nations		See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNEP	See United Nations	See United Nations		See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UN-Habitat	See United Nations	See United Nations		See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNODC	See United Nations	See United Nations		See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
Funds and programmes	UNDP	Yes	No	UNDP Assistant Administrator and Director, Management Services	N/A	N/A	Yes	Yes	No
	UNFPA	Yes	No	UNFPA Executive Director	N/A	N/A	Yes	Yes	No
	UNHCR	Yes	No	UNHCR Deputy High Commissioner	N/A	N/A	Yes	Yes	No
	UNICEF	Yes	No	UNICEF Deputy Executive Director, Management	N/A	N/A	Yes	Yes	No
	UNOPS	Yes	No	UNOPS Executive Director	N/A	N/A	Yes	Yes	No
	UNRWA	No	Yes (Decision Review Request)	UNRWA Deputy Commissioner General	N/A	N/A	Yes (UNRWA-DT)	Yes	No
	UN-Women	Yes	No	Director, Human Resources	N/A	N/A	Yes	Yes	No
	WFP	No	Yes	WFP Executive Director ^b	FAO Appeals Committee	FAO Director-General	No	No	Yes

^a As set out in ST/SGB/2015/3.

^b For WFP staff, “final decisions” without referral to FAO Appeals Committee are made by the FAO Director-General after consultation with the WFP Executive Director.

	Organization	Internal, administrative process					External, judicial process		
		First step Procedural prerequisite for further appeal			Second step First instance mechanism of appeal			Third step Final instance judicial review	
		Management evaluation	Administrative review	Final decision	Peer review		Judicial review	UNAT	ILOAT
					Peer review body	Final decision	UNDT		
Other United Nations bodies or entities	ITC	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	
	UNAIDS	No	Yes	UNAIDS Deputy Executive Director, Management and Governance	WHO Global Board of Appeal	UNAIDS Executive Director	No	No	Yes
Specialized agencies and IAEA	FAO	No	Yes	FAO Assistant Director-General, Administration and Finance ^c	FAO Appeals Committee	FAO Director-General	No	No	Yes
	IAEA	No	Yes	IAEA Director-General	IAEA Joint Appeals Board	IAEA Director-General	No	No	Yes
	ICAO	No	Yes	ICAO Secretary-General	ICAO Appeals Board	ICAO Appeals Board	No	Yes	No
	ILO	No	Yes	Director, Human Resources Development	ILO Joint Advisory Appeals Board	ILO Director-General	No	No	Yes
	IMO	Yes (after mandatory "dialogue")	No	Director, Administrative Division	IMO Staff Appeals Board	IMO Staff Appeals Board	No	Yes	No
	ITU	No	Yes	ITU Secretary-General	ITU Appeal Board	ITU Secretary-General	No	No	Yes
	UNESCO	No	Yes	UNESCO Deputy Director-General	UNESCO Appeals Board	UNESCO Director-General	No	No	Yes
	UNIDO	No	Yes	UNIDO Director-General	UNIDO Joint Appeals Board	UNIDO Director-General	No	No	Yes
	UNWTO	No	Yes	UNWTO Secretary-General	UNWTO Joint Appeals Committee	UNWTO Secretary-General	No	No	Yes
	UPU	No	Yes	UPU Director General	UPU Appeals Committee	UPU Appeals Committee	No	Yes	No
	WHO	No	Yes	WHO Assistant Director-General, Business Operations	WHO Global Board of Appeal	WHO Director-General	No	No	Yes
	WIPO	No	Yes	WIPO Director General	WIPO Appeal Board	WIPO Director General	No	No	Yes
WMO	Yes (outsourced to UNICEF)	No	WMO Secretary-General	N/A	N/A	Yes	Yes	No	

^c For FAO staff, "final decisions" without referral to FAO Appeals Committee are made by the FAO Deputy Director-General.

Annex II

Regulatory frameworks and organizational arrangements for standard formal internal appeal mechanisms

	Organization	Staff regulations and rules applied	Standard mechanism of formal internal appeal	First step managed by	Input to the first step; policy and/or legal advice to managers provided by	Represents executive head as respondent in first instance process	Represents executive head as respondent in final judicial instance process	Staff relations or workplace relations officer or unit
United Nations Secretariat and its departments and offices^a	United Nations	United Nations Staff Regulations and Rules	Management evaluation followed by UNDT, UNAT	Management Evaluation Unit, Department of Management Strategy, Policy and Compliance (centralized)	Respective administrative office, executive office or human resources office at entity-level (decentralized)	Appeals Section, Administrative Law Division, Office of Human Resources, Department of Management Strategy, Policy and Compliance (centralized)	Office of Legal Affairs(centralized)	N/A
	UNCTAD	See United Nations	See United Nations	See United Nations	UNOG Legal and Policy Advisory Section, Human Resources Management Service	UNOG Legal and Policy Advisory Section, Human Resources Management Service	See United Nations	N/A
	UNEP	See United Nations	See United Nations	See United Nations	UNEP Legal Unit, Corporate Services Division or UNON	UNEP Legal Unit, Corporate Services Division	See United Nations	N/A
	UN-Habitat	See United Nations	See United Nations	See United Nations	UN-Habitat Legal Unit, Office of the Executive Director or UNON	UN-Habitat Legal Unit, Office of the Executive Director	See United Nations	N/A
	UNODC	See United Nations	See United Nations	See United Nations	UNODC Legal and Policy Team, Operational and Advisory Support Unit, Human Resources Management Service	UNOG Legal and Policy Advisory Section, Human Resources Management Service	See United Nations	N/A
Funds and programmes	UNDP	See United Nations	Management evaluation followed by UNDT, UNAT	UNDP Office of Legal Services	UNDP Office of Human Resources	UNDP Office of Legal Services	See United Nations	N/A
	UNFPA	See United Nations	Management evaluation followed by UNDT, UNAT	UNFPA Legal Unit	UNFPA Division for Human Resources	UNFPA Legal Unit	See United Nations	Corporate and staff relations officer
	UNHCR	See United Nations	Management evaluation followed by UNDT, UNAT	UNHCR Legal Affairs Service	UNHCR Division of Human Resources	UNHCR Legal Affairs Service	See United Nations	N/A

^a As set out in ST/SGB/2015/3.

