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# Internal Conflict Resolution at International Organizations

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## I. Introduction

Over the past forty years, globalization has made its impact on the law by enhancing the international nature of domestic laws and heightening the relevance of international organizations. As international organizations have expanded in number and prominence, the traditional boundaries of domestic legal systems have been reexamined. The expansion of employee rights and benefits has exerted upward pressure on international organizations, whose jurisprudence tends to evolve in tandem with domestic law. Thus, international law has increasingly recognized employee rights.

The doctrine of privileges and immunities addresses the tension between international organizations and domestic legal systems by encouraging the development of internal conflict resolution processes that confer a common set of rights upon employees. Responding to their obligations under international law and with an eye toward efficient and harmonious staff relations, international organizations have developed multilayered conflict resolution systems.

Part II of the article briefly discusses the legal framework of privileges and immunities, and Part III describes the conflict resolution programs of several international organizations, including the International Monetary Fund (IMF or the Fund), the International Labour Organization (ILO), the United Nations (U.N.), and the World Bank.<sup>1</sup>

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1. The World Bank Group is comprised of five agencies, including the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes (ICSID). See *Who We Are*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20046292~menuPK:1696892~pagePK:51123644~piPK:329829~theSitePK:29708,00.html> (last visited Feb. 15, 2013).

Part IV analyzes the different approaches and evaluates their effectiveness. Part V concludes with a review of challenges facing conflict resolution systems and recommends increased transparency and collaboration as powerful tools for advancing workplace relations and the missions of international organizations.

The critiques and recommendations in this article, while offered through the lens of international organizations, may prove instructive for any organization or company designing or evaluating mechanisms for fairly and efficiently resolving workplace disputes. Indeed, with globalization now increasing competition, expanding the reach of employers, and influencing the rights of employees worldwide, strong internal conflict resolution systems may be not merely advisable, but imperative for multinational corporations, among others.

## II. Privileges and Immunities

Following World War II, major powers acknowledged the important role that international organizations can play in promoting international cooperation. The founders of international organizations took note that the healthy functioning of their institutions hinged on the freedom to act on behalf of diverse, global memberships without intrusion by domestic legal systems. Thus, the creation of domestic laws granting privileges and immunities became crucial.<sup>2</sup>

The U.N. provides an example of the legal framework underlying international status. The U.N.'s privileges and immunities appear in detail in the Convention on the Privileges and Immunities of the United Nations (General Convention). The General Convention defines the U.N.'s legal personality as including the rights to contract, acquire and dispose of property, and institute legal proceedings.<sup>3</sup> It clarifies that the U.N.'s jurisdictional immunity extends to every form of legal process, except when "expressly waived."<sup>4</sup>

The ILO, IMF, and World Bank enjoy similar immunity from domestic judicial processes, deriving jurisdictional immunity from their founding documents as well as the U.N. Convention on the Privileges and Immunities of the Specialized Agencies (Special Convention).<sup>5</sup> The

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2. *E.g.*, The International Organizations Immunities Act, 22 U.S.C. §§ 288–288I (2006).

3. *See* Convention on the Privileges and Immunities of the United Nations art. I, § 1, Feb. 13, 1946, 1 U.N.T.S. 15 [hereinafter General Convention].

4. *See id.* art. II, § 2. The Convention requires, however, that the U.N. provide "appropriate modes of settlement" for disputes arising out of its contracts or disputes of a private legal character. *Id.* art. VIII, § 29.

5. *See* ILO, ILO Constitution art. III, § 4; IMF, Articles of Agreement art. IX, § 3; Int'l Bank of Reconstruction and Dev., Articles of Agreement art. VII, § 3; Int'l Dev. Ass'n, Articles of Agreement art. VIII, § 3; *see also* Convention on the Privileges and Immunities of the Specialized Agencies art. III, § 4, Nov. 21, 1947, 33 U.N.T.S. 261 [hereinafter Special Convention]. The United States is not a party to the Special Convention.

Special Convention, like the General Convention, provides that agencies “shall enjoy immunity from every form of legal process except . . . [where] they have expressly waived their immunity.”<sup>6</sup> Although covered by the Special Convention, the World Bank, in its own Articles of Agreement, interestingly does not foreclose suits by nonmembers.<sup>7</sup> The reach of the Bank’s immunity thus remains open to interpretation. In practice, however, the Bank may assert and enjoy broad immunity.

The immunity of international organizations typically bars employees with employment-related grievances from obtaining redress in domestic courts. Acknowledging that such circumstances abridge significant individual rights, the international legal community recognizes a corresponding duty on the part of international organizations to provide “reasonable alternative means” for resolving employment disputes.<sup>8</sup> Today, conflict resolution procedures are firmly entrenched in the frameworks of many international organizations.

### III. Internal Conflict Resolution Practices at Individual International Organizations

#### A. *International Monetary Fund*

The IMF was formally established in 1945 as a collective response to the economic instability wrought by the Great Depression and World War II.<sup>9</sup> In particular, the IMF’s founding member countries sought to promote collaborative rather than restrictive monetary and trade relations as countries worked to reinvigorate their currencies and economies.<sup>10</sup> The IMF continues to manage the international monetary system that permits purchases by and between individuals and countries worldwide.<sup>11</sup> The Fund is a relatively small institution, composed of about 2,400 staff members, with most of its professional staff serving as economists and financial experts.<sup>12</sup> It maintains a

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Immunity of the ILO, IMF, and World Bank under U.S. law derives instead from the International Organizations Immunities Act, 22 U.S.C. §§ 288–288I (2006).

6. Special Convention, *supra* note 5, art. 2, § 2.

7. See Int’l Bank of Reconstruction and Dev., Articles of Agreement, art. VII, § 3 (“Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No action shall, however, be brought by members or persons acting for or deriving claims from members.”); see also Int’l Dev. Ass’n, Articles of Agreement, art. VIII, § 3.

8. See, e.g., *Waite & Kennedy v. Ger.*, 13 Eur. Ct. H.R. 121, 134 (1999).

9. *Cooperation and Reconstruction (1944–71)*, IMF, <http://www.imf.org/external/about/histcoop.htm> (last visited Feb. 15, 2013).

10. *Id.*

11. *Id.*

12. *Staff of International Civil Servants*, IMF, <http://www.imf.org/external/about/staff.htm> (last visited Feb. 15, 2013).

comprehensive system of formal and informal conflict resolution procedures for employees.

### 1. Informal Procedures

The office of the ombudsperson serves as the primary program available to staff for informal resolution of employment disputes. Use of the office is voluntary, and recourse to the ombudsperson is not a prerequisite for using formal procedures. The ombudsperson counsels staff and assists in the resolution of work-related disputes through mediation and other means, including outreach to managers, with the staff member's consent.<sup>13</sup> The ombudsperson exercises strict confidentiality.<sup>14</sup> The ombudsperson also presents annual reports of the office's caseload to the Fund's managing director and staff.<sup>15</sup>

In 2012, the IMF created a new mediation office.<sup>16</sup> The Fund's part-time mediator will operate independently of the IMF's management and departments.<sup>17</sup> In addition to mediating employment-related conflicts, the mediator will reach out to staff about the office's services.<sup>18</sup>

### 2. Formal Procedures

The Fund has three formal processes for resolving staff member conflicts: administrative review, a grievance committee, and the IMF administrative tribunal.<sup>19</sup>

#### A. ADMINISTRATIVE REVIEW

Administrative review enables staff to obtain review of a contested decision first by a department head and then, if necessary, by the human resources department. A request for review should detail the nature of the decision at issue, the reasons for the staff member's grievance, any alleged inconsistencies with IMF policy, and the relief sought.<sup>20</sup> Staff must seek administrative review before requesting consideration by the grievance committee, unless the disputed decision was made by human resources or the managing director, in which case staff may proceed first to the grievance committee.<sup>21</sup>

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13. *IMF Ombudsperson's Terms of Reference*, IMF (Dec. 2007), <http://www.imf.org/external/hrd/ombuds.htm>.

14. *Id.* Disclosure may occur where authorized by an employee or necessary to prevent an "imminent risk of serious harm." *Id.*

15. *Id.*

16. *See Job Posting: Mediator, Washington, DC*, IMF (Jun. 28, 2012), <http://blog.lib.umn.edu/gpa/globalnotes/2012/06/international-monetary-fund-me.php>.

17. *Id.*

18. *Id.*

19. IMF, General Administrative Order No. 31, § 6 (2008), available at <http://www.imf.org/external/hrd/pdf/2011/gao33.pdf> (within appended material).

20. *See id.*

21. *Id.* §§ 6.06, 7.02.

## B. THE GRIEVANCE COMMITTEE

The grievance committee is an advisory body to the managing director of the IMF. The committee serves as a neutral three-person panel, including a chairperson, a staff member appointed by the staff association committee, and a staff member appointed by management.<sup>22</sup> The grievance committee chair, an independent professional with relevant experience and legal expertise, is selected by the managing director following consultation with the staff association committee.<sup>23</sup> The grievance committee's proceedings and recommendations to management are strictly confidential.<sup>24</sup> The grievance committee reviews complaints brought by staff alleging inconsistencies between management decisions and IMF regulations governing conditions of employment.<sup>25</sup> Typically, the grievance committee holds oral hearings but, with the parties' consent, may consider a grievance on the written record alone.<sup>26</sup> In cases in which the grievant elects to be represented by legal counsel, a representative from the legal department traditionally will represent the Fund.<sup>27</sup> The staff association committee maintains a library of cases and has a legal advisor available for consultation by staff. If the grievance committee deems a grievance "well-founded in whole or in part," it can recommend reimbursement of the grievant's legal fees and other costs.<sup>28</sup> At a hearing on the merits, both parties may present evidence and examine and cross-examine witnesses under oath.<sup>29</sup> Following the hearing, the parties generally submit written briefs.<sup>30</sup> After consideration, the grievance committee issues its report and recommendations to the IMF's managing director, who issues a decision.<sup>31</sup>

## C. IMF ADMINISTRATIVE TRIBUNAL

The IMF administrative tribunal is the final and highest level of review of administrative decisions.<sup>32</sup> It functions as an independent

22. *Id.* § 2.01. Although the latter two members and their alternates are appointed by the staff association committee and management, respectively, they serve on the grievance committee as "independents." *Id.* § 10.03.

