



WORLD HEALTH ORGANIZATION

EXECUTIVE BOARD
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Reports of the Joint Inspection Unit

Recent JIU reports

Report by the Secretariat

1. In 2001, the United Nations Joint Inspection Unit (JIU) issued six reports. Three were not of direct relevance to WHO.¹
2. Comments on two of the remaining three reports – United Nations system support for science and technology in Latin America and the Caribbean (document JIU/REP/2001/2) and Review of management and administration in WHO (document JIU/REP/2001/5) – were submitted to the Audit Committee at its fifth meeting prior to the 109th session of the Executive Board in January 2002 and subsequently presented to the Board.
3. Comments on the third report of relevance to WHO – Enhancing governance oversight role: structure, working methods and practices on handling oversight reports (document JIU/REP/2001/4) – together with JIU's main findings and recommendations, are contained in Annex 1.
4. In 2002, JIU issued six reports, one of which was not considered to be of direct relevance to WHO.² Another – the results approach in the United Nations: implementing the United Nations Millennium Declaration (document JIU/REP/2002/2) – seems to be directed more particularly at the United Nations. As is customary for reports not directly involving WHO, there was neither interaction between JIU and WHO during the preparation of the report nor request for WHO comments on the draft report.
5. With regard to the latest JIU report issued so far – United Nations system revenue-producing activities (document JIU/REP/2002/6), most of its contents do not directly concern WHO, as the Organization's own revenue-producing activities, apart from publications, are limited. Although WHO's patent policy foresees the possibility of revenue generation, this has been treated very much as a secondary objective. The primary one is still to ensure that products resulting from WHO intellectual

¹ • JIU/REP/2001/1: Management of buildings: practices of selected United Nations system organizations relevant to the renovation of the United Nations headquarters;
• JIU/REP/2001/3: Review of management and administration in the International Telecommunication Union;
• JIU/REP/2001/6: Reforming the Field Service category of personnel in United Nations peace operations.

² JIU/REP/2002/4: Extension of water-related technical cooperation projects to end-beneficiaries: bridging the gap between the normative and the operational in the United Nations system (case studies in two African countries).

property rights are made widely available, and in particular to the public sector of developing countries at prices they can afford.

6. Generally speaking, while accent should rightly be placed on the cost-effectiveness of services provided, there is quite a difference between specific activities undertaken to generate revenues and those where revenues are an objective which has to be taken into account but cannot override other, more important, objectives such as wide availability of products resulting from WHO intellectual property rights. Therefore, it is difficult to make the level of likely proceeds from such products one of the measurable indicators for their quality, relevance and effectiveness in attaining the Organization's objectives.

7. Annex 2 contains comments on the remaining three JIU reports for 2002, together with JIU's main findings and recommendations.

ACTION BY THE EXECUTIVE BOARD

8. The Executive Board is invited to take note of the reports.

ANNEX 1

REPORT OF THE JOINT INSPECTION UNIT – 2001

Title	Purpose	Recommendations	Position of the WHO Secretariat
<p>JIU/REP/2001/4</p> <p>Enhancing governance oversight role: structure, working methods and practices on handling oversight reports</p>	<p>To contribute to enhancing the effectiveness and quality of the oversight role which is inseparably linked to the governance function and is exercised primarily by the “executive” legislative organs (such as Executive Board or Council) and their subsidiary bodies responsible for oversight issues. The report is not dealing with technical or scientific programme management, oversight of which is provided by standing or ad hoc technical, scientific or other related bodies. Rather, it focuses on the governance structure, working methods and practices of legislative organs covering oversight and on their procedures for handling reports prepared by oversight mechanisms.</p>	<p>Rec.1: The legislative organs may wish to adopt the following modus operandi: (a) list thematic oversight reports, as far as feasible and practical, under the appropriate substantive agenda items, together with any other relevant reports listed under the same agenda items; (b) when more than one report is listed under a specific agenda item, review all the relevant parts of the reports listed in a comprehensive and coordinated manner; (c) link fully the review made in (b) above to setting policy and/or management directives on the issue (under the agenda item) in question, with specific legislative actions on the strategic/policy matters whenever required; (d) in addition, make organizational arrangements to ensure that consideration of programme matters is linked systematically to the consideration of administrative/budgetary/financial matters; and (e) furthermore, consider/verify secretariat compliance with approved oversight recommendations while ensuring reinforcement of a system of secretariat accountability and responsibility.</p>	<p>The JIU recommendations contained in this report are useful. The Organization considers that most of the substance contained in the four JIU recommendations has already been implemented in the case of WHO during the past few years, through a series of reforms intended to strengthen and better monitor oversight by its governing bodies. In particular, the following measures already apply.</p> <p>Rec.1: While individual internal audit reports are not provided to the governing body or any of its committees, WHO’s internal auditor makes available to the Health Assembly an annual report that presents the previous year’s significant audit results, including implementation information, in summary form. It is discussed under the agenda item “management and financial matters”.</p>