	Organization	Staff regulations and rules applied	Standard mechanism of formal internal appeal	First step managed by	Input to the first step; policy and/or legal advice to managers provided by	Represents executive head as respondent in first instance process	Represents executive head as respondent in final judicial instance process	Staff relations or workplace relations officer or unit
	UNICEF	See United Nations	Management evaluation followed by UNDT, UNAT	UNICEF Administrative Law Unit, Office of the Executive Director	UNICEF Division of Human Resources	UNICEF Administrative Law Unit	See United Nations	Employee relations team
	UNOPS	See United Nations	Management evaluation followed by UNDT, UNAT	UNOPS Administrative Law Unit, Legal Group	UNOPS Policy and Compliance Unit, People and Performance Group	UNOPS Administrative Law Unit, Legal Group	See United Nations	N/A
	UNRWA	UNRWA International and Area Staff Regulations	Decision review request followed by UNRWA DT, UNAT	UNRWA Department of Legal Affairs	UNRWA Human Resources Department and UNRWA Field Offices	UNRWA Department of Legal Affairs	UNRWA Department of Legal Affairs	N/A
	UN-Women	See United Nations	Management evaluation followed by UNDT, UNAT	UN-Women Legal Services	UN-Women Human Resources	UN-Women Legal Services	See United Nations	Workplace relations advisor
	WFP	FAO Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	WFP Legal Office	WFP Legal Office	FAO Legal Office	FAO Legal Office	Staff Relations Branch
Other United Nations bodies or entities	ITC	See United Nations	See United Nations	See United Nations	UNOG Legal and Policy Advisory Section, Human Resources Management Service	UNOG Legal and Policy Advisory Section, Human Resources Management Service	See United Nations	N/A
	UNAIDS	WHO Staff Regulations and Staff Rules adapted by UNAIDS	Administrative review followed by peer review, ILOAT	UNAIDS Human Resources Policy and Legal Unit, Human Resources Management Department	N/A	UNAIDS Human Resources Policy and Legal Unit, Human Resources Management Department	WHO Office of the Legal Counsel	N/A
Specialized agencies and IAEA	FAO	FAO Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	FAO Legal Office	FAO Human Resources Division	FAO Legal Office	FAO Legal Office	Workplace relations manager
	IAEA	IAEA Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	IAEA Division of Human Resources	N/A	IAEA Division of Human Resources	IAEA Office of Legal Affairs	Staff relations specialist
	ICAO	ICAO Service Code and Staff Rules	Administrative review followed by peer review, UNAT	ICAO Legal Affairs and External Relations Bureau (jointly with Human Resources)	ICAO Human Resources (jointly with Legal Affairs and External Relations Bureau)	ICAO Legal Affairs and External Relations Bureau	ICAO Legal Affairs and External Relations Bureau	N/A
	ILO	ILO Staff Regulations	Administrative review followed by peer review, ILOAT	ILO Human Resources Development Department, Policy and Benefits Branch	N/A	ILO Human Resources Development Department	ILO Legal Office	N/A
	IMO	IMO Staff Regulations and Staff Rules	Mandatory "dialogue", followed by management evaluation, peer review, UNAT	IMO Human Resources Services	N/A	IMO Legal Office	IMO Legal Office	N/A

	Organization	Staff regulations and rules applied	Standard mechanism of formal internal appeal	First step managed by	Input to the first step; policy and/or legal advice to managers provided by	Represents executive head as respondent in first instance process	Represents executive head as respondent in final judicial instance process	Staff relations or workplace relations officer or unit
	ITU	ITU Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	ITU Human Resources Management Department	N/A	ITU Human Resources Management Department	ITU Human Resources Management Department	N/A
	UNESCO	UNESCO Staff Regulations and Staff Rules	Administrative review followed by peer review, ILOAT	UNESCO Bureau of Human Resources Management	N/A	UNESCO Administrative Law Section, Legal Affairs	UNESCO Administrative Law Section, Legal Affairs	N/A
	UNIDO	UNIDO Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	UNIDO Department of Human Resources Management	UNIDO Department of Human Resources Management	UNIDO Department of Human Resources Management	UNIDO Office of Legal Affairs	N/A
	UNWTO	UNWTO Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	UNWTO Human Resources (jointly with Legal Counsel)	UNWTO Legal Counsel (jointly with Human Resources)	UNWTO Human Resources (jointly with Legal Counsel)	UNWTO Legal Counsel	N/A
	UPU	UPU Staff Regulations and Staff Rules of the International Bureau	Administrative review followed by peer review, UNAT	UPU Human Resources Directorate	N/A	UPU Legal Affairs Directorate	UPU Legal Affairs Directorate	N/A
	WHO	WHO Staff Regulations and Staff Rules	Administrative review followed by peer review, ILOAT	WHO Human Resources Policy Coordination and Internal Justice team, Human Resources Talent Management	N/A	WHO Human Resources Policy Coordination and Internal Justice team, Human Resources Talent Management	WHO Office of the Legal Counsel	N/A
	WIPO	WIPO Staff Regulations and Rules	Administrative review followed by peer review, ILOAT	WIPO Administrative Law Section, Office of the Legal Counsel	WIPO Human Resources Management Division	WIPO Administrative Law Section, Office of the Legal Counsel	WIPO Administrative Law Section, Office of the Legal Counsel	N/A
	WMO	WMO Staff Regulations and Rules	Management evaluation followed by UNDT, UNAT	UNICEF Administrative Law Unit, Office of the Executive Director	WMO Human Resources Section (jointly with Legal Counsel and Administration)	WMO Legal Counsel and Administration	WMO Legal Counsel and Administration	N/A

Annex III

Specialized recourse mechanisms

A. Overview of specialized recourse mechanisms available to staff of the United Nations system organizations

	Organization	Performance rebuttals	Job reclassifications	Medical determinations	Disciplinary matters	Pension-related matters	Determination of non prima facie cases of retaliation
United Nations Secretariat and its departments and offices ^a	United Nations Secretariat	√	√	√	X	UNJSPF	√
	UNCTAD	See United Nations	See United Nations	See United Nations	See United Nations	UNJSPF	See United Nations
	UNEP	See United Nations	See United Nations	See United Nations	See United Nations	UNJSPF	See United Nations
	UN-Habitat	See United Nations	See United Nations	See United Nations	See United Nations	UNJSPF	See United Nations
	UNODC	See United Nations	See United Nations	See United Nations	See United Nations	UNJSPF	See United Nations
Funds and programmes	UNDP	√	X	√	X	UNJSPF	√
	UNFPA	√	X	√	X	UNJSPF	√
	UNHCR	√	X	√	X	UNJSPF	√
	UNICEF	√	X	√	X	UNJSPF	√
	UNOPS	√	X	√	X	UNJSPF	√
	UNRWA	√	X	√	X	UNJSPF ^b	√
	UN-Women	√	X	√	X	UNJSPF	√
	WFP	√	X	√	X	UNJSPF	√
Other United Nations bodies or entities	ITC	√	√	√	X	UNJSPF	√
	UNAIDS	√	√	√	X	UNJSPF	X
Specialized agencies and IAEA	FAO	X	X	√	X	UNJSPF	√
	IAEA	√	X	√	√	UNJSPF	X
	ICAO	√	√	X	X	UNJSPF	√

^a As set out in ST/SGB/2015/3.

^b Excluding UNRWA Area staff.