23. *Id.* § 2.01.1 Traditionally, this role has been performed by a professional arbitrator.

24. *Id.* § 7.08. However, the staff association committee office maintains a file with redacted copies of previous recommendations, which are available for review by potential grievants.

25. *Id.* § 5. The committee lacks jurisdiction, however, over executive board actions and matters related to the organization's retirement plan. *Id.* § 4.03.

26. *Id.* § 7.05.1.

27. IMF, REVIEW OF THE INTERNATIONAL MONETARY FUND'S DISPUTE RESOLUTION SYSTEM: REPORT OF THE EXTERNAL PANEL 15 (2001), available at <http://www.imf.org/external/hrd/dr/112701.pdf>. [hereinafter REPORT OF EXTERNAL PANEL].

28. IMF, General Administrative Order No. 31 (2008), § 7.04.

29. *Id.* § 7.05.3.

30. *Id.* § 7.07.

31. *Id.* § 8.

32. See Statute of the Admin. Trib. of the IMF, art. XIII.

body with jurisdiction over “any application . . . by a member of the staff challenging the legality of an administrative act,” which includes “any individual or regulatory decision taken in the administration of the staff of the Fund.”<sup>33</sup> The IMF administrative tribunal is further empowered to both review and issue judgments regarding decisions of the managing director and executive board.<sup>34</sup> A claim within the grievance committee’s jurisdiction must exhaust the committee’s procedures before being heard by the IMF administrative tribunal.<sup>35</sup>

Members of the IMF administrative tribunal, consisting of the president and four other judges, are typically prominent jurists with experience in international administrative law.<sup>36</sup> The president is appointed by the managing director, following consultation with the staff association committee and executive board.<sup>37</sup> The four other judges are appointed by the managing director, after “appropriate consultation.”<sup>38</sup> Although the IMF administrative tribunal usually decides cases based on the written record, it may hold oral hearings.<sup>39</sup>

### 3. Ethics Office

In 2000, the IMF recruited its first ethics advisor, who “promotes awareness of ethics issues, provides training and education on ethics, and carries out impartial inquiries and investigations concerning alleged violations of the [Fund’s] rules and regulations.”<sup>40</sup> The ethics advisor thus plays dual roles: counseling staff members on ethics issues and investigating potential violations of Fund policies. The ethics office also hosts a confidential hotline to which staff and outside parties can report allegations of misconduct.<sup>41</sup>

### 4. Additional Conflict Resolution Resources

The IMF maintains additional human resources divisions and staff to facilitate dispute prevention and resolution, including management coaches, a special advisor on staff diversity, and advisors against harassment.<sup>42</sup>

33. *Id.* art. II.

34. REPORT OF EXTERNAL PANEL, *supra* note 27, at 17.

35. Statute of the Admin. Trib. of the IMF, art. V. A decision relating to the IMF’s staff retirement plan must first be appealed to the plan’s administration committee before it can be heard by the IMF appeals tribunal. See REPORT OF EXTERNAL PANEL, *supra* note 27, at 82.

36. Statute of the Admin. Trib. of the IMF, art. VII.

37. *Id.*

38. *Id.*

39. *Id.* art. XII; REPORT OF EXTERNAL PANEL, *supra* note 27, at 17–18.

40. IMF Ethics Advisor Terms of Reference, Preamble, IMF <http://www.imf.org/external/hrd/eo.htm> (last visited Feb. 15, 2013); see also REPORT OF EXTERNAL PANEL, *supra* note 27, at 19.

41. IMF, Staff Bulletin: New IMF Integrity Hotline Program (Dec. 16, 2008), available at <http://www.imf.org/external/hrd/pdf/2011/gao33.pdf> (within appended materials).

42. See REPORT OF EXTERNAL PANEL, *supra* note 27, at 20–21.

## B. *The World Bank*

The World Bank is an international development institution that extends financial and technical assistance to developing nations to combat poverty and promote economic growth.<sup>43</sup> The Bank employs more than 9,000 individuals in over one hundred offices worldwide.<sup>44</sup> Two-thirds of the staff work in the Bank's headquarters in Washington, D.C.<sup>45</sup> The Bank's conflict resolution system provides both informal and formal means of addressing staff complaints.<sup>46</sup>

### 1. Informal Procedures

The Bank's informal process seeks to resolve conflicts through nonadversarial means, including ombuds services, mediation, and peer assistance and review.<sup>47</sup>

#### A. OMBUDS SERVICES

The ombuds services office operates independently of the Bank's formal structure, and offers impartial and confidential assistance to staff with employment-related concerns.<sup>48</sup> The ombudsman does not issue decisions, create policy, or conduct investigations. However, the ombudsman may provide recommendations and, with staff's consent, may speak with Bank staff at any level to assist conflict resolution.<sup>49</sup> The ombudsman may also reach out to management regarding systemic issues facing the organization.<sup>50</sup>

#### B. RESPECTFUL WORKPLACE ADVISORS

Respectful workplace advisors are volunteer peers who offer confidential assistance to staff experiencing employment-related conflicts and concerns.<sup>51</sup> They do not formally participate in conflict resolution but, rather, provide advice to empower fellow employees to resolve problems or engage the Bank's other conflict resolution services.<sup>52</sup> The ombuds services office supervises this program.<sup>53</sup>

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43. *What We Do*, WORLD BANK, <http://go.worldbank.org/7Q47C9KOZO> (last visited Feb. 13, 2013).

44. *Id.*

45. *People*, WORLD BANK, <http://go.worldbank.org/B6U4HPNDS0> (last visited Feb. 13, 2013).

46. *Conflict Resolution System*, WORLD BANK, <http://go.worldbank.org/GA9N4HD110> (last visited Feb. 13, 2013).

47. *Welcome to Ombuds Services*, WORLD BANK, <http://go.worldbank.org/W1TG0GTBJ0> (last visited Feb. 13, 2013).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Respectful Workplace Advisors (RWA) Program*, WORLD BANK, <http://go.worldbank.org/LJ14XCTG10> (last visited Feb. 13, 2013).

52. *Id.*

53. *Id.*



## C. OFFICE OF MEDIATION SERVICES

The office of mediation services provides mediation, group facilitation, and training services.<sup>54</sup> Mediation assists parties in communicating their concerns with the ultimate goal of resolving conflicts through voluntary agreement.<sup>55</sup> When mediation is successful, the parties' agreement becomes the basis of a memorandum of understanding that binds the parties but does not declare either party at fault.<sup>56</sup> To invite participation, such services are both confidential and nonadversarial.<sup>57</sup>

In addition, the office of mediation services provides group facilitation: "an informal, confidential process in which an impartial third party, a facilitator, can improve the quality of communication, problem-solving and decision-making processes in groups."<sup>58</sup> The facilitator first meets with a group about the assistance desired and then provides a proposal detailing the process ahead.<sup>59</sup> If the proposal is accepted, the facilitator will assist in subsequent meetings and discussions.<sup>60</sup>

## D. PEER REVIEW SERVICES

Peer review services invites employees to seek review of an employment-related matter before an impartial panel of their peers.<sup>61</sup> Peer review members, who are volunteer staff, determine whether a Bank decision accords with relevant organizational rules and conditions of employment.<sup>62</sup> Peer review members serve in panels of three and include both managers and nonmanagers. "Where feasible, the Peer Review Secretariat will designate to serve on the panel at least one Peer Review Member who is either at the same grade level or shares similar work experience [as the grievant] . . . [and] at least one Peer Review Member from the same Bank Group institution."<sup>63</sup>

Following a request for peer review, management will typically issue a response.<sup>64</sup> The panel will then review the parties' submissions and may hold a hearing, if requested.<sup>65</sup> The panel typically submits its findings to the vice president of the manager responding in the case.<sup>66</sup>

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54. *Mediation Services*, WORLD BANK, <http://go.worldbank.org/GUK5CUB9M1> (last visited Feb. 13, 2013).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* (follow "Group Facilitation" tab).

59. *Id.*

60. *Id.*

61. *Peer Review Process*, WORLD BANK, <http://go.worldbank.org/AS8S0JQBY0> (last visited Feb. 13, 2013).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

The relevant vice president, after consulting with the vice president of human resources, will determine relief.<sup>67</sup>

E. OFFICE OF ETHICS AND BUSINESS CONDUCT

The office of ethics and business conduct informs staff about and oversees compliance with ethical obligations set forth in the Bank's code of professional ethics, among other sources.<sup>68</sup> Its services are available to employees and their families, as well as clients and vendors,<sup>69</sup> and it also maintains a confidential ethics hotline for reporting misconduct.<sup>70</sup>

2. Formal Procedures

A. WORLD BANK ADMINISTRATIVE TRIBUNAL

Generally, the World Bank administrative tribunal considers cases only after the staff has sought assistance through available conflict resolution remedies, although for disciplinary and termination cases, staff may proceed directly to this tribunal.<sup>71</sup> It consists of seven independent judges from different countries among the Bank's membership.<sup>72</sup> Tribunal decisions are final.<sup>73</sup>

An employee submits a case to the tribunal through an application to the tribunal's executive secretary.<sup>74</sup> The executive secretary then forwards the application to the Bank, inviting its written response.<sup>75</sup> An employee may reply to the written answer received by the executive secretary,<sup>76</sup> and the Bank may conclude with a rejoinder.<sup>77</sup> The tribunal decides most cases on this written record, although it may hold oral proceedings on its own accord or at a party's request.<sup>78</sup>

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67. *Id.*

68. *Office of Ethics and Business Conduct*, WORLD BANK, <http://go.worldbank.org/L9TZ7416A0> (last visited Feb. 13, 2013); see also WORLD BANK GRP, CODE OF PROFESSIONAL ETHICS (1999), available at <http://siteresources.worldbank.org/INTEETHICS/Resources/CodeinEnglish.pdf>.

