

**Statement  
by  
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before the

House Committee on Foreign Affairs  
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

Hearing  
on

**UN Peacekeepers: Abuse and Accountability**

Washington, DC  
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Thank you for inviting me to speak today. My name is Peter Anthony Gallo, I was employed as an investigator in the Investigations Division of the Office of Internal Oversight Services (“OIOS”) from 2011 until last year. OIOS is the office set up specifically to investigate<sup>1</sup> reports of possible violations of UN rules or regulations, mismanagement, misconduct, waste of resources and abuses of authority.

**Sexual Exploitation and Abuse in the UN**

Sexual Exploitation and Abuse by UN staff has been a problem for a number of years. When I joined OIOS it was generally accepted that it was largely a thing of the past. I do not subscribe to that view.

OIOS does continue to receive reports of sexual exploitation but the number of complaints is small.

Part of the problem is due to the UN’s deployment of poorly trained and ill-disciplined troops. The UN has often complained of being unable to take action against military personnel, but the agreements with Troop Contributing Countries does contain provisions to exert jurisdiction over peacekeeping troops.<sup>2</sup>

In late 2013, I carried out an analysis of the reported Sexual Exploitation and Abuse cases for the then Under-Secretary-General of Oversight, Ms. Carman Lapointe.

I do not have a copy of that report but the finding was that there were more or less equal numbers of sexual misconduct complaints against military personnel as against UN civilian staff. However, a typical large UN peacekeeping missions might comprise 20,000 military personnel and less than 2,000 civilian staff, UN Volunteers and Police Officers.

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<sup>1</sup> ST/SGB/273

<sup>2</sup> See Revised draft model Memorandum of Understanding with Troop Contributing Countries attached to the Report of the Special Committee on Peacekeeping Operations dated 11 June 2007. Document A/61/19 (Part III).

With these numbers, and complaints being split equally, the problem can be seen to be proportionately worse among the civilian staff.

The statistics in that report cannot be considered indicative of the scale of the problem, it was only an analysis of the matters reported to OIOS, but it did indicate that the UN was being disingenuous in always blaming the Troop Contributing Countries.

## Central African Republic

It was only much later that I learned how, in May 2014 two UN staff members, from the UN Human Rights and Justice Section and the childrens charity UNICEF in the UN mission in the Central African Republic (“MINUSCA”) had discovered that children - boys as young as 9 years old - were being sexually abused by French peacekeeping troops in the country.<sup>3</sup>

Those French peacekeepers were not even under UN command. All that anyone had to do was to inform the French commander, whose troops included military police of the Gendarmerie Nationale, and action could have been taken immediately.

Instead, the UN did nothing, but staff kept returning, day after day, to record how more and more children were being raped. The head of the Human Rights and Justice Section showed no concern for their welfare. He did not consider he had any responsibility to protect the children or to do anything to ensure that the perpetrators were held accountable. He even obscured the information within broader thematic reports to his superiors and encouraged the Head of the MINUSCA mission to keep it confidential rather than request that the French authorities act to stop the ongoing abuse.<sup>4</sup>

The information came to the attention of Mr. Anders Kompass, who worked in Office of the High Commissioner for Human Rights in Geneva, where he was Director of the Field Operations and Technical Cooperation Division.<sup>5</sup> He wrote to the French ambassador and passed him the information.

French investigators were very soon despatched to the Central African Republic, but the UN Office of Legal Affairs in New York would not permit MINUSCA staff to co-operate with them.

The UN insisted the French to present any questions in writing through the Office of Legal Affairs, and they would convey written answers. This prevented the French investigators from making any headway with their investigation.

What then happened was that the UN turned on Mr. Kompass, and the whole cover-up was exposed in the media.

Since then, the UN has been plagued by more and more allegations of sexual abuse by peacekeepers, mostly involving the Central African Republic. This can be attributed to one factor and that is attention from the media, prompted by the Code Blue Campaign.<sup>6</sup> I do not believe the sexual exploitation

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<sup>3</sup> See <http://www.codebluecampaign.com/carstatement/>

<sup>4</sup> Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic dated 17 December 2015. (“The Deschamps Enquiry Report.”)

<sup>5</sup> UNDT Order 139 (GVA/2015)

<sup>6</sup> See [www.codebluecampaign.com](http://www.codebluecampaign.com)

problem is getting any worse; the difference is primarily that more cases are now being reported.

## Investigation of Sexual Exploitation and Abuse

There are two aspects to consideration of the sexual exploitation and abuse in the UN.