	Organization	Performance rebuttals	Job reclassifications	Medical determinations	Disciplinary matters	Pension-related matters	Determination of non prima facie cases of retaliation
	ILO	X	√	X	√	UNJSPF	√
	IMO	X	√	√	√	UNJSPF	√
	ITU	X	√	√	√	UNJSPF	√
	UNESCO	√	X	X	X	UNJSPF	√
	UNIDO	√	√	√	√	UNJSPF	X
	UNWTO	X	X	X	√	UNJSPF	X
	UPU	X	X	X	√	UPU Provident Scheme	X
	WHO	X	√	√	X	UNJSPF	X
	WIPO	X	X	X	X	UNJSPF	√
	WMO	√	√	√	X	UNJSPF	√

Annex III

B. Performance rebuttals

	Organization	Specialized process in place to challenge outcome of performance evaluation	Applicable rules or policy	Process owner	Recourse modality	What can be challenged	Outcome of specialized recourse process subject to further appeal
United Nations Secretariat and its departments and offices^a	United Nations Secretariat	Yes	ST/AI/2021/4 on performance management and development system, sects. 14 and 15	Human resources or executive office at entity-level (decentralized)	Peer review by rebuttal panel	Rating of “partially meets performance expectations” or “does not meet performance expectations”	No, only administrative decision based on final rating can be appealed through the standard process
	UNCTAD	See United Nations	See United Nations	UNOG Human Resources Management Service	See United Nations	See United Nations	See United Nations
	UNEP	See United Nations	See United Nations	UNON Human Resources Management Service	See United Nations	See United Nations	See United Nations
	UN-Habitat	See United Nations	See United Nations	UNON Human Resources Management Service	See United Nations	See United Nations	See United Nations
	UNODC	See United Nations	See United Nations	UNOV/UNODC Human Resources Management Service	See United Nations	See United Nations	See United Nations
Funds and programmes	UNDP	Yes	Annex 3: Rebuttal Panel Terms of Reference	UNDP Office of Human Resources	Peer review by rebuttal panel	Results of the annual performance review following the final review by the Bureau/Office	No, the decision by the Chair of the Rebuttal Panel constitutes the final decision on the matter
	UNFPA	Yes	Policies and Procedures Manual, Rebuttal and Related Remedies Regarding Performance Appraisal and Development	UNFPA Department of Human Resources, New York	Peer review by rebuttal panel	Performance ratings of the year-end appraisal, including good ratings and comments	No, outcomes are final. However, administrative decision based on final appraisal can be appealed through standard management evaluation
	UNHCR	Yes	Policy on Performance Management and Development Framework (UNHCR/HCP/2022/05)	Human Resources Staff Services/ Division of Human Resources Management	Peer review by the rebuttal board	Overall rating of “does not meet performance expectations” or “partially meets performance expectations”	No
	UNICEF	Yes	CFAI2011- 002 Amend 2, Performance Management	Division of Human Resources (DHR)	Review by an external reviewer, assigned by Director, DHR	Overall rating of “low achievement” or equivalent; Rebuttal only following unsuccessful attempts to find alternative remedies (discussion with supervisor and staff member’s	No

^a As set out in ST/SGB/2015/3.

	Organization	Specialized process in place to challenge outcome of performance evaluation	Applicable rules or policy	Process owner	Recourse modality	What can be challenged	Outcome of specialized recourse process subject to further appeal
						comments on Performance Evaluation Report or Performance Improvement Plan)	
	UNOPS	Yes	UNOPS Process and Quality Management System, process 7.6.4, Manage Rebuttal Process	People and Performance Group (PPG)	Review by an independent consultant, assigned by Director, PPG	Overall rating below "fully meets expectations"	No
	UNRWA	Yes	International Personnel Directive No. PD/I/112.6/Rev.1	Performance Management Rebuttal Committee (PMRC)	Peer review by the PMRC ^b	Rating of "does not meet expectations"	Yes, through the standard process
	UN-Women	Yes	Performance management policy	Human Resources	Peer review by the rebuttal panel	Rating of "partially meets expectations" or "does not meet expectations" in end-of-cycle performance assessment	No
	WFP	Yes	Performance and Competency Enhancement Programme (PACE) Recourse Procedure Guidelines	Performance and Competency Human Resources Division	Peer review by the review group	Overall rating of "unsatisfactory"; written appraisal comments, as documented in the PACE form; or final rating considered to be factually incorrect or significant flaw identified in PACE procedure	Yes, through the standard process
Other United Nations bodies or entities	ITC	See United Nations	See United Nations	UNOG Human Resources Management Service	See United Nations	See United Nations	See United Nations
	UNAIDS	Yes	HRM/IN 2020-2 Rev.1, UNAIDS Performance Management Policy	Human Resources Management	Peer review by the Global Rebuttal Panel	Overall rating of "does not meet performance expectations"	Yes, to the WHO Global Board of Appeal
Specialized agencies and IAEA	FAO	No	-	-	Informal mediation	-	-
	IAEA	Yes	AM.II/3, annex 7, Resolution Process Procedures	The Division of Human Resources	Request for review to most senior line manager for formal resolution (Deputy Director General or Head of Division or Department)	Any performance-related disagreement between supervisor and staff member	Yes, through the standard process
	ICAO	Yes	Personnel Instruction 4.39 (Staff Regulation 4.39) (Staff Rule 1 04.39) Performance and	Policy, Organizational and Staff Development Section	Peer review by the rebuttal panel	Overall rating below "fully meets expectations"	No, only administrative decision based on the assessment may be appealed through the standard process

^b The Performance Management Rebuttal Committee consists of the Deputy Commissioner-General as Chair, two other members at the D-1 or D-2 level, and including one Field Director (see PD/I/112.6/Rev.1).

	Organization	Specialized process in place to challenge outcome of performance evaluation	Applicable rules or policy	Process owner	Recourse modality	What can be challenged	Outcome of specialized recourse process subject to further appeal
			Competency Enhancement (PACE) Rebuttal Process				
	ILO	No	-	-	Standard process	-	-
	IMO	No	-	-	Informal mediation	-	-
	ITU	No	-	-	-	-	-
	UNESCO	Yes	Human Resources Manual, 14.4, Managing Underperformance	Human Resources Management	Peer review by the Performance Review Board	Staff on fixed-term appointments, except for staff on probation: overall rating of "does not meet expectations"	Yes, through the standard process
	UNIDO	Yes	UNIDO/AI/2012/01, Framework for Staff Performance Management	Human Resources Management	Peer review by the rebuttal panel	Overall rating of "1" or "2" for either the compact (partial or non-achievement of results) or the competencies (developing proficiency or not proficient)	No, not internally; administrative decision based on final appraisal may be appealed through the standard process
	UNWTO	No	-	-	Informal mediation	-	-
	UPU	No	-	-	-	-	-
	WHO	No	-	-	Standard process	-	-
	WIPO	No	-	-	Standard process (shortened timeline)	-	-
	WMO	Yes	WMO Staff Performance Management and Development System	Human Resources Section	Peer review by the rebuttal panel	Rating of "partially meets performance expectations" or "does not meet performance expectations"	No, administrative decision based on final appraisal may be resolved through informal or formal justice mechanisms