69. *Office of Ethics and Business Conduct*, *supra* note 68.

70. *Ethics HelpLine*, WORLD BANK, <http://go.worldbank.org/TWA905BN80> (last visited Feb. 13, 2013).

71. World Bank, Statute of the Administrative Tribunal of the International Bank for Reconstruction and Development, International Development Association and International Finance Corporation art. II [hereinafter Statute of WBAT]; see World Bank, Staff Rule 8.01, Annex A, available at [http://siteresources.worldbank.org/INTDOI/Resources/Staff\\_Rule\\_801.pdf](http://siteresources.worldbank.org/INTDOI/Resources/Staff_Rule_801.pdf).

72. Statute of WBAT, *supra* note 71, art. IV.

73. *Id.* art. XI.

74. World Bank, Rules of the World Bank Administrative Tribunal, Rule 7, available at <http://web.worldbank.org/external/default/main?pagePK=7333373&contentMDK=22961288>.

75. *Id.* Rule 7(10), 9.

76. *Id.* Rule 10.

77. *Id.* Rule 11.

78. *Id.* Rule 17.

### 3. Additional Associated Services

The World Bank offers additional resources to assist staff and managers, including a personal and work stress counseling unit,<sup>79</sup> an office of diversity programs, and a staff association that maintains a full-time attorney who represents staff in their disputes.<sup>80</sup>

#### C. *United Nations*

The U.N. is an international organization that fosters international cooperation as a means to prevent war and advance economic and social development among its 193 member states.<sup>81</sup> The U.N. has nearly 44,000 employees in offices around the world.<sup>82</sup> In addition, the U.N. works through fifteen specialized agencies and maintains cooperative relationships with several international institutions.<sup>83</sup> Some of the U.N.'s specialized agencies, most notably the ILO, maintain their own conflict resolution systems.<sup>84</sup>

In 2005, the U.N. Secretary-General requested that a panel of independent experts review and offer recommendations for redesigning the U.N.'s longstanding administrative justice system.<sup>85</sup> In its report to the U.N. General Assembly, the panel stated that the U.N. system of justice "is neither professional nor independent [and] . . . is extremely slow, underresourced, inefficient and, thus, ultimately ineffective. It fails to meet many basic standards of due process."<sup>86</sup> Embracing the panel's recommendations, the U.N. General Assembly established a new system of justice.<sup>87</sup> The following sections address the redesigned structure.

79. The joint bank group/fund health services department, which operates the personal and work stress counseling unit, is run jointly by the World Bank and IMF. The office provides the same counseling and consultative services to both World Bank and IMF staff and managers. See *WBG Health Service Department*, JOINT BANK/FUND HEALTH SERVS. DEP'T, <http://wbfn.org/calendar/wbg-services/health-service-intro.html> (last visited Feb. 13, 2013).

80. *Associated Services*, WORLD BANK, <http://go.worldbank.org/4ABM0EVS40> (last visited Feb. 13, 2013).

81. See *U.N. at a Glance*, U.N., <http://www.un.org/en/aboutun/index.shtml> (last visited Feb. 13, 2013); U.N. Charter art. I.

82. *Careers*, U.N., <https://careers.un.org/lbw/home.aspx?viewtype=WWA> (last visited Feb. 13, 2013).

83. *Structure and Organization*, U.N., <http://www.un.org/en/aboutun/structure/index.shtml#Others> (last visited Feb. 13, 2013).

84. See *ILO Constitution*, ILO, [http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO#A31](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A31) (last visited Feb. 13, 2013).

85. G.A. Res. 59/283, U.N. Doc. A/RES/59/283 (Apr. 13, 2005).

86. Report of the Redesign Panel on the United Nations Sys. of Admin. of Justice, ¶ 5, July 28, 2006, U.N. Doc. A/61/150, available at <http://www.un.org/ga/president/62/issues/resolutions/a-61-205.pdf> [hereinafter U.N. Redesign Panel Report].

87. G.A. Res. 61/261, U.N. Doc. A/RES/61/261 (Apr. 4, 2007); GA Res. 62/228, U.N. Doc. A/RES/62/228 (Dec. 22, 2007).

## 1. Informal Procedures

The office of the ombudsman, comprised of the mediation division and the ombudsman, serves as the U.N.'s informal system of justice. The office acts as an independent, neutral, and confidential resource for employees seeking resolution of workplace matters, including conflicts with fellow staff.<sup>88</sup> The office received 1,764 cases in 2010—a thirty-five percent increase from the 1,287 cases it received the year before.<sup>89</sup>

### A. OMBUDSMAN

The ombudsman division includes the U.N. ombudsmen, U.N. fund and programme ombudsmen, and regional ombudsmen located in seven regional branch offices.<sup>90</sup> Upon receipt of a complaint from an employee, the office will assign an ombudsman to the matter, typically within five working days.<sup>91</sup> The ombudsman will meet with the employee to learn more about the employee's concerns and will assist in evaluating available means for addressing the situation.<sup>92</sup> While the ombudsman cannot personally issue formal decisions, the ombudsman may help an employee access more formal avenues of conflict resolution.<sup>93</sup>

### B. MEDIATION DIVISION

The mediation division assists parties in arriving at their own solutions to workplace problems.<sup>94</sup> The division offers services through staff mediators and a network of on-call mediators at headquarters and the regional branches.<sup>95</sup> Cases arrive at the division either at an employee's request or by referral from another U.N. unit.<sup>96</sup>

## 2. Formal Procedures

The formal procedures at the U.N. underwent more significant reform than the informal procedures, largely to address egregious fail-

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88. *What We Do*, U.N. OMBUDSMAN & MEDIATION SERVS., <http://www.un.org/en/ombudsman/what.shtml> (last visited Feb. 13, 2013).

89. U.N. Secretary-General, *Activities of the Office of the United Nations Ombudsman and Mediation Services*, ¶ 93, U.N. Doc. A/66/224 (Aug. 2, 2011) [hereinafter U.N. Secretary-General Report].

90. *Who Are the Ombudsman and Mediators*, U.N. OMBUDSMAN & MEDIATION SERVS., <http://www.un.org/en/ombudsman/ombudsmenlist.shtml> (last visited Feb. 13, 2013).

91. *Frequently Asked Questions*, U.N. OMBUDSMAN & MEDIATION SERVS., <http://www.un.org/en/ombudsman/faqs.shtml> (last visited Feb. 13, 2013).

92. *Id.*

93. *Id.*

94. *Mediation Services: What Is Mediation?*, U.N. OFFICE OF OMBUDSMAN & MEDIATION SERVS., <http://www.un.org/en/ombudsman/medservices.shtml> (last visited Feb. 13, 2013).

95. See U.N. Secretary-General Report, *supra* note 89, ¶ 11.

96. *Mediation Principles and Guidelines (July 7, 2010)*, U.N. OFFICE OF OMBUDSMAN & MEDIATION SERVS., <http://www.un.org/en/ombudsman/meddivision.shtml> (last visited Feb. 13, 2013).

ures in rendering binding decisions, the timeliness of addressing cases, and maintaining neutrality and independence.

#### A. INTERNAL JUSTICE COUNCIL

Established as part of the U.N.'s redesigned administrative justice model, the internal justice council advances the integrity of the institution's internal judicial bodies and system of justice generally.<sup>97</sup> Specifically, the council reviews candidates for judicial appointments to internal U.N. tribunals, drafts a judicial code of conduct, and evaluates progress in implementing the redesigned justice system.<sup>98</sup> The council consists of five members, including two representatives from staff and management and two independent jurists (one proposed by staff and the other by management).<sup>99</sup> These four members select by consensus an additional jurist to serve as council chair.<sup>100</sup>

#### B. U.N. DISPUTE TRIBUNAL

The U.N. dispute tribunal is the first judicial level of the U.N.'s formal conflict resolution system.<sup>101</sup> The dispute tribunal replaces the former joint appeals boards and joint disciplinary committees, which functioned through volunteer staff, experienced immense delays, and demonstrated insufficient knowledge of staff rules.<sup>102</sup> At the urging of the redesign panel, the Secretary-General thus recommended "replacing the advisory bodies with a professional and decentralized first-instance tribunal that issues binding decisions that either party can appeal to an appeals tribunal."<sup>103</sup> The dispute tribunal presently operates through three full-time judges, located in New York, Geneva, and Nairobi, along with two part-time judges in other offices.<sup>104</sup>

#### C. U.N. APPEALS TRIBUNAL

The U.N. appeals tribunal is the court to which appeals from the U.N. dispute tribunal are taken.<sup>105</sup> The appeals tribunal is composed of seven members, who sit primarily in panels of three in New York.<sup>106</sup> From July 2009 through December 2011, the appeals tribunal reviewed 284 cases and delivered 190 decisions,<sup>107</sup> and from July

97. G.A. Res. 62/228, ¶ 35, U.N. Doc. A/RES/62/228 (Feb. 6, 2008).

98. *Id.* ¶ 37.

99. *Id.* ¶ 36.