The first is the sexual harassment suffered by women working in the system; here the regulations<sup>7</sup> require a fact finding panel to be formed. The matter is not handled by professional investigators, allowing superiors in the department where the complaint arises to control the investigation.

The second are the sexual assaults, rapes and other sexual offences. When committed by UN staff these should be investigated by OIOS as serious misconduct, but this is not always done.

In its most recent Annual Report in respect of peacekeeping operations<sup>8</sup> for the year ending 31 December 2015, OIOS reported the completion of the investigations into fifteen (15) sexual exploitation and abuse cases, in which they actually made a finding against the subject in only *four*.

In the same period, they received 27 such reports, of which 11 were from the Central African Republic alone. In 2014, they had received a total of only 16.

Very recently, the 'Code Blue Campaign' revealed<sup>9</sup> that in a single province of the Central African Republic alone, 98 girls were found who claimed to have been sexually abused by UN peacekeepers.

I do not believe this is an indication of an increase in the sexual exploitation of women and children; rather it is an indication of the UN's historical unwillingness to recognise that this happens.

## Personal Experience

I joined OIOS in March 2011, and was employed as an investigator in the Investigations Division

Prior to joining the UN I had spent 18 years as an investigator in the private sector in Asia, where I was recognised as an authority on money laundering. I am admitted to practice law in my home country of Scotland, in Hong Kong and in New York. I have an MBA and a Masters degree in International Criminal Law. I have had a number of articles published on money laundering and investigation management, have spoken at numerous conferences and taught courses in these subjects as an adjunct lecturer in Hong Kong. At no time prior to joining the UN was my professional ability, my integrity or my conduct ever challenged, and no client ever complained about my work.

My dispute with the UN arose out of an attempt by my then Unit Chief in OIOS Ms. Roberta Baldini to portray me as incompetent, pressuring me to sign a 'Performance Improvement Plan' (PIP) urgently.

The document was insulting and unwarranted. It is significant, however, in that it is an insight into how OIOS management wish investigations to be conducted; which is simply to go through a check-list of pre-prepared questions. The purpose of an investigation is to be only to determine whether or not the

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<sup>7</sup> ST/SGB/2008/5

<sup>8</sup> A/70/318 (Part II) Para 11.

<sup>9</sup> Code Blue Campaign Press Release. 30 March 2016

staff member was guilty of the misconduct *for which he was being investigated* - and nothing else. To that end, OIOS considered it appropriate that as an investigator, I should be directed never to ask questions “*just to satisfy my curiosity.*”

I asked questions about what I was alleged to have done wrong. No one would answer me. No one could even point out a question that I *had* ever asked “*just to satisfy my curiosity.*”

What then followed was an Annual Appraisal that denounced me as universally incompetent, and a series of petty complaints against me ; all by the same managers as *I* had complained were trying to impose an unjustified PIP. This litany of complaints included my former First Reporting Officer complaining that I had asked him how he was doing “*in a rather challenging voice*” and accusing me of trying to provoke him.<sup>10</sup> My former Unit Chief, accused me of “sabotaging cases” by writing a Note to File critical of the pettiness of something that was not an investigation.<sup>11</sup> There was a complaint about how I had forwarded an e-mail, alleging it was “*unprofessional*” and in violation of a Protocol on Electronic Communications which contained nothing about forwarding emails.<sup>12</sup>

This reached a climax in January 2014, after the publication of the judgement in Nguyen-Kropp & Postica<sup>13</sup> and the Associated Press wire service story about the judgement.<sup>14</sup> The UN Dispute Tribunal (“UNDT”) found that OIOS Deputy Director Michael Dudley had tampered with evidence in an investigation, and that the investigators who had complained about it were subjected to a retaliatory investigation by Michael Dudley’s own staff.

I was investigated for ‘harassment’ for the trivial act of making a satirical change to an existing comment on a whiteboard, referring to that judgement.

Ms. Lapointe, who had herself been named in the judgement, also tried to have me suspended *immediately*.<sup>15</sup> I worked in OIOS for four years, and recall no other occasion of *any* subject being suspended prior to being investigated.

At the same time, Ms. Roberta Baldini, my former Unit Chief accused me of “*a possible assault*” - apparently because I was alleged to have walked in the corridor in such a way that *I could* have bumped into her, had this potential ‘bumping incident’ *not been avoided* by her (or possibly *my*) stepping slightly to the side. I later learned from a leaked document that I was alleged to have pushed her, and that she was going to apply to the courts for an Order of Protection. What was most disconcerting however, was that I was falsely accused of illegal possession of a firearm.