Annex III

C. Job reclassifications

	Organization	Specialized process in place to challenge outcome of job reclassification or grading	Applicable rules or policy	Peer review body involved in appeal against job reclassification or grading	Process path of appeals relating to job reclassification or grading	Organization-specific observations
United Nations Secretariat and its departments and offices ^a	United Nations Secretariat	Yes	ST/AI/1998/9, sects. 5, 6, and 7	Classification Appeals Committee	Review by the Classification Appeals Committee, then direct appeal to UNDT (no management evaluation required)	Technical body (ST/AI/2018/7) therefore appeal exempt from management evaluation upon its recommendation
	UNCTAD	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNEP	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UN-Habitat	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNODC	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
Funds and programmes	UNDP	No	No dedicated policy	No	Full standard appeal process (management evaluation, UNDT, UNAT)	-
	UNFPA	No	No dedicated policy	No	Full standard appeal process (management evaluation, UNDT, UNAT)	-
	UNHCR	No	No dedicated policy	No	Full standard appeal process (management evaluation, UNDT, UNAT)	-
	UNICEF	No	No dedicated policy	No	Full standard appeal process (management evaluation, UNDT, UNAT)	-
	UNOPS	No	No dedicated policy	No	Full standard appeal process (management evaluation, UNDT, UNAT)	-
	UNRWA	No	No dedicated policy	No	Full standard appeal process (decision review request, UNRWA-DT, UNAT)	-
	UN-Women	No	No dedicated policy	No	Full standard appeal process (management evaluation, UNDT, UNAT)	-
	WFP	No	FAO Staff Rule 302.2	No	Full standard appeal process (administrative review, peer review by FAO Appeals Committee, ILOAT)	-
Other United Nations bodies or entities	ITC	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNAIDS	Yes	UNAIDS information note HRM/IN 2019-7 MER/HRM, 28 May 2019	UNAIDS Classification Review Standing Committee	Review by Classification Review Standing Committee, no administrative review required, direct appeal to WHO Global Board of Appeal, ILOAT	Classification Review Standing Committee suspended until further notice
	FAO	No	Staff Rule 302.2	No	Full standard appeal process (administrative review, peer review by FAO Appeals Committee, ILOAT)	New policy is currently being formulated

^a As set out in ST/SGB/2015/3.

	Organization	Specialized process in place to challenge outcome of job reclassification or grading	Applicable rules or policy	Peer review body involved in appeal against job reclassification or grading	Process path of appeals relating to job reclassification or grading	Organization-specific observations
Specialized agencies and IAEA	IAEA	No	Administrative Manual, Part II, Section 3, Staffing	No, classification review is conducted by classification officer(s) designated by Head of Division of Human Resources	Decisions not to reclassify an encumbered position: resubmission to Head of Human Resources Division, before standard process; other decisions: full standard process (administrative review, peer review by Joint Appeals Board, ILOAT)	-
	ICAO	Yes	Staff Rule 102.2	ICAO Job Classification Panel	First step: classification review conducted independently by Human Resources personnel; second step: appeal to the Job Classification Panel	Job classification and grading process is currently outsourced to One HR
	ILO	Yes	HRD Circular No. 639 (REV.2), Job Grading Procedure	ILO Independent Review Group	Review by the Independent Review Group; for appeals on procedural grounds: standard process (peer review by Joint Advisory Appeals Board, ILOAT), if not an appeal on procedural grounds: no peer review required, direct appeal to ILOAT	Special process only applicable to established officials; standard process used for all other officials
	IMO	Yes	Staff Rule 102.1	IMO Classification Committee	Mandatory "dialogue" with Director of Administrative Division, peer review by Staff Appeals Board (no management evaluation by panel required)	IMO Classification Committee currently handles reclassification procedures on a trial basis; complete outsourcing of the process to One HR remains a possibility
	ITU	Yes	Service Order No. 19/16, Classification of Posts	ITU Classification Review Board	Review by Classification Review Board, then standard appeal process	-
	UNESCO	No	Human Resources Manual (2009)	No	Full standard appeal process (administrative review, peer review by UNESCO Appeals Board, ILOAT)	-
	UNIDO	Yes	Staff Rules, Chapter II	Classification Appeals Committee	Review by Classification Appeals Committee, then standard appeal process	Classification Appeals Committee suspended since 2012
	UNWTO	No	Staff Rule 11 (1)	No	Full standard appeal process (administrative review, peer review by UNWTO Joint Appeals Committee, ILOAT)	-
	UPU	No	Staff Regulations, Chapter II	No	Full standard appeal process (administrative review, peer review by UPU Appeals Committee, UNAT)	-
	WHO	Yes	Staff Rules, Section II	WHO Classification Review Standing Committee	Review by WHO Classification Review Standing Committee (no administrative review required, direct appeal to WHO Global Board of Appeal, ILOAT)	-
	WIPO	No	Staff Regulations, Chapter II and Staff Rule 2.2.1	No	Full standard appeal process (administrative review, peer review by WIPO Appeal Board, ILOAT)	-
	WMO	Yes	WMO Standing Instructions, Chapter 4	No	Receivability checked by Standing Committee on the Reclassification of Posts, review by an independent external classifier, no management evaluation required, direct appeal to UNDT	Technical body, therefore appeal exempt from management evaluation

Annex III

D. Medical determinations

	Organization	Specialized mechanism in place to challenge compensation claims	Peer review body involved in compensation claims	Involvement of medical board or independent medical practitioner in reviewing medical aspects	Process path of appeals relating to compensation claims	Specialized mechanism available for other medical determinations	Organization-specific observations
United Nations Secretariat and its departments and offices ^a	United Nations Secretariat	Yes	United Nations Advisory Board on Compensation Claims	Yes, staff entitled to engage an independent medical practitioner in the review procedure	Request for review of medical determination by Medical Services Division in accordance with ST/AI/2019/1	Yes	See ST/AI/2019/1 on medical disputes
	UNCTAD	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	-
	UNEP	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	-
	UN-Habitat	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	-
	UNODC	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	-
Funds and programmes	UNDP	Yes	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNFPA	Yes	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNHCR	Yes	See United Nations	See United Nations	See United Nations	See United Nations	Same provisions as ST/AI/2019/1 in its own policy
	UNICEF	Yes	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNOPS	Yes	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
	UNRWA	Yes	UNRWA Advisory Board on Compensation Claims	Yes	Request for reconsideration to technical board established by the Commissioner-General	No	-
	UN-Women	Yes	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations
WFP	Yes	WFP Advisory Committee on Compensation Claims	See FAO	Request for reconsideration of decision by Executive Director upon recommendation of WFP Advisory Committee, peer review by FAO Appeals Committee, then ILOAT	See FAO	WFP Advisory Committee separated from FAO Advisory Committee in 2021	
Other United Nations bodies or entities	ITC	See United Nations	See United Nations	See United Nations	See United Nations	See United Nations	-
	UNAIDS	Yes	WHO Advisory Committee on Compensation Claims	See WHO	See WHO	See WHO	-
Specialized agencies and IAEA	FAO	Yes	FAO Advisory Committee on Compensation Claims	Medical board convened if reconsideration request is based on disagreement with the medical basis	Request for reconsideration of decision by Director General upon recommendation of FAO Advisory Committee, peer review by FAO Appeals Committee, then ILOAT	Yes	-

^a As set out in ST/SGB/2015/3.