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		<p>Rec.2: In applying the modus operandi in Rec.1 above, the legislative organs may wish to adopt measures to rationalize or strengthen governance structures and working methods along the following lines: (a) for the organizations with more than one committee (covering oversight at least as a part of the terms of reference, and subsidiary to the “executive” legislative organ) (FAO, UNESCO, WHO and ITU): (i) consolidate (or convert) the existing committees basically into two, i.e. programme and administrative/budget/finance committees (option 1); or (ii) establish a single standing committee as subsidiary to the “executive” legislative organ by consolidating the existing committees (option 2); (b) for the organizations with a single committee (ILO, IAEA, UPU, WMO, WIPO and UNIDO), maintain the single committee, but fully embody the modus operandi in Rec.1 in respect of its organization and working methods, and for that purpose, broaden, when necessary, its terms of reference and enhance its authority regarding all oversight matters excluding purely technical areas; (c) for the organizations with no committee (United Nations Funds and Programmes and IMO), what is required is to embody the same modus operandi in the functioning of the “executive” legislative organ itself, with the necessary structural [re-]arrangement (including the possible creation of a sessional committee); (d) furthermore, where it is not the case, the “executive” legislative organs, depending on the size, resources and needs of their respective organizations, could be assisted by a small expert advisory body on administrative/financial and related managerial questions reporting to the administrative/budget/finance committee/the single committee or direct to the “executive” legislative organ (IMO).</p> <p>Rec.3: In the interest of efficiency, effectiveness and economy in governance oversight, and drawing on practices in some of the organizations of the United Nations system, the legislative organs, where applicable, may also wish to review the following questions: (a) numerical composition of the “executive”</p>	<p>Rec.2(a): WHO has three committees: Programme Development (PDC), Administration, Budget and Finance (ABFC) and Audit. There is a close correlation between their work, as many of the same issues are discussed but with a slightly different perspective. Integration of their work is achieved through joint meetings of PDC and ABFC, where appropriate, and through the Audit Committee reporting to ABFC as necessary. The Executive Board in the context of its discussions on its working methods may wish to consider whether there would be some merit in combining the two latter committees so that a more fruitful and extensive discussion could take place on substantive issues that are of relevance under the terms of reference of both committees.</p> <p>Rec.3(b): The selection of Audit Committee members follows the presentation of a curriculum vitae of each candidate, a requirement designed to ensure membership of persons with the appropriate expertise in the area.</p>

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		<p>legislative organs and/or their subsidiary committees, including an option of maintaining a limited/elected core membership of the committees where such is the practice, while allowing wider participation as observers by interested members of the “executive” legislative organs; (b) expertise and experience of the members of the “executive” legislative organs and/or their committees covering oversight, which should be represented or accompanied, to the extent possible, by individuals having managerial expertise in administrative and financial matters in addition to technical knowledge of the work of the organizations concerned; (c) frequency and duration of the sessions, including, <i>inter alia</i>, the possibility of less frequent and shorter sessions, with more streamlined agendas and focused considerations on issues requiring legislative actions; as well as (d) travel and subsistence allowance paid to the delegates, including the possibility of abolishing such practices (entirely or partially) as a matter of principle, with due regard, however, to the capacity of countries, in particular the least developed countries, to finance their representation.</p> <p>Rec.4: As a supplement to the measures being/to be taken to improve handling reports prepared by oversight mechanisms, the executive heads, following the practice mandated by the General Assembly for the United Nations in its resolution 52/220 II (para.8), should include in the individual sections of programme [and] budget a summary of the relevant recommendations and related follow-up actions taken.</p>	<p>Rec.3(c): The duration of WHO governing body meetings has already been shortened, by at least a week in the case of the Health Assembly and the Executive Board and by one or two days in the case of regional committees.</p> <p>Rec.3(d): Resolution WHA50.1 limited reimbursement of travel expenses of delegations attending the Health Assembly to only those from least developed countries (one delegate per such country). By resolution WHA52.9, the Health Assembly decided to apply the same rule for attendance at sessions of regional committees.</p> <p>Rec.4: All relevant JIU reports are already submitted to WHO’s governing bodies, including a detailed listing of all recommendations as well as the Organization’s position on each of them. In addition, the new follow-up system for JIU reports also comprises detailed monitoring of implementation and reporting to the governing bodies on past JIU reports. Going beyond this by summarizing relevant JIU recommendations and related follow-up actions in individual sections of programme budget statements would, in WHO’s view, not be the proper vehicle to ensure conscientious follow-up. Furthermore, in view of the level of detail that this would involve, it would also be incompatible with WHO’s new results-based budgeting format.</p>