The UN failed to recognise that any of this might be retaliation.

At no time was anyone ever able to point to an investigation I had mishandled, but throughout all of this the UN has insisted that I was 100% wrong 100% of the time, and nobody else was at fault. At the

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<sup>10</sup> Email Dzuro to Wilson. 25 July 2013 at 5:43pm

<sup>11</sup> Email Baldini to Wilson. 15 August 2013 at 11:17am

<sup>12</sup> Email Dudley to Wilson 3 October 2013 at 8:52am

<sup>13</sup> Nguyen-Kropp & Postica UNDT/2013/176

<sup>14</sup> John Heilprin. ‘UN whistle-blower case shows accountability limits’. Associated Press, 10 January 2014. Online at: [bigstory.ap.org/article/un-whistle-blower-case-shows-accountability-limits](http://bigstory.ap.org/article/un-whistle-blower-case-shows-accountability-limits)

<sup>15</sup> Email Lapointe-Pollard 17 January 2014, at 18:54Hrs

same time, the UN repeatedly insisted that I had no right to demand answers to my questions about what I was alleged to have done that was wrong and that justified the attempt to impose the PIP.

The UN is now outraged that I speak publicly about this and that I portray the Organization as farcical, but all I ever asked was answers to those questions. This simple request went as high as Susanna Malcorra, who was Ban Ki Moon's Chief of Staff; she insisted that I had no right to have those questions answered.

## **Culture of the Organisation**

Two factors in particular can largely explain the culture in the UN. One is the 'Noblemaire Principle' which sets the UN salary levels, tying staff salaries to the highest government salaries paid in any Member State. The other is the practice of two year employment contracts, which gives managers enormous power to exert control over their staff. Retaliation is also commonplace in the UN, so these factors contribute to a workforce disinclined to report a senior official for misconduct.

My experience of the UN's attitude towards accountability is that it is inconsistent and the attitude of senior officials towards the risk of misconduct is one of denial.

There is also a willingness to close cases - including sexual exploitation and abuse cases - rather than investigate them fully.

Senior staff *have* been investigated for misconduct from time to time, but this is often because a finding of misconduct is required as justification for a pre-determined outcome.

This can be seen in the investigation of Mr. Anders Kompass; he had been investigated by OIOS once already for something else and Ms. Malcorra knew the investigation was going to clear him. That in itself is concerning; Ms. Malcorra should never have known the result of the OIOS investigation before it was completed.

In any event, unsatisfied that he should be exonerated, in order to ensure that Mr. Kompass was investigated for something; the UN settled on his having taken action to stop the sexual abuse of children in the Central African Republic, misrepresenting this as "*leaking confidential information.*"

A clear *political* motive can be seen in the investigation of Mr. Michael von der Schulenberg,<sup>16</sup> who was formerly the Head of the mission in Sierra Leone. He was investigated because he was carrying out his mandate and promoting democracy in that country. This irritated the sitting President who believed he was too close to the opposition party and demanded that the Secretary-General remove him. Contrived misconduct investigations provided an excuse and he was summarily dismissed.

## **The selective investigation of misconduct**

The UN has an incentive to misrepresent the number of misconduct cases - particularly Sexual Exploitation and Abuse cases that are reported. To do otherwise would be to discredit their own peacekeeping activities and to admit to the ineffectiveness of their own prevention activities.

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<sup>16</sup> von der Schulenberg -v- Secretary-General UNDT/2013/176 & UNDT/2013/178.

Following the whiteboard incident, when I was being investigated for commenting on evidence tampering by Michael Dudley, I learned that an audio recording of a witness interview had been withheld from the decision-maker. Incredibly, this was *more* evidence tampering. I complained about it, but nothing was done.

A few weeks prior to that incident, I had reported a case of what I believe to be perjury by an OIOS investigator. That was not pursued either.<sup>17</sup>

Mr. Stefanovic, the Director of the Investigations Division was investigated following a complaint by Ms. Baldini over a comment he had made some 18 months earlier about rats in the New York subway. After being cleared of any wrongdoing, when he tried to have Ms. Baldini investigated for reporting misconduct in bad faith, *and for misleading the Tribunal*; the UN was not prepared to do so.