	Organization	Specialized mechanism in place to challenge compensation claims	Peer review body involved in compensation claims	Involvement of medical board or independent medical practitioner in reviewing medical aspects	Process path of appeals relating to compensation claims	Specialized mechanism available for other medical determinations	Organization-specific observations
	IAEA	Yes	IAEA Joint Advisory Board on Compensation Claims	Recommendation by Joint Advisory Board to Director General entails inputs from a medical board	Request for reconsideration of decision by Director General upon recommendation of Joint Advisory Board, no peer review required, direct appeal to ILOAT	No	Similar process as United Nations currently under development
	ICAO	No	ICAO Advisory Board on Compensation Claims	No	Full standard appeal process (administrative review, peer review by ICAO Appeals Board, UNAT)	Yes	-
	ILO	No	Invalidity committee (for disability claims only)	Yes, a medical board is convened to advise the Director General	Standard appeal process	No	-
	IMO	Yes	IMO Advisory Board on Compensation Claims	Yes	Request for reconsideration of medical determination by Medical Board, no management evaluation required, peer review by IMO Staff Appeals Board, UNAT	Medical board reviews all medical disputes; disability-related disputes handled by Staff Pension Committee	-
	ITU	Yes, through an arrangement with UNOG	No	Yes, through an arrangement with UNOG	Standard appeal process	No	To determine if an illness, injury or death was service incurred, ITU has an arrangement with UNOG to process ITU cases through its own bodies and procedures
	UNESCO	No	UNESCO Advisory Board on Compensation Claims	Medical board convened if reconsideration request is based on disagreement with the medical basis	Request for reconsideration of decision by Director General upon recommendation of Advisory Board, peer review by UNESCO Appeals Board, ILOAT	Yes	-
	UNIDO	Yes	UNIDO Advisory Board on Compensation Claims	Recommendation by Advisory Board to Director General entails inputs from a medical board	Request for reconsideration of decision by Director General upon recommendation of Advisory Board, no peer review required, direct appeal to ILOAT)	No, other medical-related disputes (sick leave, termination for health reasons etc.) follow the standard process	-
	UNWTO	No	No	-	-	Yes, for sick leave only	-
	UPU	No	No	If reconsideration requested based on disagreement with medical assessment, referral to an independent medical practitioner or a medical board (acceptable to both the Director General and the staff member) may take place	Request for reconsideration of decision by Director General, followed by standard appeal process (UPU Appeals Committee and UNAT)	No	-

	Organization	Specialized mechanism in place to challenge compensation claims	Peer review body involved in compensation claims	Involvement of medical board or independent medical practitioner in reviewing medical aspects	Process path of appeals relating to compensation claims	Specialized mechanism available for other medical determinations	Organization-specific observations
	WHO	Yes	WHO Advisory Committee on Compensation Claims	Medical board convened if reconsideration request is based on disagreement with the medical basis	Request for reconsideration of decision by Director General upon recommendation of Advisory Committee, appeal to WHO Global Board of Appeals, then ILOAT	Yes	-
	WIPO	No	No	Yes	Full standard appeal process (administrative review, peer review by WIPO Appeal Board, ILOAT)	Yes, mandatory review by medical board or independent practitioner for sick leave and termination for health reasons, then standard appeal process	-
	WMO	Yes	WMO Advisory Board on Compensation Claims	Yes, a medical board convened if necessary	Request for reconsideration of decision by WMO Secretary-General upon recommendation of the Advisory Board on Compensation Claims does not require management evaluation and is directly appealable to UNDT	No	-

Annex III

E. Disciplinary measures

	Organization	Peer review body required to advise on proposed disciplinary sanction before it is imposed	Disciplinary measures may be appealed through standard appeal process	Adjustments to standard appeal process relating to disciplinary measures	Organization-specific observations
United Nations Secretariat and its departments and offices ^a	United Nations Secretariat	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
	UNCTAD	See United Nations	See United Nations	See United Nations	-
	UNEP	See United Nations	See United Nations	See United Nations	-
	UN-Habitat	See United Nations	See United Nations	See United Nations	-
	UNODC	See United Nations	See United Nations	See United Nations	-
Funds and programmes	UNDP	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
	UNFPA	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
	UNHCR	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
	UNICEF	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
	UNOPS	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
	UNRWA	No	Yes	None; full standard appeal process required (decision review request before appealing to UNRWA DT)	-
	UN-Women	No	Yes, with adjustments	No management evaluation required, direct appeal to UNDT	-
WFP	No	Yes	None; full standard appeal process (administrative review, peer review by FAO Appeals Committee, ILOAT)	-	
Other United Nations bodies or entities	ITC	See United Nations	See United Nations	See United Nations	-
	UNAIDS	No	Yes, with adjustments	No administrative review required, direct appeal to WHO Global Board of Appeal, then ILOAT.	-
Specialized agencies and IAEA	FAO	No	Yes	None; full standard appeal process (administrative review, peer review by FAO Appeals Committee, ILOAT)	-
	IAEA	IAEA Joint Disciplinary Board	No	No administrative review nor appeal to IAEA Joint Appeals Board required, direct appeal to ILOAT	- Referral to IAEA Joint Disciplinary Board may be waived by mutual agreement between staff member and executive head; - No referral in case of summary dismissal
	ICAO	No	Yes	None; full standard appeal process (administrative review, peer review by ICAO Appeals Board, UNAT)	-

^a As set out in ST/SGB/2015/3.

	Organization	Peer review body required to advise on proposed disciplinary sanction before it is imposed	Disciplinary measures may be appealed through standard appeal process	Adjustments to standard appeal process relating to disciplinary measures	Organization-specific observations
	ILO	ILO Joint Advisory Appeals Board (peer review body for standard appeals)	Yes, with adjustments	No administrative review required; if already reviewed prior to imposition of sanction, no appeal to ILO Joint Advisory Appeal Board required, direct appeal to ILOAT.	- Referral to ILO Joint Advisory Appeals Board may be waived by mutual agreement between staff member and executive head; - No referral in cases of warning or reprimand
	IMO	IMO Joint Disciplinary Committee	Yes	No management evaluation required; mandatory “dialogue”, review by IMO Staff Appeals Board, then UNAT	-
	ITU	Disciplinary Chamber of ITU Joint Advisory Committee (staff management body)	Yes	No administrative review required; disciplinary decisions appealed directly to ITU Appeal Board, then ILOAT	-
	UNESCO	No	Yes	None; full standard appeal process (administrative review, peer review by UNESCO Appeals Board, ILOAT)	UNESCO Joint Disciplinary Committee abolished in 2020
	UNIDO	UNIDO Joint Disciplinary Committee	Yes	No administrative review required; disciplinary decisions appealed directly to the Joint Appeals Board (within one month of written notification of disciplinary decision), then ILOAT	- Referral to UNIDO Joint Disciplinary Committee may be waived by mutual agreement between staff member and executive head; - No referral in case of summary dismissal
	UNWTO	UNWTO Joint Appeals Committee (peer review body for standard appeals)	Yes	None; full standard appeal process (administrative review, peer review by UNWTO Joint Appeals Committee, ILOAT)	- Referral to UNWTO Joint Appeals Committee may be waived by mutual agreement between staff member and executive head; - No referral in cases of verbal warning or written reprimand
	UPU	UPU Disciplinary Committee	Yes	None; full standard appeal process (administrative review, peer review by UPU Appeals Committee, UNAT)	No referral in case of summary dismissal, but may be requested by staff member
	WHO	WHO Global Board of Appeal	Yes, with adjustments	No administrative review required; direct appeal to WHO Global Board of Appeal, then ILOAT	For cases of harassment, discrimination and abuse of authority, the Global Advisory Committee on Abusive Conduct (peer review body) reviews investigative reports before a decision is taken under the WHO policy on abusive conduct. For other forms of misconduct, no peer review is envisaged for appeals against decisions on disciplinary measures.
	WIPO	No	Yes, with adjustments	No administrative review required; direct appeal to WIPO Appeal Board, then ILOAT	Peer review for disciplinary matters by WIPO Joint Advisory Committee abolished in 2014
	WMO	No	Yes, with adjustments	No management evaluation required; direct appeal to UNDT	WMO Joint Disciplinary Committee abolished in 2020