ANNEX 2

REPORTS OF THE JOINT INSPECTION UNIT – 2002

Title	Purpose	Recommendations	Position of the WHO Secretariat
<p>JIU/REP/2002/1</p> <p>Involvement of civil society organizations other than nongovernmental organizations (NGOs) and the private sector in technical cooperation activities: experiences and prospects of the United Nations system</p>	<p>To examine the profile of civil society and analyse how the increased involvement and cooperation of its organizations in economic and social development programmes of selected United Nations entities can be better structured and expanded.</p>	<p>Rec.1: Civil society organizations (CSOs) should be involved in technical cooperation activities during all stages of programme planning, which includes design, sustainability, implementation/execution, monitoring and evaluation as well as follow-up.</p> <p>Rec.2(a): A standard framework, which is sufficiently flexible, could be usefully established to be adapted to the different situations and needs of organizations of the United Nations system. This should include the assessment of the legitimacy of representation of any particular CSO, as has been provided for through the guidelines and selection criteria of nongovernmental organizations (NGOs), but specific to the nature of CSOs.</p> <p>Rec.2(b): Organizations particularly active in technical cooperation without a focal point for CSOs should consider appointing one as part of the existing structure.</p> <p>Rec.2(c): In connection with meetings of the United Nations System Chief Executives Board for Coordination (CEB) formerly the Administration Committee on Coordination (ACC), consultations among focal points, either directly or through the existing network of the United Nations Nongovernmental liaison service as appropriate, could be envisaged when relevant issues on sustainable development are examined.</p>	<p>Rec.1: As far as is possible, WHO seeks to involve other partners such as CSOs and NGOs in technical cooperation activities.</p> <p>Rec.2(a): The concept of a standard framework is supported. It should be coherent for CSOs and NGOs, as the boundaries between CSOs and NGOs are often not well defined.</p> <p>Rec.2(b): WHO has focal points for NGOs at different levels, the Civil society initiative being the focal point at headquarters level, liaising with focal points in other organizations of the United Nations system.</p> <p>Rec.2(c): The general idea of consultations among focal points in connection with discussions in CEB is supported, with the United Nations Nongovernmental liaison service being a suitable body to arrange this kind of meeting.</p>

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		<p>Rec.3(a): Accountability and reporting procedures must be taken into account in the partnership between organizations of the United Nations system and CSOs.</p> <p>Rec.3(b): A policy should be recommended by the legislative organs to develop a common set of principles to guide engagement of organizations of the United Nations system with CSOs.</p> <p>Rec.4: CEB should: (a) recognize and institutionalize such cooperation to be reflected permanently in its agenda of work and periodically report the results to the Economic and Social Council; and (b) sensitize its High-level committee on programmes in order that, when economic and social issues are considered, the role of CSOs is taken into account.</p> <p>Rec.5(a): In order to enable national CSOs to assume further their increasing roles as partners of the system, each organization should make it part of their objective to train and empower CSOs as well as strengthen their organizational structures in terms of legal and managerial capacity, and inform the legislative organs as appropriate.</p> <p>Rec.5(b): The organizations of the United Nations system should assist women in general, and those in the developing countries in particular, with appropriate action on training and resource mobilization to enhance their organizational and managerial skills including information technology. Member States and donors should provide financial resources intended for this purpose.</p> <p>Rec.6(a): The prevailing informal and pragmatic cooperation with CSOs should be better structured through the definition of policy guidelines. This</p>	<p>Rec.3(a) and Rec.3(b): WHO seeks to ensure accountability and reporting in all partnerships. A common set of principles to guide the engagement of organizations of the United Nations system with CSO issues would be welcome.</p> <p>Rec.4(a): WHO reports regularly to its governing bodies on collaboration with NGOs as part of the current system of official relations with NGOs.</p> <p>Rec.4(b): Not applicable.</p> <p>Rec.5(a) WHO supports the idea of capacity-building of CSOs/NGOs. This will be part of new WHO guidelines for its country offices to support Member States in their interaction with national CSOs/NGOs.</p> <p>Rec.5(b): Considerations regarding gender equity and the role of women should, if feasible, be integrated into all interactions with NGOs and CSOs.</p> <p>Rec.6(a): Policy guidelines for CSOs should be coherent with those for NGOs, as the boundaries between CSOs and NGOs are often not well defined.</p>