Ms. Baldini also reported me for the “*possible assault*.” When my legal counsel tried to complain that she had made a report against me in bad faith, the UN failed to even acknowledge receipt of the letter.

Incompetent investigations by OIOS and misconduct by OIOS staff has also resulted in a number of UNDT decisions in favour of the Applicant or such cases being settled out of court, all at considerable expense to the Organisation. These include the cases of Wasserstrom,<sup>18</sup> Hashimi,<sup>19</sup> von der Schulenberg,<sup>20</sup> Nguyen-Kropp & Postica,<sup>21</sup> Lubbad,<sup>22</sup> Sirohi<sup>23</sup> and most recently Stefanovic<sup>24</sup> and there may be others. All of these can be attributed to the same group of OIOS investigators, none of whom has ever suffered any consequences or been held accountable for any of these failures.

## **Assessments of Complaints**

One of the methods by which the number of Sexual Exploitation & Abuse cases in the missions has been kept artificially low involves these reports being filtered by the local Conduct & Discipline Team.

The Conduct & Discipline function in the UN has no investigative authority. Their role is basically to act as a postbox and pass these reports on to OIOS for investigation. Their function is prevention; raising awareness of such ‘soft’ issues as codes of conduct. As such, Conduct & Discipline Teams have an incentive to minimise the number of misconduct reports that are deemed ‘credible’.

What often happens in practice is that these ‘assessment’ simply identify witnesses, who can then be discredited, bribed or intimidated. If the matter is subsequently investigated, by the time investigators arrive; material witnesses have often been paid off, retracted their allegations or otherwise disappeared.

I recall one report of report of a statutory rape in Haiti. In the period between this report being assessed by the Conduct & Discipline Team and the arrival of my colleagues from OIOS, a family living in a

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<sup>17</sup> Peter A Gallo Confidential memo to Stefanovic dated 7 November, delivered 23 December 2013.

<sup>18</sup> UNDT/2013/153

<sup>19</sup> UNDT Order No.93 (NY/2011), Case No. UNDT/NY/2011/020

<sup>20</sup> UNDT Order No.48 (NBI/ 2015), Case No. UNDT/NBI/2014/032

<sup>21</sup> UNDT/2013/176

<sup>22</sup> Lubbad -v- Secretary-General UNDT/2013/132 and UNDT Order No. 159 (NBI/2014)

<sup>23</sup> The hearing in the Sirohi case was held in November 2014 and was settled out of court before the last witnesses were called. No judgement has ever been published.

<sup>24</sup> UNDT Order No.276 (NY/2015)

refugee camp appears to have found the money to retain legal counsel to withdraw their complaint.

In August last year, as part of an ‘assessment’ of another statutory rape complaint in the Central African Republic, UN staff cross-examined the 16 year old victim, humiliating the girl by taking photographs of her naked and demanding to know if she was a prostitute.<sup>25</sup>

There was a case from Haiti when a UN Woman Police Officer, who happened to be an American, passed on information she received from a Catholic Missionary about a soldier from a peacekeeping unit indecently assaulting a local woman. This was reported to the Conduct & Discipline Team in MINUSTAH<sup>26</sup> in the month of January, the Police Officer heard nothing more but later learned that something had been done about it in the April of that year, and that the report was deemed to lack credibility.

I could find no trace of that assault ever being reported to OIOS. I believe this is typical and that many are made to disappear.

## **Referrals of Investigations**

Many of the misconduct reports received by OIOS are not investigated. They are ‘referred’ to another department on the basis that it is “more appropriate” that another Department deal with the matter.

OIOS once received an abuse of authority complaint about a senior official in the MINUSTAH mission in Haiti who had borrowed large sums of money from his subordinates. This was referred the matter back to the Mission, and just as predicted – the subject received only a reprimand. That did not delay his promotion to a larger Mission. The UN did not appear to have been concerned that someone reported to have a gambling problem should have control of an even larger budget.

Another case from MINUSTAH was reported by the same American woman Police Officer I mentioned above. She was told by community leaders in one of the Refugee Camps that a number of UNPOL officers were having sex with under-age girls in the camp. The extent of her involvement was receiving this information, writing it down and passing it on to to be dealt with.

The Conduct and Discipline Unit had passed the information to OIOS, but instead of investigating it, OIOS then *referred* it to the Police Division in the Department of Peacekeeping Operations, i.e. the department that had the greatest interest in clearing the accused officers of any wrongdoing.

This particular lady had over ten years experience with the Police Department of a major US city, and she described how she had been subjected to 3½ hours of “interrogation” into her motives for passing on that report.