Annex IV

Profiles and administrative arrangements for the Chairs of peer review bodies (standard internal appeal mechanisms)

Peer review body	Chair	Profile	Administrative arrangements	Cost	Selection process	Term limit	Alternate
FAO Appeals Committee (including WFP)	External	<ul style="list-style-type: none"> Member of governing body No specific qualifications required, legal background desirable 	N/A	N/A	Appointed by the FAO Council upon proposal from the Director-General	None	Two alternates
IAEA Joint Appeals Board	Internal	<ul style="list-style-type: none"> Director (senior manager) No specific qualifications required 	N/A	N/A	Designated by the Director-General after consultation with the Staff Council	3 years, renewable	None
ICAO Appeals Board	External	<ul style="list-style-type: none"> Legal expert (international judge) Experience in administrative law at international level required 	Consultancy contract, expert engaged when case arises (retainer)	Lump sum of \$10,000 per case; travel, DSA, miscellaneous expenses payable separately (if required)	For each case, the Chair is selected by the two other members of the Appeals Board from a list endorsed by the ICAO Council upon the proposal of the ICAO Secretary General, following consideration and advice of the Staff Advisory Committee.	3 years, renewable	One, to be selected from roster of three judges
ILO Joint Advisory Appeals Board	External	<ul style="list-style-type: none"> Former ILO officials, active or former officials of the United Nations Secretariat or the specialized agencies No specific qualifications required 	Letter of appointment, payment order	Lump sum of SwF 5,000 per year (SwF 2,500 per semester) as base fee regardless of cases filed, and lump sum of SwF 1,000 per case	Appointed by the Director-General on the recommendation of the Joint Negotiating Committee	3 years, renewable once	Two
IMO Staff Appeals Board	External	<ul style="list-style-type: none"> Legal expert (international judge) Experience in administrative law at international level required 	Consultancy contract, expert engaged when case arises (retainer)	Lump sum of \$6,000 (equivalent to 8 days); beyond 8 days, \$750 per day, up to a maximum of \$10,000 per case; travel, DSA, miscellaneous expenses payable separately	Externally advertised vacancy notice; staff representative body participates in selection process as observer	2 years, renewable	One, to be selected from a roster of two judges
ITU Appeal Board	Internal/ External	<ul style="list-style-type: none"> Active or retired elected officials or other active or retired high-ranking officials of ITU No specific qualifications required, legal background desirable 	-	-	Designated by the Secretary-General, in consultation with the Staff Council	2 years, renewable	Two to four
UNESCO Appeals Board	External	<ul style="list-style-type: none"> Legal expert (national judge) Legal background desirable 	-	Chair: lump sum of \$12,500 per year; travel, DSA, miscellaneous expenses payable separately; Vice-Chair: \$2,500 per year; no travel, DSA payable	Appointed by UNESCO Executive Board in closed session	4 years, renewable once	One

Peer review body	Chair	Profile	Administrative arrangements	Cost	Selection process	Term limit	Alternate
UNIDO Joint Appeals Board	Internal	<ul style="list-style-type: none"> No specific qualifications required 	N/A	N/A	Appointed by the Director-General from a list presented by the Staff Council	2 years, renewable	None
UNWTO Joint Appeals Committee	Internal	<ul style="list-style-type: none"> No specific qualifications required 	N/A	N/A	Selected from a panel appointed by the Secretary-General after consultation with the Staff Association(s)	2 years, renewable	One
UPU Appeals Committee	External	<ul style="list-style-type: none"> Legal expert Experience in administrative law or international civil service law desirable 	Consultancy contract, expert engaged when case arises (retainer)	-	Not advertised, engagement under <i>de minimis</i> provision in procurement rules	4 years, renewable	One
WHO Global Board of Appeal (including UNAIDS)	External*	<ul style="list-style-type: none"> Legal expert Experience in administrative law or international civil service law desirable 	Fixed-term regular staff contract at P-5 level, with 5-year service limit	Equivalent of 2 x P-5 salary and post adjustment, including standard benefits and entitlements, based in Budapest	Regular, open recruitment; staff representative body represented in selection panel	5 years, non-renewable (first year probationary)	One Deputy Chair
WIPO Appeal Board	External	<ul style="list-style-type: none"> Legal expert Experience in administrative law or international civil service law required 	Consultancy contract for 5 years, expert engaged when case arises (retainer)	Lump sum of SwF 15,500 per year, and a flat fee of SwF 2,000 for each report issued by the panel chaired; plus yearly retainer for the expert	Designated by the WIPO Coordination Committee on proposal by the Director General after consultation with the Staff Council	5 years, renewable once	One Deputy Chair

* The Chair is recruited as a staff member of WHO on an independent, time-limited post; recruitment open to external and internal candidates.