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		<p>development will give further input to ongoing initiatives by the secretariats and should be translated into policy actions by legislative organs.</p> <p>Rec.6(b): The financial autonomy of CSOs and their entities, including access to credit, should be encouraged by donors and recipient countries to reduce their dependence on sporadic donations and contributions which undermine their sustainability and potential effectiveness of action.</p> <p>Rec.7(a): Specific staff training is required in development programmes to be approved and implemented at the national level involving CSOs. The responsibility of training the trainers could also be envisaged.</p> <p>Rec.7(b): For improvements in United Nations staff training, the United Nations Staff College in Turin could be one appropriate structure.</p> <p>Rec.8: The existing mechanism at the country level has to be revised and amplified, shifting from limited and sporadic consultations to involvement of CSOs during the planning and execution processes of technical cooperation activities in synergy with governments.</p> <p>Rec.9(a): Those organizations of the United Nations system dealing with economic and social development should be encouraged to include in their web sites selected information on CSOs engaged in technical cooperation activities for the benefit of CSOs in general, and in particular, for those which do not have a web site. For CSOs already equipped with a web site, it would be useful for web sites of organizations of the United Nations system to have hyperlinks embedded, thereby making it possible to connect readers to the web sites of relevant CSOs.</p>	<p>Rec.6(b): Not applicable.</p> <p>Rec.7(a): As appropriate, WHO is planning to train its staff in the management of relations with CSOs and NGOs.</p> <p>Rec.7(b): Not applicable.</p> <p>Rec.8: In principle, WHO is working towards increasing participation of CSOs/NGOs in WHO-supported activities at country level.</p> <p>Rec.9(a): Many web sites of WHO technical departments have links to those of CSOs/NGOs. The Civil society initiative is creating a new web site for CSOs/NGOs wanting contact with WHO and for access to information on collaborative activities.</p>

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<p>JIU/REP/2002/3</p> <p>Support costs related to extrabudgetary activities in organizations of the United Nations system</p>	<p>To review the formulation and application of extrabudgetary support-cost policies in organizations of the United Nations system, and to propose measures aimed at harmonizing these policies.</p>	<p>Rec.9(b): Major conferences, meetings, seminars/workshops organized by organizations of the United Nations system and of special interest to CSOs should be part of the appropriate printed word, radio and web site information.</p> <p>Rec.1: Legislative organs may wish to request the executive heads of each organization to: (a) integrate extrabudgetary resources with core resources in budget presentations and subject them, at least in terms of broad programmatic prioritization, to legislative approval; and (b) accept extrabudgetary resources for activities beyond the reach of core budgets in line with the broad programmatic prioritization approved by legislative organs.</p>	<p>Rec.9(b): WHO is inviting CSOs and NGOs to many of its technical consultations. Increasingly, many programmes arrange special consultations with NGOs.</p> <p>WHO found this report particularly interesting and very well researched. It is of great and increasing relevance to many agencies with sizeable extrabudgetary financing and certainly to WHO, where this source of funding has increased substantially over the past four years.</p> <p>Many of the JIU recommendations concord with the direction that WHO has been taking, particularly concerning the need for better integration of both sources of funding in budgeting and more focused programmatic prioritization of extrabudgetary activities. Any reservations expressed below are therefore more linked to the practical aspects of the recommendations than to their conceptual content.</p> <p>Rec.1: WHO welcomes this recommendation, which essentially endorses what WHO has been progressively putting in place over the last and current bienniums: the Programme budget 2002-2003 integrates both sources of funding. The appropriation resolution for the financial period 2002-2003 (resolution WHA54.20) authorizes the regular budget expenditures for that biennium and notes the expected level of extrabudgetary funds. The “programmatic prioritization” and relative ranking of importance have been achieved at the area of work level by showing the estimated total funding level for, e.g., tuberculosis, malaria, or other areas of work in the budget document. It is planned to continue this integrated presentation in the Proposed programme budget 2004-2005.</p>

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		<p>Rec.2: Executive heads should ensure that all incremental cost-measurement exercises clearly define what share of the costs associated with existing administrative and other support structures is appropriately borne by core resources and what must be borne from extrabudgetary resources.</p> <p>Rec.3: Executive heads should give careful prior consideration to the costs and benefits associated with potential approaches to incremental cost measurement. The validity of the findings of all cost-measurement exercises, including the resulting projections of support-cost income requirements, should be verified using historical expenditure-income analysis.</p>	<p>Rec.2: WHO agrees with this recommendation. Quite rightly, JIU expresses some scepticism about the management accounting value of “cumbersome, costly and time-consuming time-work surveys”. Such surveys generally use an incremental approach to the determination of support costs, while JIU points out that the “process of defining cost-measurement parameters entails a significant and unavoidable element of subjective judgement”. WHO undertook such an exercise prior to considerations by the Executive Board in 1996 of a higher rate for programme support costs. Studies have been conducted showing that the cost borne by WHO when providing the full range of the administrative services to a given extrabudgetary programme or entity were generally sizeably higher than the present approved rate of 13%. The Executive Board did not, however, approve a higher rate.</p> <p>Rec.3: See comments on Rec.2.</p>