The Police Division - unsurprisingly - found no credible evidence against the UNPOL officers, cleared them, and made adverse findings against the community leaders who first reported the information.

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<sup>25</sup> <http://www.foxnews.com/world/2015/08/21/un-investigators-said-to-take-nude-photo-ask-about-prostitution-in-under-age/>

<sup>26</sup> MINUSTAH is the current UN mission in Haiti.

## **OIOS Independence and Conflicts of Interest**

It is possible to explain this by reference to the inherent conflict in that the Head of Conduct and Discipline Unit, Ms. Mercedes Gervilla is married to the Deputy Director of the OIOS Investigations Division, Mr. Michael Dudley. A married couple occupying these strategically important positions undermines the independence of OIOS and discredits the investigation of misconduct reports from Field Missions.

Applying a strict interpretation of the rules, the couple were not ineligible for those positions because neither reports to the other, but OIOS must frequently interact with Conduct & Discipline.

The concern, since Ms. Gervilla was appointed to that post, has always been that OIOS would never raise any objection to a matter that Conduct & Discipline had assessed as lacking credibility - and where either the Department of Field Support in general or the Conduct & Discipline Unit had a particular interest for any given matter to be covered up; the wife could arrange with the husband that OIOS would not investigate it, but would instead 'refer' the cases back to the Department of Field Support or somewhere where they would disappear, never to be heard of again.

It has been reported in the press<sup>27</sup> that the Ethics Office were consulted about this conflict, but would not concede that there was one. Ms. Dubinsky, the Ethics Director is reported to have acknowledged that it could, however, *potentially be perceived* as a conflict of interests *in the future*. In order to avoid such accusations from arising, she recommended that the husband and wife receive "*counselling*" to assist them "*avoiding particular actions*".

This makes no sense; if a Third Party perceives there to be a conflict, that cannot be prevented or mitigated by the subjects having received counselling in how they should act.

The UN appears to have an unusual understanding of the concept of a conflict of interests.

The issue of the Nguyen-Kropp & Postica case involved Michael Dudley being investigated – and cleared of any wrongdoing – by two OIOS staff members, both of whom reported to him, and neither of whom considered they might have a conflict of interests investigating their own boss.

In my own case, the decision to consider my satirical reference on the whiteboard as 'harassment' was made by Ms. Lapointe, who had herself been implicated in the retaliation suffered by Ms. Nguyen-Kropp and Mr. Postica and who was named in the judgement. I was then investigated by a panel, both members of which had had a working relationship with the "aggrieved party" Michael Dudley for a number of years. Neither of them knew me.

The UN's Administrative Law Section denied there was anything irregular in any of this.

### **Lack of oversight of 'Oversight'**

OIOS was established by the General Assembly, specifically to be independent. The UN is manifestly unable to police itself, because it is clear that the independence that OIOS once had has been

<sup>27</sup> Colum Lynch. 'The UN's Investigation Wars' Foreign Policy, 26 August 2015. Online at: <http://foreignpolicy.com/2015/08/26/the-u-n-s-investigation-wars/>



compromised. OIOS has repeatedly been found to be factional, it is riddled with corruption and self interest and is effectively controlled by the same senior management that it is supposed to investigate for wrongdoing.

Beholden to senior management for political patronage and other favours, OIOS management has been able to select which reports should be investigated and which should be referred to another department (and conveniently lost or buried). Potentially embarrassing cases have been closed in the face of evidence of fraud, sexual abuse or other misconduct.<sup>28</sup> There is a toxic working environment; some investigators have been harassed, experienced retaliation and encouraged to resign<sup>29</sup> while serious misconduct complaints against some others have been ignored.<sup>30</sup>

OIOS also lacks some sort of Oversight Committee to assume a function similar to that of a Police Commissioner, and to perform an acutely needed role in dealing with complaints against OIOS investigators in a manner that is both independent and consistent.

I consider it scandalous that despite the findings of fact in Nguyen-Kropp & Postica<sup>31</sup> that he tampered with evidence in an investigation, Michael Dudley remains in post as a Deputy Director in OIOS. Similarly, despite having been found to have had an obvious conflict of interests and having carried out an internal investigation for what was clearly a retaliatory purpose; Suzette Schultz also remains in post as a Unit Chief and is still carrying out a “quality control” function.