100. *Id.*

101. Statute of the U.N. Dispute Tribunal art. I (Dec. 24, 2008).

102. See U.N. Redesign Panel Report, *supra* note 86, at 15–17.

103. U.N. Secretary-General, *Note by the Secretary General on the Report of the Redesign Panel on the United Nations System of Administration of Justice*, § 17, U.N. Doc. A/61/758 (Feb. 23, 2007).

104. Statute of the U.N. Dispute Tribunal arts. IV, V.

105. Statute of the U.N. Appeals Tribunal art. I (Apr. 8, 2012).

106. *Id.* arts. III, IV, X.

107. U.N. Office of Admin. of Justice, *Fifth Activity Report of the Office of Administration of Justice: 1 July to 31 December 2011*, ¶ 37, available at [http://www.un.org/en/oaj/unjs/pdf/Fifth\\_activity\\_report\\_OAJ.pdf](http://www.un.org/en/oaj/unjs/pdf/Fifth_activity_report_OAJ.pdf).

through December 2011, it considered thirty-nine cases from staff members appealing dispute tribunal decisions.<sup>108</sup> Of these, “34 were rejected, two were entertained in full or in part, and three cases were remanded to the [dispute tribunal].”<sup>109</sup>

#### D. OFFICE OF STAFF LEGAL ASSISTANCE

Under the prior system of justice, the U.N. provided pro bono legal assistance to staff through the panel of counsel.<sup>110</sup> While staff members had the right to select outside counsel, they could also seek assistance from the panel, which included volunteer members.<sup>111</sup> Importantly, however, the “overwhelming majority of individuals serving as counsel . . . lack[ed] legal qualifications.”<sup>112</sup> The U.N. replaced the panel with the U.N. office of staff legal assistance, a professionalized office that provides free counsel through legal staff at U.N. headquarters and individual legal officers in other offices.<sup>113</sup> The office also enlists the support of pro bono attorneys and members of the U.N. community with legal backgrounds.<sup>114</sup> It evaluates the merits of individual claims and may decline representation when, for example, it determines that an “application has little chance of success.”<sup>115</sup>

#### D. International Labour Organization

The ILO promotes rights at work and promulgates international labor standards as a specialized agency of the U.N.<sup>116</sup> The ILO operates through a distinct collaborative model that engages governments, workers, and employers in the development of international labor policy.<sup>117</sup> The International Labour Office, the ILO’s main operating center, employs approximately 2,700 employees (called “officials”) worldwide.<sup>118</sup> Workplace disputes can be resolved informally by

108. *Id.* ¶ 44.

109. *Id.*

110. *About the U.N. Internal Justice System: The Old and New System*, U.N. OFFICE OF ADMIN. OF JUSTICE, <http://www.un.org/en/oaj/unjs/oldnew.shtml> (last visited Feb. 13, 2013).

111. *Id.*

112. U.N. Redesign Panel Report, *supra* note 86, at 23.

113. G.A. Res. 62/228, ¶ 14, U.N. Doc. A/RES/62/228 (Feb. 6, 2008).

114. *Office of Staff Legal Assistance: About OSLA*, U.N. OFFICE OF ADMIN. OF JUSTICE, <http://www.un.org/en/oaj/legalassist/about.shtml> (last visited Feb. 13, 2013).

115. *Syed v. Sec’y-Gen. of the United Nations*, Judgments U.N. Dispute Trib., ¶ 27, No. UNDT/2009/093 (Dec. 22, 2009); see also *U.N. Office of Staff Legal Assistance: Frequently Asked Questions*, U.N. OFFICE OF STAFF LEGAL ASSISTANCE, <http://www.un.org/en/oaj/legalassist/faq.shtml#faq2> (last visited Feb. 13, 2013).

116. *About the ILO*, ILO, <http://www.ilo.org/global/about-the-ilo/lang-en/index.htm> (last visited Feb. 13, 2013).

117. *Id.* These groups collaborate in each of the ILO’s administrative bodies, including the International Labour Office, the Governing Body, and the International Labour Conference. *Id.*

118. *International Labour Office*, ILO, <http://www.ilo.org/global/about-the-ilo/who-we-are/international-labour-office/lang-en/index.htm> (last visited Feb. 13, 2013).

using the organization's ethics officer or mediator, or, formally, by recourse to the ILO administrative tribunal.

### 1. Informal Procedure

#### A. ETHICS OFFICER

The ethics officer provides information and training about relevant ethics rules, counsels staff and management regarding ethics inquiries, and conducts initial reviews of retaliation complaints.<sup>119</sup> Consultation of the ethics officer about matters of retaliation does not foreclose staff's use of the ILO's other conflict resolution procedures.<sup>120</sup> The ethics officer's review may, however, result in submission of the case to the human resources department, which determines whether to commence related disciplinary proceedings.<sup>121</sup> Between May 2007 and December 2009, the ethics officer received only one complaint of retaliation.<sup>122</sup>

The ethics officer position was previously performed by the deputy legal adviser.<sup>123</sup> Acknowledging the potential conflicts of interest that might arise between these positions, the former ethics officer agreed that if consulted by staff in his capacity as ethics officer, he would not later handle the same matter in the office of the legal adviser. The current ethics officer also serves in another position at the ILO, although not in the office of the legal adviser.<sup>124</sup>

#### B. OFFICE OF THE MEDIATOR

The office of the mediator provides facilitation, coaching, and mediation services in an independent and informal environment.<sup>125</sup> Mediators safeguard the confidentiality of all parties, materials, and sessions.<sup>126</sup> This office also provides the services of trained peer facilitators, including more than sixty volunteer facilitators at headquarters and in regional offices.<sup>127</sup>

119. See ILO, Office Directive IGS No. 76: Ethics in the Office, Ver. 1, at 2-3 (June 17, 2009), available at <http://www.ilo.org/public/english/ethics/download/ethics.pdf> [hereinafter ILO Ethics Office Directive].

120. *Whistleblower Protection*, ILO ETHICS OFFICE, [http://www.ilo.org/public/english/ethics/areas/w\\_blowers.htm](http://www.ilo.org/public/english/ethics/areas/w_blowers.htm) (last visited Feb. 13, 2013).

121. *Id.*

122. See ILO, INT'L LABOUR OFFICE, REPORT OF THE ETHICS OFFICER MAY 2006-30 APRIL 2007 (2007).

123. *Id.* at 3.

124. *Personnel*, ILO INT'L TRAINING CTR., <http://www.itcilo.org/en/the-centre/about-us/ethics/personnel> (last visited Feb. 13, 2013). In 2009, the ILO announced a conflict of interest and disclosure policy for staff. See ILO Ethics Office Directive, *supra* note 119, at 3.

125. *Office of the Mediator*, ILO, <http://www.ilo.org/public/english/mediate/index.htm> (last visited Feb. 13, 2013).

126. ILO Office of the Mediator, Standards of Conduct for ILO Mediators, § V (2008), available at <http://www.ilo.org/public/english/mediate/informal/mediation.htm>.

127. ILO, INT'L LABOUR OFFICE, REPORT OF THE ETHICS OFFICER 1 MAY 2008-30 APRIL 2009, at 5 (2009).

## 2. Formal Procedures

### A. ILO ADMINISTRATIVE TRIBUNAL

The ILO administrative tribunal serves as the ILO's formal administrative body for review of employment-related claims. Interestingly, other international organizations may consent to the administrative tribunal's jurisdiction over cases arising within their institutions.<sup>128</sup> This broad jurisdiction derives in part from the history of the League of Nations. The League, which was founded in 1927, maintained an administrative tribunal that also serviced the ILO, which was created eight years earlier. In 1946, the League ceased operations and conveyed its functions and property to its successor, the U.N.<sup>129</sup> The ILO—the first of the U.N.'s specialized agencies—was a natural fit, given its oversight of labor rights, and it assumed management

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128. Statute of the Administrative Tribunal of the ILO art. III [hereinafter Statute of the ILOAT]. The ILO administrative tribunal is used and recognized by the following organizations (in order of recognition): World Health Organization, including the Pan American Health Organization; International Telecommunication Union; United Nations Educational, Scientific and Cultural Organization; World Meteorological Organization; Food and Agriculture Organization of the United Nations, including the World Food Programme; European Organization for Nuclear Research; World Trade Organization; International Atomic Energy Agency; World Intellectual Property Organization; European Organisation for the Safety of Air Navigation; Universal Postal Union; European Southern Observatory; Intergovernmental Council of Copper Exporting Countries (until 1992); European Free Trade Association; Inter-Parliamentary Union; European Molecular Biology Laboratory; World Tourism Organization; European Patent Organisation; African Training and Research Centre in Administration for Development; Intergovernmental Organisation for International Carriage by Rail; International Center for the Registration of Serials; International Office of Epizootics; U.N. Industrial Development Organization; International Criminal Police Organization; International Fund for Agricultural Development; International Union for the Protection of New Varieties of Plants; Customs Co-operation Council; Court of Justice of the European Free Trade Association; Surveillance Authority of the European Free Trade Association; International Service for National Agricultural Research (until July 14, 2004); International Organization for Migration; International Centre for Genetic Engineering and Biotechnology; Organisation for the Prohibition of Chemical Weapons; International Hydrographic Organization; Energy Charter Conference; International Federation of Red Cross and Red Crescent Societies; Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; European and Mediterranean Plant Protection Organization; International Plant Genetic Resources Institute; International Institute for Democracy and Electoral Assistance; International Criminal Court; International Olive Oil Council; Advisory Centre on World Trade Organization Law; African, Caribbean and Pacific Group of States; Agency for International Trade Information and Cooperation; European Telecommunications Satellite Organization; International Organization of Legal Metrology; International Organisation of Vine and Wine; Centre for the Development of Enterprise; Permanent Court of Arbitration, South Centre; International Organisation for the Development of Fisheries in Central and Eastern Europe; Technical Centre for Agricultural and Rural Cooperation ACP-EU; The International Bureau of Weights and Measures; International Thermonuclear Experimental Reactor International Fusion Energy Organization; Global Fund to Fight AIDS, Tuberculosis and Malaria; and International Centre for the Study of the Preservation and Restoration of Cultural Property.