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		<p>Rec.4: Legislative organs may wish to consider permitting organizations of the United Nations system to retain the interest earned on extrabudgetary resources contributed to multidonor activities where resources are commingled and separate donor-specific accounting is not possible. They may wish to determine that this income should be used to reduce extrabudgetary support costs and that appropriate reporting is made to legislative organs on the relationship between such interest income and support-cost rates.</p> <p>Rec.5: Executive heads should review the extrabudgetary support-cost legislation applicable to their respective organizations and present proposals to their legislative organs aimed at eliminating contradictions in this legislation.</p>	<p>Rec.4: WHO would favour this recommendation. It should be noted that a distinction is made between interest-bearing and non-interest-bearing accounts. For example, WHO's Voluntary Fund for Health Promotion, the main channel for extrabudgetary contributions, is defined as an interest-bearing fund, which results in the application of interest earned on any unspent fund balances to those balances. Some, donors, but by no means the majority, appear sympathetic to the desire of recipient organizations to retain such interest for programmatic work; others take the opposite view.</p> <p>Rec.5: On one side, there are legislative injunctions against any diversion of "hidden" support to extrabudgetary programme activities through cross-subsidization from core regular budget resources, while on the other, governing body-approved extrabudgetary support-cost policies or donors' agreements in fact require just that. However, there is less contradiction than may appear, since some degree of cross-subsidization always appears to have been acceptable. At the time of the establishment of the original UNDP 13% formula, i.e. the founding principle on which most United Nations support-cost rates are based, cost-measurement studies clearly demonstrated that the true level of support costs was much higher than that agreed upon.</p>

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		<p>Rec.6: Those organizations which have not yet done so should explore the possibility of including, as direct and internal project or programme costs, identifiable elements presently covered by percentage-based support-cost charges.</p> <p>Rec.7: The Executive Board of UNDP should review the practice of incorporating indirect support costs for organizations of the United Nations system as part of the cost of substantive UNDP project inputs and expenditures. The Executive Board of UNDP may wish to revise this policy in line with the principles described in Rec.9 below.</p> <p>Rec.8: Executive heads should ensure that exceptional support-cost rates, and the grounds on which they are permitted, are consistent. They should only be granted on the basis of justifiable substantive priorities or a genuine determination that lower support-cost rates are appropriate. Furthermore, executive heads granting exceptional support-cost rates on a relatively frequent basis should revise the extrabudgetary support-cost policies to which they are approving exceptions.</p>	<p>Rec.6 and Rec.7: These are extremely interesting suggestions from JIU for achieving more flexibility in programme support costs and enabling organizations such as WHO to compete on a more equal footing with those others who already employ this practice. However, there are also drawbacks in shifting some cost elements over from the “lump-sum category” covered by a standard support-cost rate to itemized direct cost elements individually reimbursable as such. First, any such shift may lead to suggestions for a corresponding reduction in the list of permissible support-cost elements, which in turn could lead to demands for an overall lowering of the standard support-cost rate. Second, the report itself implicitly admits, as indicated in Rec.1, that extrabudgetary resources are being (and should be) increasingly mainstreamed into the integrated programmatic action of an organization. Recourse to direct costs, by contrast, may end up promoting project-specific grants, programme fragmentation and micromanagement. This is especially true of foundation-type support.</p> <p>Rec.8: Lower programme support-cost rates in individual cases could be appropriate if there are good and valid reasons for some exceptions, such as: simple, large-scale transactions with little extra burden to the administrative support system (e.g. bulk purchases); size of donation permitting the recipient to realize economies of scale; or linking of a lower rate with the requirement for “matching grants”, such as in arrangements made with some foundations. WHO has undertaken a revision of its policy; for example, as a rule, different support-cost rates are applied for large-scale procurement (6% and 3% depending on activities).</p>