The UNDT judgement in Nguyen-Kropp & Postica was vacated on a technicality on appeal.<sup>32</sup> The UN considers that this has the effect of making the facts disappear, and does not consider it possible to hold them accountable for their actions.

## **Ethics Office Reluctance to identify Retaliation**

While OIOS may be selective in recognising misconduct, the Ethics Office appears to be more consistent in their wilful blindness.

When I first applied for ‘whistleblower protection,’ the Ethics Office rejected the application on the basis that the misconduct complaint I had made did not contain ‘evidence’ and therefore did not qualify as a “*protected act*” within the meaning of the rules.<sup>33</sup> The actual wording of that provision however reads “*information or evidence.*” [Emphasis added] The complaint was 2,000 words in length, it referred to a specific e-mail alleged to be coercion, which was identified by sender, date and exact time. The Ethics Office simply did not consider this to be evidence.

Then, unconcerned with the logic of the statement, they attributed my Annual Appraisal to “*prior, documented performance shortcomings*” - the very absence of which had been the basis for the complaint in the first place.

<sup>28</sup> Examples of this include the closure of a total of 84 medical insurance fraud cases, and at least the one statutory rape.

<sup>29</sup> See Nguyen-Kropp & Postica (Further examples include (1) a former IRS-CI investigator, (2) a former New Zealand police officer, (3) Mr. Michael Stefanovic, Director OIOS/ID, and (4) myself, all of us having left OIOS/ID .

<sup>30</sup> As at January 2014, out of the 26 staff of the New York office of OIOS/ID there were something like 20 misconduct complaints pending. Most of these were complaints generated internally - by other OIOS staff.

<sup>31</sup> UNDT/2013/176

<sup>32</sup> 2015-UNAT-509

<sup>33</sup> ST/SGB/2005/21

The Ethics Office practice is simple; they need only decide that a misconduct complaint lacked credibility or that it fails to meet some other test and this allows them to reject any application for protection when the staff member suffers retaliation. The UN Appeals Tribunal decision in the Wasserstrom<sup>34</sup> case means there is nothing the staff member can then do about it; whistleblower protection is not an enforceable right in the UN.

The second time I applied for whistleblower protection, the Ethics Director, Ms. Joan Dubinsky was faced with the prospect of having to make an adverse finding against Ms. Lapointe, the Under-Secretary-General of Oversight as well as against Roberta Baldini who was an OIOS Unit Chief and Michael Dudley who was an OIOS Deputy Director.

Ms. Dubinsky took two months to recall a pre-existing conflict of interests and recused her office from making a decision on the matter.<sup>35</sup> She passed it to Ms. Malcorra, the Chief of Staff, who did nothing.

In the Nartey<sup>36</sup> case, Ms. Dubinsky failed to protect the staff member from retaliation after being ordered by the UN Dispute Tribunal to do so. She was therefore referred to the Secretary-General to take action against her for failing to obey a Court Order.<sup>37</sup>

The Tribunal made a similar referral for the Director of Administrative Services in Nairobi, Mr. Alexander Barabanov, who they found to have abused of authority, intimidated and retaliated against the applicant in the case.

The Nartey judgement was overturned on Appeal and the provision referring Ms. Dubinsky and Mr. Barabanov to the Secretary-General for accountability was vacated.<sup>38</sup>

Ms. Dubinsky retired from the UN, but not before Ms. Malcorra extended her contract just long enough to give her a significantly increased pension.<sup>39</sup>

Mr. Barabanov still works for the UN in Nairobi. Curiously, this is the same Mr. Barabanov as was found to have unlawfully obtained a UN firearm in 2008.<sup>40</sup> The then UN Director-General in Nairobi, Ms. Anna Tibaijuka, tried to have action taken against him at that time, but it was *she* who was removed from her post, to be replaced by someone less senior.<sup>41</sup>

## **The Prospects for Staff Members reporting misconduct**

The investigation of fraud, waste and abuse in the United Nations depends on these first being reported to OIOS. This will not happen if staff not only have reason to fear retaliation, but also know that they will be protected against that retaliation should they report something.

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<sup>34</sup> Wasserstrom -v- Secretary-General. 2014-UNAT-457

<sup>35</sup> Memo. Dubinsky to PAG, 12 March 2014

<sup>36</sup> Nartey -v- Secretary-General. UNDT/2014/051

<sup>37</sup> Nartey. *ibid*, para 219.