129. *League of Nations: History*, THE U.N. OFFICE AT GENEVA, <http://www.unog.ch> (follow "League of Nations" tab on left, then click "League of Nations Chronology") (last visited Feb. 13, 2013).



of the administrative tribunal.<sup>130</sup> Three years later, the ILO modified the administrative tribunal's founding statute to enable, through formal declarations, its jurisdiction over matters arising in other international organizations.<sup>131</sup>

Recently, the administrative tribunal has been deciding nearly one hundred cases annually, convening twice a year in Geneva for three-week sessions.<sup>132</sup> Decisions are rendered by seven judges who sit in panels of three and rule by majority vote.<sup>133</sup> Their rulings are final.<sup>134</sup> If the tribunal decides that a complaint should be fully examined, it will request written pleadings from the parties as well as any relevant supporting evidence and transcripts from earlier proceedings.<sup>135</sup> The tribunal may also, by its own initiative or at a party's request, order additional investigation, "including the appearance of the parties before it, the hearing of expert and other witnesses, the consultation of any competent international authority, and expert inquiry."<sup>136</sup> It determines on a case-by-case basis whether oral proceedings are warranted and whether the public may attend any such hearings.<sup>137</sup> Judgments of the tribunal must articulate the basis for the decision and be submitted to both the ILO's Director-General and the staff member who brought the claim.<sup>138</sup> For cases that originate outside the ILO, judgments are also delivered to the Director-General of the defendant organization.<sup>139</sup>

#### IV. Best Practices for Internal Conflict Resolution Procedures

An effective conflict resolution program must be compatible with the institutional environment in which it operates. Thus, no single internal conflict resolution template would satisfy the needs of every international organization. This section will highlight issues faced by the profiled organizations and evaluate their effectiveness in responding to such demands.

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130. *About the ILO*, *supra* note 116; *About Us: The Tribunal*, ILO, <http://www.ilo.org/public/english/tribunal/about/index.htm> (last visited Feb. 15, 2013).

131. Statute of the ILOAT, *supra* note 128, art. II(5); Annex to the Statute of the ILOAT.

132. *About Us: The Tribunal*, *supra* note 130.

133. Statute of the ILOAT, *supra* note 128, arts. III, VI.

134. *Id.* art. VI(1). Appeals to the International Court of Justice are available in cases in which an executive board challenges a decision confirming ILO administrative tribunal jurisdiction or highlights a fundamental procedural flaw. Annex to the Statute of the ILOAT art. XII, ¶ 1.

135. Rules of the ILO Administrative Tribunal, arts. 6, 8.

136. *Id.* art. 11(1).

137. Statute of the ILOAT, *supra* note 128, art. V.

138. *Id.* art. VI(2).

139. Annex to the Statute of the ILOAT art. VI, ¶ 2.

### A. *The Structure of Conflict Resolution Systems*

The structure of conflict resolution systems, though ever-evolving, must respond to the concerns of both participants and institutions. For employees, conflict resolution procedures present a host of emotional and financial costs and benefits. The availability of accessible and confidential entry points to a system frequently determines whether an employee will engage or avoid conflict resolution procedures. Employees may find complaints unresolved at early stages to be burdensome in terms of time, cost, exposure, and contentiousness if pursued at later stages. Organizations, for their part, may conceive of procedures as a series of sequential screens for resolving complaints at the earliest stages and defending against unjustified complaints at later stages. Management seeks both fair and efficient conflict resolution, and compliance with due process and human rights obligations under international law. This section will examine conflict resolution systems from both perspectives.

#### 1. Informal v. Formal Procedures

While international organizations must provide formal administrative procedures for resolving disputes or risk intrusion by domestic courts, informal procedures are not strictly required, and, thus, they have evolved organically to reflect the composition and purpose of each organization. Although seemingly formalistic, the balance of informal and formal procedures bears real and far-reaching consequences for international organizations and their staff.

Informal procedures offer accessible, private, and nonadversarial avenues for addressing staff concerns—aspects of critical importance to staff who may be reluctant to confront individuals in positions of authority.<sup>140</sup> Such procedures also allow organizations to address and ideally to resolve disputes before staff-management relations erode to a perhaps irreparable degree. Resolution of disputes soon after they arise increases not only workplace harmony, but also efficiency, eliminating both the time and cost demanded by more formal procedures.<sup>141</sup>

Absent informal procedures, formal mechanisms may appear too distant, intimidating, or intrusive to garner employee participation. At the same time, absent more formal and professional mechanisms (e.g., administrative tribunals), staff and organizations alike may suffer incomplete or biased reviews of disputes or inconsistent application of policies and procedures to similar cases. Although many conflict

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140. Brian Bloch et al., *Systems for Dealing with Conflict and Learning from Conflict—Options for Complaint-Handling: An Illustrative Case*, 14 HARV. NEGOT. L. REV. 239, 247 (2009).

141. John P. “Jack” Kennedy, *Improving the Step Below: Administrative Review in International Organizations*, in THE ADMINISTRATIVE TRIBUNAL OF THE ASIAN DEVELOPMENT BANK: 20 YEARS OF OPERATION 44 (Asian Development Bank ed., 2012), available at <http://www.adb.org/sites/default/files/pub/2012/adb-administrative-tribunal.pdf>.

resolution mechanisms defy precise categorization as either formal or informal, organizations must nevertheless strive to create systems that, through an array of such procedures, prioritize the fair treatment and consideration of employees and the objective and consistent review of management decisions.<sup>142</sup>

While all of the international organizations profiled have formal administrative tribunals, their internal conflict resolution procedures differ greatly at the lower level. The U.N. has the most formal structure below the administrative tribunal level, consisting of a formal judicial body, the U.N. dispute tribunal. Interestingly, despite the availability of a multilevel series of formal courts, informal mechanisms (e.g., the ombudsman and mediation services) enjoy far greater usage.

The World Bank has the least formal procedures below the administrative tribunal level. Its peer review services, in addition to ombuds and mediation processes, appear to be extremely effective. Of major concern, however, the World Bank's informal process fails to produce an administrative record. As such, the WBAT effectively must consider each case *de novo*.<sup>143</sup> This reality poses significant costs for both grievants and the organization, as proceedings may prove unnecessarily redundant or time-consuming. The potential loss of evidence similarly challenges the integrity of tribunal findings.<sup>144</sup> The World Bank's emphasis on peer review at earlier stages prioritizes nonadversarial conflict resolution; however, tension mounts between the accessibility of review by staff with knowledge of the World Bank and the need for consistent and accurate application of policies by professionals.

The IMF system constitutes a middle ground of formality. The Fund has a central grievance committee—a process that some have criticized as being too formal and ill-suited to provide informal conflict resolution.<sup>145</sup> The Fund's new mediation program seeks to address this concern. The IMF maintains an ethics advisor, yet the dual advisory and prosecutorial roles of this position act as a strong disincentive for employees to use the ethics office, since formal investigation and disciplinary actions could result from their request.<sup>146</sup>

## 2. The Three-Tiered Process

Although the existence and administration of informal procedures vary by organization, commonalities exist in the structure of more

142. See Chris de Cooker, *Improving the Step Below: Peer Review in the Internal Justice System of International Organizations*, in *THE ADMINISTRATIVE TRIBUNAL OF THE ASIAN DEVELOPMENT BANK*, *supra* note 141, at 53.

143. *Id.* at 61.

144. GOV'T ACCOUNTABILITY PROJECT, *HOW THE WORLD BANK'S PEER REVIEW SERVICES DENY STAFF THE RIGHT TO A FAIR HEARING* 14 (2011), available at [http://www.whistleblower.org/storage/Peer\\_Review\\_Services\\_Final\\_August\\_12.pdf](http://www.whistleblower.org/storage/Peer_Review_Services_Final_August_12.pdf).

145. See REPORT OF THE EXTERNAL PANEL, *supra* note 27, at 52.

146. *Id.* at 38.

formal mechanisms. Indeed, commentators note a trend toward a three-tiered structure at international organizations, including administrative review, an internal review stage by a staff-management committee, and judicial review.<sup>147</sup>

A. ADMINISTRATIVE REVIEW

International human resources consultant Jack Kennedy<sup>148</sup> highlights several virtues of administrative review, including the ability to “resolve a substantial portion of employment disputes, thereby avoiding costly, time-consuming recourse to later appeals processes such as proceedings in the organization’s administrative tribunal.”<sup>149</sup> For example, in the IMF administrative review offers the manager closest to the challenged decision another look, and also provides for an “independent review” by the human resources department.<sup>150</sup> Diverse institutional interests are brought to bear on the decision, including the need for consistency in applying rules.<sup>151</sup>

Administrative review also enables an organization to “prepare . . . for subsequent consideration by appeals committees and/or administrative tribunals.”<sup>152</sup> Thus, a reviewing human resource official may collect information through documents, interviews, or other means of discovery to develop a case for litigation. This investigatory product is, however, unilateral: it is neither conducted nor shared with the staff member.

This use of administrative review may create a perception of unfairness as participants become aware of the procedure’s one-sided discovery. Settlements that occur during administrative review may well result from this imbalance of information. Kennedy raises similar concerns about whether the “degree of one-sidedness . . . can be reduced or controlled to the extent needed for reviews to be perceived and accepted as credible, objective, and independent.”<sup>153</sup> He recommends integrated mediation programs as a partial response.<sup>154</sup>

B. PEER REVIEW

Peer review “stands, just like administrative review, at the crossroads of informal and formal procedures.”<sup>155</sup> Organizations structure peer review differently, with notable distinctions in the membership

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147. Kennedy, *supra* note 141, at 38.