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		<p>Rec.9: Legislative organs should enact support-cost policies to ensure that extrabudgetary resources continue to be mobilized and deployed effectively to further the mandated activities in developmental, humanitarian and other substantive areas. These policies should be straightforward, transparent and easy to administer and must provide for a consistent and equitable approach to special arrangements. To this end: (a) extrabudgetary support-cost rates should be established in accordance with the following principles: they should recognize and reflect the relative centrality, and direct benefits, of an extrabudgetary activity to the mandated programme; and they should be differentiated to take into account the cost of support as influenced by type of activity, conditionality, and the volume of resources; (b) the authority to establish extrabudgetary support-cost rates in accordance with the principles in (a) above may be delegated to executive heads, with appropriate reporting thereon to legislative organs.</p> <p>Rec.10: In implementing new extrabudgetary support-cost policies and rates established along the lines of Rec.9 above, executive heads should carefully consider the effect of these changes upon support-cost income, ensuring that a larger proportion of the costs associated with supporting extrabudgetary activities does not fall upon core resources. Any reduction in support-cost income due to reduced support-cost rates should be offset in principle through the achievement of more efficient administrative services.</p>	<p>Rec.9: WHO agrees with the principles stated in this recommendation, but they have at times proved difficult to apply. As indicated above, WHO has introduced a more differentiated support-cost structure with rates based on the various parameters (e.g. 13% for some cases, 6% for others), but it has been noted that, notwithstanding efforts, some donors are still attempting to negotiate lower rates whatever the circumstances.</p> <p>Rec.10: The Organization has attempted to strike a balance between introducing lower support costs for some activities and ensuring that there is not cross-subsidization from core funding. WHO agrees that it is the core duty of any administration to strive continually for maximum efficiency of administrative services; however, any gains thus realized should not be considered to be the exclusive “property” of the extrabudgetary part of the Organization’s activities.</p>

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		<p>Rec.11: CEB should ensure that the process for establishing support-cost policies be monitored and regular comparative reporting of such policies be developed and disseminated. The outcome of this reporting should be reviewed by appropriate CEB machinery with a view to harmonizing, to the extent possible, the principles underlying support-cost policies, and by executive heads who should report thereon to their respective legislative organs.</p> <p>Rec.12: Legislative organs should continue to monitor overall administrative and other support expenditures and to review these components in the budgets of the organizations of the United Nations system. In so doing, Member States should ensure that administrative and other support requirements in core budgets do not increase in proportion to overall core resources.</p>	<p>Rec.11: WHO agrees that a review should be undertaken with the ultimate goal of harmonizing support-cost rates charged by organizations of the United Nations system, if only to avoid undue competition between them.</p> <p>Rec.12: WHO welcomes this recommendation. Core resources are already under considerable strain in many organizations of the United Nations system because of zero regular budget policies coupled with ever-increasing extrabudgetary funding.</p>
<p>JIU/2002/5</p> <p>Reform of the administration of justice in the United Nations system: options for higher recourse instances</p>	<p>To consider, in the context of the reform of the administration of justice in organizations of the United Nations system, the possibility of establishing a higher instance in respect of the binding decisions of the two main international administrative jurisdictions, namely, the International Labour Organization Administrative Tribunal (ILOAT) and the United Nations Administrative Tribunal (UNAT), in consultation with the organizations of the United Nations system, and bearing in mind the national legal systems of Member States.</p>		<p>General comments: WHO considers this report to be a serious and well-argued effort at improving the functioning of the formal and informal grievance system now in place in the organizations of the United Nations system. While agreeing with some of the JIU recommendations, for the reasons outlined below, WHO holds differing views on some others.</p> <p>At the time of preparation of this report to the Executive Board, consultations concerning the JIU report were ongoing among the Legal Advisers of the organizations of the United Nations system, including WHO's Legal Counsel. The Secretariat's detailed comments, set out below, may evolve as a result of these consultations.</p>