<sup>38</sup> UNAT Judgment 2015-UNAT-544

<sup>39</sup> <http://www.foxnews.com/world/2015/07/30/un-benefit-boost-to-outgoing-ethics-watchdog-questioned-in-light-sex-abuse.html>

<sup>40</sup> Letter to OLA re Barabanov 20 June 2008

<sup>41</sup> <http://www.foxnews.com/story/2009/04/21/un-official-investigated-for-wrongdoing-still-at-post.html>

This concern is more than just hypothetical. The experiences of Ms. Nguyen-Kropp and Mr. Postica<sup>42</sup> and of Mr. von der Schulenberg<sup>43</sup> and others indicate that one of the possible consequences for staff members who report misconduct is that they could find themselves the subject of a retaliatory OIOS investigation. This is an unenviable prospect. OIOS retains the managers who were responsible for the retaliation in those cases, so no one under investigation can be expected to have any confidence that they will be investigated fairly.

I warned Ms. Lapointe very openly on 6 February 2013 that the Nguyen-Kropp & Postica judgement had destroyed the credibility that OIOS once had, and that her continued protection of Dudley and Schultz was such that I was “*concerned that InnerCityPress and Fox News would become the grievance portals of choice for UN staff members wishing to report misconduct.*”<sup>44</sup> It appears I was only wrong only in that it has been the ‘Code Blue Campaign’ who appear to be filling that role.

## **The UN Justice System**

The UN Dispute Tribunal is an unusual legal entity quite unlike other administrative tribunals. As a result of a number of appellate decisions favourable to the Organization, the jurisdiction of the Tribunal has been so tightly restricted as to contribute next to nothing towards accountability in the UN system.

### **Procedure and the Absence of ‘Unreasonableness’**

It is one of the basic tenets of administrative law that courts are understandably reluctant to interfere in decision making by government departments or public bodies, and will therefore not do so unless the decision is so thoroughly unreasonable as to be patently ridiculous. The ‘justiciability’ bar is deliberately set very high.<sup>45</sup>

The UN tribunals, however, do not recognise any concept of ‘unreasonableness’ or even of ‘proportionality’ - so a UN official can make a decision verging on the absurd, but as long as it is possible to argue that the procedure was followed, it will be upheld.

In my own case, when I tried to challenge my Annual Appraisal, the Panel formed to consider my rebuttal decided that because the procedures relating to the PIP “*were generally complied with*” they would not actually consider the appraisal on its merits.<sup>46</sup>

This is an example of the perversion of logic that is not uncommon in the UN; rather than make a finding that would not reflect well on OIOS management, they relied on the notion that procedures (for something that was never concluded) were “*generally being complied with.*” They conveniently overlooked the material part about *identifying* alleged ‘performance shortcomings’ because if they simply assumed that these shortcomings *did* exist, they could avoid having to consider the substance of the rebuttal which proved that they did not.

<sup>42</sup> UNDT/2013/176

<sup>43</sup> Von der Schulenberg -v- Secretary-General UNDT/2013/176 & UNDT/2013/178.

<sup>44</sup> PAG Open Reply re 2008-5 Panel. 6 February 2014.

<sup>45</sup> In English Common Law this is the *Wednesbury Principle*, per Associated Provincial Picture Houses Ltd -v- Wednesbury Corporation (1948) 1 KB 223. <http://www.bailii.org/ew/cases/EWCA/Civ/1947/1.html> Civil law jurisdictions generally achieve a similar result with the principle of ‘proportionality.’

<sup>46</sup> Rebuttal Panel Report. 23 September 2013.

The extent to which the UN focuses on ‘procedure’ - to the point of being blind to serious crime, can be seen by the number of senior officials - and staff of the Office of Legal Affairs - who were aware of the ongoing sexual abuse of children in the Central African Republic and did nothing about it.<sup>47</sup>

## The ‘final decision’ limitation

Another principle of administrative law that a challenge to a government decision must be made *early*. This minimises expense and any miscarriage of justice or abuse of authority. The UN does the opposite; a staff member cannot challenge anything except a *final* decision. Everything else is merely ‘preparatory’ and is not receivable by the UN Dispute Tribunal.<sup>48</sup>

This ruling allows unethical UN managers to make quite ridiculous decisions and the staff member then has no legal recourse but to wait while the Organization wastes a huge amount of time and effort going through a slow and cumbersome procedure for no reason other than harassment.

In the end, when the staff member is finally cleared, they are unlikely to waste time and effort challenging the decision that exonerated them. This was done in the Schulenberg case<sup>49</sup> and is also illustrated by the actions against me after the whiteboard harassment complaint.