148. Kennedy retired in 2008 from the IMF, where he worked for twenty-two years in senior human resources positions. Prior to that, he worked for ten years at the Asian Development Bank. *Id.* at 8.

149. *Id.* at 38.

150. *Id.* at 39.

151. *Id.* at 43.

152. *Id.* at 41.

153. *Id.* at 47.

154. *Id.*

155. See de Cooker, *supra* note 142, at 53.

of reviewing committees. At the IMF, the three-person grievance committee is composed of a representative of management, a representative from the staff association committee, and an outside professional arbitrator. At the World Bank, the peer review committee is composed of three staff members, and attorneys may not be directly involved. Both structures offer advantages in terms of expertise, independence, and familiarity with institutional culture and policies.

Peer review systems gain credibility from a perception of fairness and independence; correspondingly, they lose credibility when an institution disregards their recommendations. In such cases, peer review may be perceived as an arm of the human resources department, which can effectively overrule such bodies at will. The IMF offers an instructive case. Historically, IMF management routinely adopted the recommendations of the grievance committee. Then, in a series of cases involving the committee's unanimous recommendations that the Fund pay partial attorneys' fees to the grievants' attorneys, the Fund rejected the committee's recommendations.<sup>156</sup> Although there was a disagreement regarding interpretation of the committee's authority granted by IMF regulations to recommend fees in each instance, the rejection of the recommendations undermined the overall respect for and credibility of the committee. If the Fund would not endorse the committee's unanimous recommendations on a subsidiary matter, staff might well doubt the committee's independence and significance. The IMF example reveals the tenuous nature of peer review: it offers the first real opportunity to have complaints heard by an independent body, but it provides only nonbinding recommendations.

### C. JUDICIAL REVIEW

All of the profiled organizations maintain administrative tribunals. These tribunals play a critical role, offering employees an opportunity to have their cases heard by experienced and impartial fact finders. The U.N.'s redesign of its internal justice system underscores the importance of this administrative level and highlights considerations for its effectiveness.<sup>157</sup>

The U.N. redesign panel emphasized that hearings are a "clear requirement in international standards whenever there are disputed issues of fact" and urged that "[t]o guarantee due process and to facilitate decisions, oral hearings should be promoted and accepted."<sup>158</sup> In practice, oral hearings are not always offered or requested.

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156. In most of these cases, the Fund was essentially vindicated in its position, with some partial findings against the Fund on the merits.

157. See generally U.N. Redesign Panel Report, *supra* note 86.

158. *Id.* at 5.

At the World Bank and IMF, tribunals are permitted to hold oral hearings, but seldom, if ever, do.<sup>159</sup> Consequently, cases at many international organizations are decided in private on written records. In cases involving the interpretation of organizational rules or law, written submissions likely will prove sufficient.<sup>160</sup> This practice may, however, challenge justice in more fact-intensive cases, particularly at organizations such as the World Bank where administrative records are not maintained during informal procedures. Restrictions on the role of counsel in preparing submissions at the World Bank's peer review level compound the potential for loss of evidence. Increased availability of oral hearings promises greater access to information for fact finders and decision-making resources for employees.

The effectiveness of administrative tribunals rests not only on their accessibility, but also on their consistency in rendering decisions in similar cases. Predictable and reasoned results enhance the integrity of organizational procedures as well as employee confidence. Acknowledging the importance of consistency, many tribunals look both inward, to reconcile their decisions with those in prior cases, and outward, to align their findings with international law and the decisions of other tribunals. Indeed, "there is hardly any judgment of international tribunals that does not make reference to jurisprudence of other tribunals. It has become current practice."<sup>161</sup> The unique posture of tribunals as quasi-sovereign entities encourages these bodies to cite decisions by other international tribunals to preserve neutrality across member countries and avoid preference for any one domestic legal system. The influence of tribunal decisions extends beyond substantive matters to inform the review and redesign of internal conflict resolution procedures at various organizations.<sup>162</sup> As a result, tribunals play an active role in shaping due process rights both at the highest levels of administrative review and in the steps below.

### *B. Staff Representation in Conflict Resolution Mechanisms*

A robust internal conflict resolution system imposes substantial costs on both international organizations and their employees. For employees, these costs are borne in the form of time, energy, and financial

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159. A rare example of an oral hearing at the World Bank can be found in *John Y. Kim v. IBRD*, Decision No. 448 (May 25, 2011), available at [http://lnweb90.worldbank.org/crn/wbt/wbtwebsite.nsf/\(resultsweb\)/747BFCD689EE1874852578B200722E5C](http://lnweb90.worldbank.org/crn/wbt/wbtwebsite.nsf/(resultsweb)/747BFCD689EE1874852578B200722E5C).

160. See Arnold M. Zack, *Developing Standards of Workplace Justice in International Organizations*, 2010 AM. SOC. INT'L LAW INT'L ORGS. INTEREST GROUP REV. 44, 50 (2010), available at <http://www.law.harvard.edu/programs/lwp/people/staffPapers/zack/International%20Organizations%20Interest%20Group%20Review%20-%202010%20Issue.pdf>.

161. Chris de Cooker, *The Effectiveness of International Administrative Law as a Body of Law*, in *THE DEVELOPMENT AND EFFECTIVENESS OF INTERNATIONAL ADMINISTRATIVE LAW* 319, 322 (Olufemi Elias ed., 2010).

162. See generally *id.*

resources expended in pursuing a claim. This section will explore unique considerations related to international civil service and analyze resources available to staff to assist in meeting their needs.

### 1. Needs and Demands of International Civil Service

International civil servants trade allegiance to their countries for service to a collective of nations in support of ambitious missions—from promoting labor rights to preventing war. An international code of conduct highlights the seriousness of this undertaking: such employment requires strict independence from and impartiality in the face of national interests.<sup>163</sup> Unprotected by the employment laws and safety net systems of their countries, these employees rely upon their organizations for compensation and job security, as well as a range of benefits.

The working conditions of many international civil servants echo the gravity of their global responsibility. Field employees of the U.N., for example, face harsh conditions, frequently encumbered by danger and despair.<sup>164</sup> Isolation from family, culture, and colleagues increases stress. Headquarters staff are not immune from pressure, frequently working at a distance from their personal support networks and home countries, and “often at the center of world attention, in the world’s largest and most visible fishbowl.”<sup>165</sup> Devotion to a shared mission and an established hierarchy gives rise to a stoic culture in some organizations, leading field employees in particular to withhold requests for assistance, lest their fitness for service or allegiance be questioned.<sup>166</sup>

### 2. Staff Associations and Collective Bargaining

Employee organizations assist staff in navigating an organization’s internal conflict resolution procedures. Such organizations generally owe their existence to staff rules and regulations referencing the “freedom of association,” and take the form of staff associations, committees, or unions. In several organizations, including the World Bank and IMF, the staff associations do not formally represent employees as a union would; rather, they assist employees in identifying relevant resources and avenues for filing claims. While these associations may also serve an active role in expressing the views of staff to management, they do not possess collective bargaining power—that

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163. See generally INT’L CIV. SERV. COMM’N, STANDARDS OF CONDUCT FOR THE INTERNATIONAL CIVIL SERVICE (Jan. 2002), available at <http://licsc.un.org/resources/pdfs/general/standardsE.pdf>.

164. Dina Francesca Haynes, *Ethics of International Civil Service: A Reflection on How the Care of United Nations’ Staff Impacts the Ability to Fulfill Their Role in “Harmonizing” the World*, 30 HAMLINE J. PUB. L. & POL’Y 175, 197 (2008).

165. *Id.* at 199.

166. *Id.* at 216–17.

is, the authority to negotiate agreements with management regulating work relations, conditions, and other terms of employment.<sup>167</sup>

In contrast, other organizations, including the U.N. and ILO, are served by unions that enjoy more traditional collective bargaining relationships with organizational managers, negotiating binding agreements on a host of employment policies and procedures. Unsurprisingly, given its mandate to promote workers' rights, the ILO hosts a staff-management relationship characterized by collective agreements, including an agreement related to conflict resolution.<sup>168</sup>

At the U.N., the right to collective bargaining is frequently supported in practice but is not explicitly recognized.<sup>169</sup> While staff and management engage in negotiation on various topics, bargaining on other matters is circumscribed by limits from member states on management's authority.<sup>170</sup> Collective bargaining does not exist, for example, in the realm of compensation.<sup>171</sup> In light of this distinction and to prevent confusion over whether the right exists, even within limits, a recent report by the U.N.'s joint inspection unit recommended the approval of "an appropriate staff regulation confirming the recognition of the right of the United Nations staff to collective bargaining."<sup>172</sup>

Collective bargaining assumes an important role in conflict resolution procedures. First, it provides a substantial opportunity to gain employee buy-in, as such systems will better reflect employee needs and input. Collective bargaining also enables administrative consistency, particularly when staff-management agreements directly address subjects of grievances. Negotiation further ensures that procedures will be revisited and will evolve in response to experience and feedback. Further, the collective bargaining representative usually represents employees or funds such representation, thus alleviating a primary inhibition to bringing claims.

Unfortunately, the role of collective bargaining appears undeveloped or inconsistent at many international organizations. Staff-management relations governed by consultation alone too often lead

167. See, e.g., REPORT OF THE EXTERNAL PANEL, *supra* note 27, at 72 ("[T]he [staff association committee] does not act as a trade union."); *Corporate Responsibility*, WORLD BANK, <http://crinfo.worldbank.org/wbcrinfo/node/19> (last visited Feb. 13, 2013) ("The [staff association] is not a union, and it does not engage in collective bargaining.")