Title	Purpose	Recommendations	Position of the WHO Secretariat
		<p>Rec.1: Every effort should be made to ensure the independence of all bodies concerned with the administration of justice; whenever appropriate, organizations might wish to consider establishing independent offices grouping all bodies and institutions dealing with the administration of justice, as recommended by the Inspectors for the United Nations.</p> <p>Rec.2(a): The organizations' capacity for informal conciliation, mediation and negotiation should be strengthened. Every organization that has not yet done so is encouraged to establish an independent, central ombudsman function performed by a senior official appointed by the executive head, in consultation with the staff representatives, for a single, non-renewable five-year term. This function should be complemented, at every major duty station, by a person or a panel responsible on a part-time basis for informal conciliation, mediation and negotiation functions under the overall guidance and supervision of the Ombudsman.</p>	<p>Specific comments on the JIU recommendations:</p> <p>Rec.1: WHO agrees with the principle of the independence of bodies concerned with the administration of justice. WHO already has independent internal appeal boards, i.e., Regional Boards of Appeal; Headquarters Board of Appeal; and the recently established Headquarters Grievance Panel, which deals with harassment complaints.</p> <p>Rec.2(a): It is agreed that greater emphasis should be placed on the non-litigious phase of dispute resolution, with one goal being the reduction of the number of complaints before ILOAT. WHO already has a full-time ombudsman at headquarters and in most regional offices. In this respect, WHO is probably a pioneer among organizations of the United Nations system, since it appointed its first ombudsman in February 1974. At present, the headquarters Ombudsman carries out activities in those regional offices where no ombudsman has yet been appointed. In paragraph 29 (page 4), the JIU report is not quite accurate in reporting how the WHO Ombudsman is appointed. In fact, the WHO procedure is the same as outlined in Rec.2 (page vi), the one fundamental difference being that WHO does not specify the length of contract while JIU recommends "a single, non-renewable five-year term". WHO agrees that the Ombudsman should be a senior official, but prefers a case-by-case approach to the question of the duration and renewability of this appointment.</p> <p>WHO questions the usefulness of complementing the ombudsman function with a part-time panel in every major duty station. From a practical point of view, it is already difficult to find staff who are willing and able to serve on various committees of</p>

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		<p>Rec.2(b): Following the example of certain judicial instances in the Member States, ILOAT and UNAT should be enabled to mediate between parties. This power should be expressly attributed to the tribunals so that, whenever deemed appropriate, they may resort to conciliation to resolve disputes, particularly those where no major legal issues are involved.</p> <p>Rec.3: In considering the desirability of eventually merging ILOAT and UNAT, the competent legislative organs of the ILO and the United Nations may wish to require the harmonization of the statutes and working procedures of the two tribunals in question, with special emphasis on the procedures for selecting their members, their competencies and jurisdictions as well as case laws; a detailed timetable for such a merger should be developed by the two tribunals in consultation with their participating organizations as appropriate.</p>	<p>this nature (e.g. internal boards of appeal). Respected retired staff members could be considered for the function of ombudsman and to act as conciliators/mediators/arbitrators, assuming they are suited to the task and are well trained.</p> <p>Rec.2(b): The proposal that ILOAT and UNAT be enabled to mediate disputes, particularly those where no major legal issues are involved, raises serious concerns: (a) there already exist numerous opportunities and mechanisms to deal with staff appeals, or potential appeals; (b) for the recommendation to be workable, a fundamental conflict of interest concern would have to be overcome: specifically, if the Tribunal's mediation efforts were not successful and the matter were to end up as a complaint before the Tribunal, it might well be unable to hear the case; and (c) utilizing ILOAT judges to mediate disputes raises practical difficulties (e.g. the potential need for the ILOAT judges to be present at a duty station where the dispute occurs) and would also have significant financial implications.</p> <p>Rec.3: This proposal has been the subject of discussion among organizations of the United Nations system for many years. In 2002, it was considered in a report that the Secretary-General submitted to the fifty-sixth session of the United Nations General Assembly.¹ WHO will continue to participate in the ongoing discussion of this issue.</p>

¹ Administration of justice in the Secretariat. Report of the Secretary-General. New York, United Nations, 2002 (document A/56/800).

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		<p>Rec.4(a): Adopt as a general operating principle the practice of accepting the unanimous recommendations of these bodies, without prejudice to the authority of the executive heads in the discharge of their administrative responsibilities.</p> <p>Rec.4(b): Publish annual reports containing summarized information on the number and nature of the cases heard before joint appeals boards, joint disciplinary committees and similar advisory bodies, as well as general statistics on the disposition of such cases; the confidentiality of their proceedings should be preserved.</p> <p>Rec.4(c): Give appropriate consideration to the holding of oral hearings before all appellate bodies when these hearings could contribute to the settlement of disputes and expedite the disposition of cases.</p>	<p>Rec.4(a): The proposal that, as a general principle, unanimous recommendations of internal boards should be accepted raises concerns. Experience has shown that there is no correlation between unanimous recommendations of the Headquarters Board of Appeal and successful complaints before the Tribunal. The work of the Headquarters Board of Appeal could benefit from the support of a legal adviser who is knowledgeable in the law of the international civil service. Another approach that could be examined in the future is the appointment of a Board secretary who is a lawyer.</p> <p>Rec.4(b): At WHO, this information is already published by the Headquarters Board of Appeal and the Ombudsman.</p> <p>Rec.4(c): It is not clear who should “give appropriate consideration to the holding of oral hearings before all appellate bodies”. Under established principles of law, each appellate body must decide itself, without outside interference, whether an oral hearing is necessary in order to adequately consider a case before such a body, taking into account the facts of the case and all other relevant circumstances. If the intention is that the executive heads of organizations of the United Nations system should have the authority to decide in which cases oral hearings should be held and in which not, as suggested by the text preceding the recommendation, “to that end, the executive heads of the organizations should subscribe to the following measures”, such an initiative would be contrary to</p>