## Attitude towards Human Rights

The harassment complaint against me for the whiteboard comment arose because OIOS reputation had been harmed by having a Deputy Director found to have tampered with evidence. It was a comment on a finding of fact in a UN Dispute Tribunal judgement, and had been reported in the press.

Tampering with evidence is not a trivial matter. In federal investigations in the United States, it is punishable by up to 20 years imprisonment.<sup>50</sup> For this to be condoned by the UN reflected badly on me as it does on everyone in OIOS. If it was a legitimate matter of public interest - and the fact it had been reported by Associated Press would suggest that it was - one would expect it should be protected as freedom of speech and opinion under the Universal Declaration of Human Rights.

As the United Nations High Commissioner for Human Rights, Ms. Navi Pillay, expressed the view that the US Government should not prosecute Edward Snowden because his revelation of confidential information was “*in the public interest*”.<sup>51</sup>

In my case however, which involved a matter in the news as opposed to any classified information, the Secretary-General did not consider the Universal Declaration of Human Rights to be applicable because: “*this freedom is subject to reasonable restrictions, including the requirement to act in accordance with the United Nations Staff Regulations and Staff Rules.*”<sup>52</sup>

<sup>47</sup> See <http://www.codebluecampaign.com/carstatement/>

<sup>48</sup> The Organization relies on such precedents as: Ngokeng v. Secretary-General (2014-UNAT-460); Wasserstrom -v- Secretary-General (2014-UNAT-457), Hashimi -v- Secretary-General Order No. 93(NY/2011); Balakrishnan -v- Secretary-General (2012/UNDT/041) and Nguyen-Kropp & Postica -v- Secretary-General (2015-UNAT-509)

<sup>49</sup> von der Schulenberg -v- Secretary-General UNDT/2013/176 & UNDT/2013/178.

<sup>50</sup> 18 U.S.C. § 1519.

<sup>51</sup> <http://www.reuters.com/article/us-usa-security-un-idUSKBN0FL1PB20140716>

<sup>52</sup> UN Deputy-Secretary-General Jan Eliasson, letter to Peter A Gallo dated 1 April 2015

## Conclusion

When newly appointed, Ban Ki Moon announced: “*we must hold all UN employees to the highest standards of integrity and ethical behaviour.*”<sup>53</sup> He told his senior officials: “*I have been loud and clear about honesty: our UN will not tolerate corruption or abuse of power.*”<sup>54</sup>

The Member States have had ten years of empty rhetoric, with frequent and eloquent assurances of zero-tolerance for corruption, misconduct and especially sexual abuse, but the reality is very different.

The image that was successfully presented is now collapsing around us on almost a daily basis. There is no real accountability in the UN, and the Organization is both incapable and unwilling to seriously investigate misconduct of any sort within its own ranks.

As a consequence; it is failing the women and children around the world who are forced to rely on it for food, shelter and protection. I am also concerned about financial irregularities that are not investigated.

The dysfunction in the UN cannot be attributed to a few rogue officials, nor can it be blamed on those who have retired; it is very deeply ingrained in the culture of the organisation. It cannot be remedied by another consultants report, another Working Group, new policies, any reorganisation or by appointing another ‘Special Coordinator’.

This situation is one of moral and ethical bankruptcy. The Organization itself has proved unable to do so, so the Member States must assume direct responsibility for the investigation of crime and misconduct by UN staff. The solution involves recognising the need for what is essentially *receivership*.

The poorest, the most needy and the most desperate people in this world are being exploited and the only people trying to excuse that are the staff of the United Nations who consider themselves above the law that governs everyone else. This is unconscionable. Privileges and Immunities must be stripped as soon as there is cause to believe that a criminal offence has been committed.

UN Staff must be held accountable for their misdeeds, and that has to be done by an external body, completely independent of the UN Secretariat, and reporting directly to the General Assembly.

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Peter A Gallo

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<sup>53</sup> UN Secretary-General Ban Ki-moon, speaking at the Center for Strategic and International Studies. Washington DC . 16 January 2007. Available online at: [http://www.un.org/apps/news/infocus/sgspeeches/statments\\_full.asp?statID=62#VwP5gT-niRs](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=62#VwP5gT-niRs)

<sup>54</sup> UN Secretary-General Ban Ki-moon, speaking to senior UN officials at Turin Retreat, Italy. 31 August 2007. Quoted online at: <http://www.un.org/sg/PublicDisclosure.shtml>