Annex V

Impact on internal appeal mechanisms when organizations opt to change tribunal jurisdictions

1. As presented in chapter II of the present report, with the exception of UNRWA, which has its own dispute tribunal, all other JIU participating organizations adhere to one of two tribunal systems: the International Labour Organization Administrative Tribunal or the two-tier system comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.
2. **Forum shopping between tribunals.** The present review found that a tendency had emerged in recent years to compare tribunal systems like exchangeable service providers, thereby “normalizing” the acceptability of “forum shopping” between tribunals. In this annex, the state of play of this trend will be reviewed from a regulatory, jurisprudential and operational point of view; the main purpose is to highlight and clarify the elements of risk associated with a jurisdictional shift, in particular the need for a transition plan that addresses the regulatory, organizational and financial impacts of such a shift.
3. **Possibility of joining the jurisdiction of a tribunal.** Although both tribunal systems were originally set up with specific client organizations in mind, both allow other organizations to join their jurisdiction.¹ To join the ILO Administrative Tribunal, organizations must submit a unilateral declaration to the Director-General of ILO and obtain the approval of the ILO governing body. To join the United Nations Appeals Tribunal and/or the United Nations Dispute Tribunal, organizations must conclude an agreement recognizing the respective jurisdictions, which is signed by the Executive Director of the Office of Administration of Justice on behalf of the Secretary-General of the United Nations.
4. **Possibility of leaving the jurisdiction of a tribunal not equally open to all organizations.** However, the option to leave – that is, withdraw recognition of a jurisdiction – their “home” tribunal is not equally open to all United Nations system organizations. For the organizations applying the United Nations Staff Regulations and Rules, the two-tier justice system is mandated by the General Assembly.² Accordingly, the entities concerned do not have the option to leave and join the jurisdiction of another tribunal unilaterally. In contrast, United Nations system organizations that are autonomously governed and have voluntarily and individually accepted the jurisdiction of a particular tribunal (e.g. the ILO Administrative Tribunal) are at greater liberty to change to another jurisdiction.
5. **United Nations system organizations that have withdrawn their recognition of the International Labour Organization Administrative Tribunal.** In the last five years, two JIU participating organizations, namely, UPU and WMO, opted to withdraw their recognition of the ILO Administrative Tribunal (WMO in 2017, UPU in 2021), which had been adjudicating their appeals, and to accept the jurisdiction of the United Nations Appeals Tribunal instead. As a second step, in 2020, WMO decided to adopt the entire two-tier justice system of the United Nations, including the jurisdiction of the United Nations Dispute Tribunal as a first judicial instance.
6. **Main reasons for changing jurisdictions.** The most common reasons organizations had formally put forth for withdrawing from the jurisdiction of the ILO Administrative Tribunal included the lengthy duration of tribunal proceedings and the costs involved. One organization – the International Fund for Agricultural Development (IFAD) – which is not considered in the present review, had also raised concerns about the different standard of proof applied by the ILO Administrative Tribunal in considering evidence produced in disciplinary cases. As a matter of fact, and without prejudice to the various reasons stated by

¹ Statute of the ILO Administrative Tribunal, art. II (5) and annex; Statute of the United Nations Dispute Tribunal, art. 2 (5); Statute of the United Nations Appeals Tribunal, art. 2 (10). The jurisdiction of the UNRWA Dispute Tribunal is available to UNRWA staff only.

² United Nations staff regulation 11.1; also General Assembly resolution 62/228.

the withdrawing organizations, a number of withdrawals from the ILO Administrative Tribunal since 2016 came in the wake of judgments ordering the reinstatement of unlawfully dismissed officials and significant amounts of compensation awarded against the organizations concerned.³

7. **Danger of differences being instrumentalized.** In its 2004 review, the Inspectors had provided evidence⁴ that, at the time, even the more obvious differences between the tribunals, and which continue to persist under the revised statutes of the United Nations tribunals today, had not resulted in materially divergent jurisprudence or judicial practices. They found that the risk was mainly in the perception, rather than in the reality, of inequality between the tribunals. It should be noted that those same areas, for which harmonization between the statutes of the tribunal statutes was recommended at the time, seem to have motivated, in significant part, the recent decisions to change jurisdictions and, as a result, the structural transformation of pre-tribunal mechanisms.

8. **Reputational damage.** In the view of judges of the ILO Administrative Tribunal, “the fact that an organization can decide to withdraw its recognition of a tribunal’s jurisdiction simply because it disagrees with that tribunal’s case law weakens the appearance of independence and impartiality of both the tribunal from which it wishes to withdraw and the one it wishes to join.”⁵ Indeed, the United Nations Appeals Tribunal’s re-interpretation of article 2 (10) of its statute, as of 2019 onwards, appears to have been rooted in its concern over the rate at which organizations seemed to be abandoning its sister tribunal and seeking an allegedly easier and quicker “deal” at its doors. In that sense, the Tribunal’s message to organizations is clear: the United Nations Appeals Tribunal demands strict observance of its statute and will not hesitate to hold administrations to account by remanding cases to the first instance until they comply, in structure as well as output, with all requirements of the law.

Implications of a change in tribunal jurisdiction

9. As the analysis shows, some of the most profound structural changes to pre-tribunal mechanisms introduced over the last five years were precipitated by the decisions taken by some organizations to withdraw from one tribunal and join another. Perhaps the highest cost associated with a change in jurisdiction is generated by a lack of adequate preparation for the move beforehand, together with the investment required to mend potential structural deficiencies, bridge gaps created inadvertently in addressing such deficiencies, and equip the organization and its mechanisms adequately for the new set-up. The implications of a change in jurisdiction are, in any case, not to be underestimated.

10. **Adequate preparation, motivation and involvement of all stakeholders are key.** Noting the differences between the two prevailing tribunal systems, jurisdictional changes should not be decided without adequate and timely preparation. This includes studying the associated requirements, considering financial, operational and institutional implications, to the extent that they are foreseeable, and preparing for them jointly with all relevant stakeholders. This is more likely to be accomplished satisfactorily when the change is supported as much as possible by both the organization and its staff in equal measure.

11. **Lessons learned.** When assessing the implications of a possible change in jurisdiction, cost is only one factor to be considered. The investment required to align the organization’s regulatory framework to achieve compatibility with the tribunals’ requirements has more far-reaching implications. Some of the lessons learned in this regard are presented below.

12. **Legislative adjustments to regulatory framework.** The first immediate adjustment necessitated by changing tribunal jurisdictions is to redirect appeals against the outcome of relevant internal processes from one tribunal to the other in the organization’s regulatory framework. Such a change generally needs to be reflected in the staff regulations, rules and any internal policies to include correct references to the relevant tribunal and process path.

³ A/75/690, para. 17 and footnote 12.

⁴ See JIU/REP/2004/3.

⁵ International Labour Office, document GB.335/PFA/12/1, para. 13.

Therefore, the legislative organs and governing bodies would have to be seized of the matter so as to engage in effecting the relevant regulatory changes.

13. **Communication and information materials for staff.** The change and its implications must be properly communicated to all stakeholders, in particular the staff. In addition to circulating the revised documents widely and making them available in an appropriate format and languages that ensure maximum distribution and accessibility, whether online or in print, additional guidance in the form of information sessions, briefings, town halls, dedicated training and, ideally, short practical guides in plain language is considered good practice.

14. **Transitional arrangements.** In order to clarify procedures relating to the change in jurisdiction or the introduction of new processes at the pre-tribunal stage, transitional arrangements may need to be put in place for ongoing cases that may continue to be processed under the existing mechanism or that may be transferred to the new set-up. Conditions for those eventualities should be articulated, including timelines, cut-off dates, and additional information on the implications of such transitional arrangements for the staff concerned.

15. **Different tribunals may require different pre-tribunal mechanisms.** When the change involves switching, for example, from a single-tier or single-instance tribunal, such as the ILO Administrative Tribunal, to an appellate instance, such as the United Nations Appeals Tribunal, additional changes may be required, such as a neutral first instance process, as provided for in the statute of the United Nations Appeals Tribunal. If an advisory peer review mechanism is already in place, there are two options (see below) to ensure compliance with that requirement based on related jurisprudence, each having its own requirements that must be taken into account.