168. *Collective Bargaining Agreements*, ILO STAFF UNION, [http://www.ilstaffunion.org/new/?page\\_id=2596](http://www.ilstaffunion.org/new/?page_id=2596) (last visited Feb. 13, 2013).

169. See U.N. Joint Inspection Unit (Gerard Biraud), *Staff-Management Relations Within the United Nations*, 42–43, U.N. Doc. JIU/REP/2011/10 (May 2010), available at [http://www.unjiu.org/data/reports/2011/JIU\\_REP\\_2011\\_10%20FINAL\\_13%20March%202012.pdf](http://www.unjiu.org/data/reports/2011/JIU_REP_2011_10%20FINAL_13%20March%202012.pdf) [hereinafter U.N. JIU Report].

170. *Id.* at 44.

171. *Id.* Salary scales and several other benefits are determined through recommendations of the International Civil Service Commission. *General Information*, INT'L CIV. SERV. COMM'N, <http://icsc.un.org/about/default.asp> (last visited Feb. 13, 2013).

172. U.N. JIU Report, *supra* note 169, at 44.



to a perception that staff input is merely advisory and that the most important aspects of employment decisions rest unilaterally with management. Perceptions such as these are underscored by a unique dichotomy at some institutions: member states may share membership in the ILO, and, thus, be bound by significant labor rights protocols,<sup>173</sup> and yet fail to insist on such rights for international employees. Similarly, international financial institutions such as the IMF and World Bank may urge loan recipients and financed projects to respect labor rights, including the right to collective bargaining, that are not always afforded to the organizations' staff.<sup>174</sup> These policies send a mixed message to staff, who may monitor external compliance with labor standards that do not appear to be an internal priority.

The restriction or absence of collective bargaining over remuneration and work rules may be attributed to an interest in administrative efficiency—a significant consideration in colossal organizations such as the U.N. Additionally, international organizations may view their missions as so unique and vital that they may be reluctant to diminish this role through collective bargaining. The creation and support of the organizations by nearly 200 countries mean that collective bargaining might cede prerogatives of member countries to staff organizations. While limits on collective bargaining may be appropriate, they must be balanced against the significant benefits of bargaining, including constructive dialogue between organizations and employees, prevention of conflicts, and enhanced trust between employees and employers.<sup>175</sup>

### 3. Representation by Counsel

Legal counsel play a fluid role in many internal conflict resolution systems. Although organizations may employ legal staff to oversee organizational procedures and defend against employee disputes, the appearance of counsel may be discouraged or banned during some conflict resolution procedures (e.g., peer review) to avoid lending an adversarial air to such proceedings.<sup>176</sup> Limitations on the participation of counsel, while intended to promote conflict resolution, may frustrate the ability of employees to prepare and prove their claims. In any

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173. See generally Declaration on Fundamental Principles and Rights at Work, 37 I.L.M. 1237 (June 1998).

174. U.S. DEP'T OF TREASURY, 2008 REPORT TO CONGRESS ON LABOR ISSUES AND THE INTERNATIONAL FINANCIAL INSTITUTIONS 1 (2008), available at <http://www.treasury.gov/resource-center/international/developmentbanks/Documents/Labor%20Report%202007%20final%20draft.pdf> (many development banks include the Core Labour Standards in standard bidding documents).

175. SRIYAN DE SILVA, ILO, COLLECTIVE BARGAINING NEGOTIATIONS 6 (1996), available at <http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/srscbar.pdf>.

176. See, e.g., WORLD BANK GRP., ANNUAL REPORT 2009: PEER REVIEW SERVICES 7, available at <http://documents.worldbank.org/curated/en/2009/01/12948813/peer-review-services-2009-annual-report> (desire “to reduce the antagonisms that attorneys sometimes engender”).

case, when organizations are represented by counsel, fairness dictates that employees should likewise enjoy access to counsel to remove any procedural disadvantage from imbalanced representation.<sup>177</sup> The contours of such access vary significantly among organizations.

Although the IMF staff association committee assists employees, it does not offer full legal assistance, and employees must hire their own attorneys. Grievants face IMF staff attorneys with expertise in the IMF's operations, legal system, and procedures. This imbalance might be addressed through one of two changes: by awarding attorneys' fees more generally to grievants who bring claims or by banning participation of attorneys at the grievance committee level, as the World Bank's peer review process does.

The IMF's payment of litigants' attorneys would pose a conflict of interest, as the attorneys' acceptance of IMF funds might imbue their representation with a desire to satisfy management and ensure their continued employment.<sup>178</sup> Additionally, the IMF is too small to accrue sufficient funds through its staff association committee to finance grievants' attorneys. A similar situation exists at the World Bank, where the "Bank Group agreed to fund the hiring of an attorney who will work in the Staff Association to provide legal assistance to staff members contemplating filing or [having] filed a Request for Review with the [Peer Review System]."<sup>179</sup>

If attorneys are barred from the grievance committee stage, the central benefit of careful elucidation and application of policies in an adversarial setting could be lost, leaving this function to the IMF appeals tribunal, which is ill-equipped for the development of a fulsome evidentiary record. At the IMF and World Bank, employees can choose to have another employee represent them. However, as this representative usually works for the institution, conflicts of interest remain. Further, as the IMF may still be represented by legal counsel, procedural imbalance likewise endures.

The U.N. office of staff legal assistance maintains significant funds with which to assist employees but confronts the same potential conflicts of interest as the World Bank. In addition to U.N. funds, the office of staff legal assistance has established a trust fund to which individuals can donate.<sup>180</sup> The office provides services to staff members free of charge. Importantly, the office is not obligated to take all cases, and it decides to do so only after evaluating individual claims. Indeed,

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177. International human rights law terms this procedural balance "the equality of arms." See *Kaufman v. Belg.*, App. No. 10938/84, 50 Eur. Comm'n H.R. Dec. & Rep. 98, 115 (1986).

178. See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt (2011).

179. WORLD BANK GRP., *supra* note 176, at 7.

180. *OSLA Trust Fund Contribution*, U.N., <http://www.un.org/en/oaj/legalassist/trustfund.shtml> (last visited Feb. 13, 2013).

between July 2010 and June 2011, the office represented staff in only thirty-one percent of cases before the U.N. dispute tribunal.<sup>181</sup>

### C. *Barriers to the Use of Conflict Resolution Procedures*

International organizations offer a host of procedures for resolving conflicts among their staff. Robust conflict resolution demands that such procedures move beyond written policy to enjoy actual use by employees. This section will discuss personal, cultural, and organizational considerations that affect use of conflict resolution procedures.

#### 1. Reluctance of Employees to Use the System

Reluctance to engage with conflict resolution procedures plays an undeniable role in many international organizations. While international civil servants agree to work on behalf of their organizations' missions and independently of their countries, they are nevertheless individuals with unique backgrounds that influence how they communicate and, thus, interpret conflict. Cultural considerations may influence an employee's decision to challenge authority by filing a claim—an action that in some Eastern cultures, for example, may be correlated with shame and failure.<sup>182</sup> Further, many employees fear that if they raise complaints, they will hurt their career prospects or garner a bad reputation. For international civil servants, personal and professional dependence on their employer serves as a powerful disincentive to pursuing grievances. This is especially true of staff living outside of their home countries with family accompanying them, given that their visa status may be dependent on their employment at the international organization against which they are filing a complaint.<sup>183</sup>

Reluctance to bring claims precludes hearing legitimate grievances, and, in turn, institutional fairness. Absent disputes and challenges, an institution loses a source of valuable criticism that enables it to change and improve. The loss of employee trust and belief in institutional fairness undermines morale, hindering organizational effectiveness and endangering allegiance to and achievement of its mission.

Institutions must make affirmative efforts to reassure staff members regarding use of internal dispute procedures and to educate human resources staff about cultural norms that may affect participation in such systems. Critically, the institutional imperative of apply-

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181. U.N., *FOURTH ACTIVITY REPORT OF THE OFFICE OF ADMINISTRATION OF JUSTICE—1 JULY 2010 TO 30 JUNE 2011*, at 9, available at [http://www.un.org/en/oaj/unjs/pdf/Fourth\\_activity\\_report\\_OAJ.pdf](http://www.un.org/en/oaj/unjs/pdf/Fourth_activity_report_OAJ.pdf).

182. Dale Bagshaw, *Resolving Disputes in Asia: What Has Culture Got to Do with It?*, in *THE ADMINISTRATIVE TRIBUNAL OF THE ASIAN DEVELOPMENT BANK*, *supra* note 141, at 18–20.

183. See, e.g., *Visas for Employees of International Organizations and NATO*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/types/types\\_2638.html](http://travel.state.gov/visa/temp/types/types_2638.html) (last visited Feb. 13, 2013) (discussing G-visas).

ing rules equally to employees means that “cultures and nationalities are not formally recognized in delivery of administrative decisions or the application of conflict management systems.”<sup>184</sup> Recognizing the limited capacity of conflict resolution processes to address cultural differences, organizations should consider substantive policies to reflect the diverse needs of staff—from policies concerning leave and travel to protective measures against harassment and retaliation.

Through anti-retaliation policies, organizations can reduce employee anxiety and provide a measure of security for those seeking to use conflict resolution systems. Such provisions could include a sanction of discipline, including termination, for supervisors who engage in retaliation, or disincentives (e.g., triple damages against the institution or the supervisor or manager individually). Importantly, anti-retaliation policies may exist solely on paper. Protection of employees requires both enactment and enforcement of anti-retaliation policies.