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		<p>Rec.5: The United Nations General Assembly may wish to request the Sixth Committee to study the desirability of establishing an ad hoc panel that would be responsible for reviewing the judgements of the existing two tribunals or a future single tribunal (see Rec.3 above); the panel in question could include the following features: (a) it should be composed of a Chairperson designated by the President of the International Court of Justice and two members designated one each by the Presidents of ILOAT and UNAT/legislative bodies of ILO and the United Nations. The persons proposed to serve on this ad hoc panel should be eminent jurists, internationally recognized. Their term of office shall not exceed that of the members of the tribunals. A screening procedure should be established to avoid that this panel becomes inundated with unfounded appeals; (b) applications for review of the judgements of the tribunals may be founded on the following criteria: first, that the tribunal has exceeded its jurisdiction or competence; second, that the tribunal has failed to exercise jurisdiction vested in it;</p>	<p>established principles relating to the independence of the judiciary. In any event, oral hearings are already possible before internal WHO boards of appeal, at the request of the appellant.</p> <p>Rec.5: As mentioned in Part II of the JIU report, starting in 1998 the Legal Advisers of the organizations of the United Nations system, including WHO's Legal Counsel, discussed the advisability of introducing a second-tier appellate mechanism. The matter was given careful consideration by all organizations; WHO's position at that time is briefly summarized in paragraph 66 of the JIU report. A consensus on a common position (with the exception of the Legal Adviser of UNESCO) was reached in March 1999.</p> <p>At the time the Legal Advisers concluded: unless CEB instructs otherwise, they were not inclined to further pursue this matter. In a subsequent note Mr Hans Corell, United Nations Under-Secretary-General for Legal Affairs, informed the United Nations Secretary-General that the Legal Advisers were of the view that CEB could consider the question of the introduction of a second-tier appellate mechanism in the administration of justice in the organizations of the United Nations system to be closed.¹</p>

¹ By memorandum dated 2 July 2001, the Secretary of CEB informed Mr Corell that the comments and advice provided by the Legal Advisers had been considered by the executive heads of the organizations of the Members of CEB, and that they had agreed that this matter may now be considered closed. However, note was taken in United Nations General Assembly resolution 55/258 of 27 June 2001 of the intention of JIU to continue its study of the possible need for higher-level jurisdiction, and JIU was requested to report to the United Nations General Assembly at its fifty-seventh session.

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		<p>third, that the tribunal has erred on a question of law relating to the provisions of the United Nations Charter; fourth, that the tribunal has committed a fundamental error in procedure which occasioned a failure of justice; and fifth, that the tribunal has deviated substantially from its jurisprudence; (c) the determinations and conclusions of the ad hoc panel shall be binding on the executive heads of the organizations and on the tribunals. The ad hoc panel shall not reopen the procedure but only review, as appropriate, a judgement, so that the tribunal that has issued it shall confirm or revise it in the light of the ad hoc panel's determinations and conclusions.</p> <p>Rec.6: The executive heads of the organizations should ensure collaboration with the staff associations in the development of comprehensive legal insurance schemes covering legal advice and representation for staff in these procedures, on the understanding that the organizations shall contribute towards these schemes only until such time as they are self-financing.</p>	<p>The JIU proposal envisages a new ground of second-tier review that had not been previously envisaged by it, namely, situations where the Tribunal has deviated substantially from its jurisprudence. The appropriateness of this new criterion is questionable. It suggests strict adherence to a principle of justice that would make previous decisions automatically binding in future cases. It is not clear that this is a universally accepted principle. In any event, this principle might impede the Tribunal from deviating, or appearing to deviate, from earlier jurisprudence where such deviation might be justified for a variety of reasons.</p> <p>Rec.6: A number of clarifications are required before this proposal could be meaningfully considered. For example, it is not clear whether the proposed insurance schemes would be internal or external to each of the organizations involved. Similarly, it is not clear how such schemes could become "self-financing". Specific financial implications for organizations involved would have to be assessed.</p> <p>WHO staff have had the option of being covered by legal insurance for employment-related disputes. This insurance has been arranged through the headquarters staff association and a private insurer; the WHO administration has had no involvement in the scheme, and WHO does not contribute to the cost.</p>