16. **The United Nations Dispute Tribunal replaces other forms of first instance processes.** If the organization decides to accept the United Nations Dispute Tribunal (first instance) and the United Nations Appeals Tribunal (appellate) as a package, the implication is that other forms of first instance processes, such as peer review bodies, will be abolished. This is because the two-tier justice system was conceived as a replacement of the original peer review model and having two administrative instances of internal justice together with a two-tier judicial system would be excessive and inefficient. Such a choice has additional implications, such as the elimination of staff participation from the internal justice process.

17. **The United Nations Dispute Tribunal requires a management evaluation as a first step.** By virtue of its statute, the United Nations Dispute Tribunal requires a management evaluation (in lieu of an administrative review) as the first formal step before the appeal can be submitted to the Tribunal. The need for this change emanates from an explicit provision in the statute of the Tribunal (article 8 (1) (c)), which renders the receivability of cases contingent on submission of the decision for management evaluation, where required. The latter addition refers to matters which, in accordance with the regulations and rules of the organization concerned, are exempted from management evaluation and can be appealed to the Tribunal directly. Therefore, a decision must be taken as to the matters that would be exempted from management evaluation in the future, and appropriate language should be introduced in the relevant regulations, rules and policies to ensure that such exceptions are managed coherently and exhaustively.

18. **Coherence of existing specialized mechanisms with new modality.** The challenge in devising the set-up, operation and scope of a pre-tribunal process such as management evaluation lies not so much in managing the transition from the administrative review, which serves a very similar, if not identical, function, but rather in going through the organization's entire regulatory framework to examine, in particular, any pre-existing rules and policies governing specialized recourse mechanisms. This is necessary to ensure that the procedural steps of such mechanisms, which were built to align with, feed into and complement, but definitely not overlap with the standard appeal mechanism that was in place, continue to function without duplication or unnecessary procedural steps. It also involves careful consideration of any lacunae that may be created through relevant structural changes, and which might require alternate or complementary modalities to fill resulting gaps.

19. Lastly, with the decision to use the full two-tier judicial system comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, comes the

expectation on the part of staff to be provided with professional legal representation services, similar to those that the staff of the United Nations Secretariat and the funds and programmes can obtain through the Office of Staff Legal Affairs and the Office of the United Nations Ombudsman and Mediation Services, free of charge.

20. Moreover, to counterbalance the strong focus on legal aspects in the formal dispute resolution mechanisms, the services of the Office of the United Nations Ombudsman and Mediation Services were conceived as an integral part of the judicial “package”. Therefore, the complete cost of accepting the jurisdictions of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal must take into account the annual flat fee charged for the services of the Office of Staff Legal Assistance and the Office of the Ombudsman and Mediation Service in addition to the tribunals’ fees, which are charged by case.

21. **Statement about compliance, non-neutrality or adequacy of the peer review.** In this context, the statement by the United Nations Appeals Tribunal concerning the neutrality of first instance processes in specialized agencies and other organizations must not be understood as a condemnation of their peer review mechanisms as such or of the quality or character of their deliberations. Although construed as impartial bodies that provide a joint and balanced view of staff and management representatives, based on a holistic consideration of the facts and the law in the individual cultural and institutional context of the organization, peer review bodies remain advisory in nature. Therefore, it does not culminate in a neutral decision but rather in an executive one. In short, even though the deliberations of a peer review body may satisfy the requirement of neutrality, the outcome of the process, according to the United Nations Appeals Tribunal, does not and cannot. This is so because it was never designed to be akin to a judgment.

22. Against this backdrop, the United Nations Appeals Tribunal’s refusal to exercise its appellate jurisdiction in respect of organizations that are utilizing an advisory peer review process must be understood strictly in the narrow context of the explicit requirements of its statute, which stipulate a specific type of first instance process. The Tribunal’s findings in *Spinardi*, *Heftberger*, *Rolli* and others⁶ were therefore indicative of the organizations’ compliance, at the time, with the terms of the Tribunal’s statute only; they are not findings about the neutrality and, even less, the adequacy of the peer review for internal justice purposes in general.

23. **Comparable, unimpeded and adequate access to justice.** In sum, it is the Inspectors’ view that the paramount considerations when exploring options for changing tribunal jurisdictions are whether such a change is motivated by operational necessity and, at the same time, would yield a comparable, unimpeded and adequate access to justice for the organization’s staff. Cost is a secondary factor as it depends to a non-negligible extent on the quality of and care exercised in administrative decision-making among other factors such as the size of the organization’s staff population, which is already appropriately factored into the costing arrangements of the relevant tribunals.

⁶ United Nations Appeals Tribunal, with regard to IMO: *Spinardi* (2019-UNAT-957), *Sheffer* (2019-UNAT-949), *Dispert and Hoe* (2019-UNAT-958), *Fogarty* (2021-UNAT-1117; with regard to WMO: *Rolli* (2019-UNAT-952); with regard to ICAO: *Heftberger* (2020-UNAT-1012); with regard to the International Seabed Authority: *Webster* (2020-UNAT-983); with regard to the International Tribunal for the Law of the Sea: *Savadogo* (2021-UNAT-1123).

Overview of actions to be taken by participating organizations on the recommendations of the Joint Inspection Unit

Report	Intended impact	United Nations and its funds and programmes														Specialized agencies and IAEA														
		CEB	United Nations*	UNAIDS	UNCTAD	ITC	UNDP	UNEP	UNFPA	UN-Habitat	UNHCR	UNICEF	UNODC	UNOPS	UNRWA	UN-Women	WFP	FAO	IAEA	ICAO	ILO	IMO	ITU	UNESCO	UNIDO	UNWTO	UPU	WHO	WIPO	WMO
For action		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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Recommendation 1	d		E													E		E	E	E	E	E	E	E	E	E	E	E	E	E
Recommendation 2	f																	E	E	E	E	E	E	E	E	E	E	E	E	E
Recommendation 3	a																	E	E	E	E	E	E	E	E	E	E	E	E	E
Recommendation 4	f																L	L	L	L	L	L	L	L	L	L	L	L	L	L
Recommendation 5	a		L	L			L		L	L		L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Recommendation 6	a		E	E												E		E	E	E	E	E	E	E	E	E	E	E	E	E
Recommendation 7	d			E													E	E	E	E	E	E	E	E	E	E	E	E	E	E

Legend:

- L:** Recommendation for decision by legislative organ
- E:** Recommendation for action by executive head
- : Recommendation does not require action by this organization

Intended impact:

a: enhanced transparency and accountability; **b:** dissemination of good/best practices; **c:** enhanced coordination and cooperation; **d:** strengthened coherence and harmonization; **e:** enhanced control and compliance; **f:** enhanced effectiveness; **g:** significant financial savings; **h:** enhanced efficiency; **i:** other.

* As described in ST/SGB/2015/3.