Informal processes of conflict resolution (e.g., mediation or ombudsmen) may provide additional employee protection in the form of greater privacy. Without published decisions and other formal requirements, an employee might have fewer concerns about other employees, particularly supervisors and managers, learning of a complaint. In reality, this protection comes with significant trade-offs, including the lack of record-keeping to establish supervisor involvement in the conflict resolution process. Notably, even with strong attempts to keep disputes confidential, no organization can guarantee that the facts or circumstances of a dispute will stay private, and so, this deterrent to participation remains.

## 2. Lack of Faith in the System

Effective internal conflict resolution systems rely upon the staff’s trust in the systems’ ability to protect them and to investigate claims of wrongdoing impartially. Several incidents suggest that such trust may be abused or perceived as lacking. In May 2011, the *Washington Post* reported on the widespread problem of sexual harassment at the IMF, after media reports about former IMF managing director Dominique Strauss-Kahn’s arrest on sexual assault charges cited a 2008 allegation of an improper sexual relationship with a female IMF employee.<sup>185</sup> The article reported:

In 2007, officials at the fund declined to investigate a complaint by an administrative assistant who had slept with her supervisor, and who charged that he had given her poor performance reviews to

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184. David Miller, *Managing Cultural Differences in an International Organization Conflict Management System*, 14 HARV. NEGOT. L. REV. 271, 273 (2009).

185. Binyamin Appelbaum & Sheryl Gay Stolberg, *At I.M.F., Men on Prowl and Women on Guard*, WASH. POST, May 19, 2011, at A1.

pressure her to continue the relationship. Officials told the woman that the supervisor planned to retire soon, and therefore there was no point in investigating the charges.<sup>186</sup>

Another employee alleged that, in 2009, she reported a senior manager for sending her explicit e-mails, yet the Fund did nothing to investigate the claim.<sup>187</sup> The IMF adopted a new code of conduct in May 2011, and ethics advisor Virginia R. Canter noted that the Fund had taken a “series of strong steps to protect employees” since she joined in 2010, and that her office would investigate all complaints.<sup>188</sup>

Concerns over the treatment of sexual harassment claims also arose at the U.N. According to a May 2009 article in the *Wall Street Journal*,<sup>189</sup> “[s]everal women who complained of harassment say their employment contracts weren’t renewed, and the men they accused retired or resigned, putting them out of reach of the U.N. justice system.”<sup>190</sup> The internal conflict resolution practices seemed arbitrary and “mired in bureaucracy,” with “[a]ccusers hav[ing] no access to investigative reports.”<sup>191</sup> For example, one employee reported that her complaint of sexual harassment over several years by her supervisor was investigated and cleared by her boss’s colleague.<sup>192</sup>

The new U.N. administrative system benefits from centralization and allows for discovery and analysis of organization-wide problems. Despite such changes, the U.N. has been highly criticized, most notably by a former senior official, for its flawed internal investigations and for lacking accountability.<sup>193</sup> In July 2010, Inga-Britt Ahlenius stepped down as Undersecretary-General of the office of internal oversight services, accusing Secretary-General Ban Ki-Moon of systematically “undercut[ting] the independence of her office, initially by trying to set up a competing investigations unit under his control and then by thwarting her efforts to hire her own staff.”<sup>194</sup> The accusations afford a critical lesson: a formal system of internal conflict resolution has

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186. *Id.* This case was ultimately adjudicated by the IMF administrative tribunal in *Ms. “EE” v. IMF*, Judgment No. 2010-4 (Dec. 3, 2010), available at [http://www.imf.org/external/imfat/pdf/j2010\\_4.pdf](http://www.imf.org/external/imfat/pdf/j2010_4.pdf).

187. Appelbaum & Stolberg, *supra* note 185.

188. *Id.*

189. Steve Stecklow, *Sexual-Harassment Cases Plague U.N.*, WALL ST. J. (May 21, 2009), <http://online.wsj.com/article/SB124233350385520879.html>.

190. *Id.*

191. *Id.*

192. *Id.*

193. Colum Lynch, *Departing U.N. Official Calls Ban’s Leadership “Deplorable” in 50-Page Memo*, WASH. POST (July 20, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/19/AR2010071904734.html>.

194. *Id.* While primarily discussing internal investigations into corruption and misconduct, the *Washington Post* article highlighted a general lack of confidence in U.N. accountability.

limited effectiveness if staff members do not believe their claims will be fairly investigated.

*D. Accountability and the Role of Inspectors General*

The creation of an inspector general is one possible and significant addition to the internal conflict resolution procedures at international organizations. The office of an inspector general would serve as an independent auditor of the organization's conflict resolution processes to ensure compliance with its own policies, including retaliation, and to investigate possible misconduct. An independent inspector general could alleviate a number of problems with the current systems, most notably the lack of organizational transparency and feedback. In addition, an inspector general could ensure that the decision makers and lower-level procedures employ proper standards for evaluating cases. The existence of an inspector general might instill confidence in employees to raise complaints and curb fear of retaliation.

1. Feedback

Feedback related to internal conflict resolution procedures offers valuable information to organizations that enhances both their effectiveness and responsiveness. This organizational learning process is hindered in many organizations by the practice of communicating the result or disposition of employee disputes only to management in the grievants' department, if even there.

Critically, management may have a propensity to regard validated complaints as anomalies and to ignore their broader implications. Indeed, criticism of units and individuals is too often ignored, and managers found to have made errors or worse are not held accountable. The "circle the wagons" approach of management in the face of legitimate criticism allows problems to fester and reoccur. An inspector general could offer an effective feedback mechanism by providing periodic reports of cases and decisions to management throughout the organization.<sup>195</sup> An inspector general could also alert management to the need to amend specific policies.

Currently, many of the conflict resolution entities submit reports to their institutions. Some of these reports are disseminated to staff. However, there is generally no systematic effort to modify policies in light of institutional experience. Routine and comprehensive reviews of internal conflict resolution systems by independent third parties, coupled with follow-up by top management, will enable organizations responsibly to prevent problems. While many organizations currently undertake third-party reviews periodically or in response to criticism,

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195. The inspector general could ensure preservation of privacy through redaction of personal information.

a more routine approach could aid in cultivating a culture of accountability and trust.

## 2. Lack of Transparency

Lack of transparency is a major source of employee frustration with current internal conflict resolution procedures at international organizations, although some organizations make more information public than others. Unlike domestic courts, in which an employee can read published opinions or see the end result of similarly situated plaintiffs, employees at international organizations generally have little way of knowing if they have been treated differently than previous grievants. Only the administrative tribunals uniformly release their decisions, including to the general public.

In the United States, government agencies are subject to the Freedom of Information Act, and unions routinely make information about grievance outcomes available to their members. Further, section 8(d) of the Labor Management Relations Act<sup>196</sup> and section 7114(b)(4) of the Federal Service Labor-Management Relations Act<sup>197</sup> guarantee rights to information relevant to pursuing grievances. Employees at international organizations are at a distinct disadvantage when seeking information relevant to their cases.

The international organizations discussed in this article handle the issue of transparency and accountability differently. The U.N. publishes comprehensive statistics about employee disputes and problems at both the administrative tribunal and lower levels. This information includes not only information about the total number of cases filed at the U.N. dispute tribunal, but also information about the nature and outcome of such cases. These detailed accounts serve an important accountability function, allowing employees and the public to review trends within the dispute tribunal. The U.N. also provides a detailed report on the ombudsman and mediation services.

In contrast, the IMF does not publish any information about its complaints and decisions below the administrative tribunal level, and, thus, lacks transparency. Naturally, privacy considerations play a part. Publication of a decision may discourage, rather than encourage, the filing of complaints. Even with redaction of names, identities may be recognized within an institution. Retaliation may result and be difficult to prove, given the subtlety of such cases. The ILO mediator publishes a publicly available report. While the World Bank does not

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196. 29 U.S.C. § 158(d) (2006). The duty to bargain in good faith has been interpreted to include a duty to furnish information necessary for a union to process grievances. See *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979) (citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956)).

197. 5 U.S.C. § 7114(b)(4) (2006).

publish statistics on its website, its conflict resolution system compiles annual information into a comprehensive report.

Each organization produces its own unique operational problems. The more these issues are identified and broken down by type, unit, staff level, and other factors, the greater the opportunity for employees and upper management to spot trends and craft remedies.

## **V. Conclusion**

The evolution of internal conflict resolution programs proceeds organically, with many organizations now striving to meet increasing demand and need for speedier, less costly, and less formal approaches to conflict resolution. Today, staff not only use these procedures, but may also collaborate in system design.

Critically, however, fear, mistrust, and lack of organizational accountability inhibit use of conflict resolution systems by employees experiencing workplace conflicts. Financial realities and limits on the rights of staff associations and legal counsel erect additional barriers for employees seeking redress and a voice in workplace relations. Through ongoing reviews and reforms, international organizations have taken steps to broaden access to and confidence in internal conflict resolution procedures. Nevertheless, many organizations regretfully fail fully to embrace mechanisms for revealing flaws in operations, human resources, and management.

While valid criticisms endure, the basic frameworks of the profiled systems appear sound. Through their commitment to announcing clear and consistent staff rules and terms of employment, accompanied by comprehensive systems for addressing violations, international organizations are advancing due process and fair treatment of employees. "These international organizations, of course, cannot provide a match for the laws under which [many of] their employees might have had protection in their home countries."<sup>198</sup> Nevertheless, they should continually strive to create remedies that nourish within their organizations the mutual trust, respect, and harmony that they envision and advance on behalf of the international community. Strong accountability and feedback mechanisms can further ensure that international organizations evolve in response to the wealth of information that internal conflict resolution systems reveal about human resources management and the organizations more generally.

The organizations discussed represent a rich body of experiences and processes. Greater information and analysis about each system married with an exchange of ideas among the systems will enable greater progress toward the goals of the conflict resolution process, and, ultimately, the missions of the international organizations themselves.

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198. Zack, *supra* note 160, at 46.



