The Role of Ethics and Compliance in UNHCR - Global Context and Specific Challenges -

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The Role of Ethics and Compliance in UNHCR
- Global Context and Specific Challenges -
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Summary

UNHCR’s primary purpose is, to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to possibly resettle in a third country. It also has a mandate to help stateless people. In more than five decades, the agency has helped tens of millions of people restart their lives. Today, a staff close to 7,000 people (international and local staff combined) are on duty in more than 110 countries to help about 34 million persons.

UNHCR’s evolving role and the operational challenges that the UN refugee agency is facing in its daily work make it the right candidate for a strengthened ethical rules and regulations accompanied with a clear compliance programme to help the staff respond to and mitigate the consequences of the many ethical dilemmas that may occur not only in field operations but also at Headquarters. Moreover, the importance of ethical behavior in the workplace need no demonstration for it bears such names as: Integrity, Accountability, Transparency, Truthfulness, Non-Discrimination, Respect for Diversity, Team-Spirit, Pride in Serving, Trust, Efficiency, Respectful Communication, Harmonious Workplace, Fairness, Representing UNHCR’s Persons of Concern, Politeness, etc.

Based on specific efforts nurtured by the UN refugee agency to enhance ethics and compliance in the delivery of its mandate, the paper examines the long road towards some of the features of the ethics role in UNHCR by trying to respond to the following questions: Why having adopted an ethic code namely UNHCR Code of Conduct? i.e. how did the operational challenges, the global and the United Nations contexts influence the development of ethics and compliance programme in the refugee agency? How do the ethics governance evolved and is implemented in UNHCR? What are the ongoing commitments to nurture integrity and mitigate reputational risks in UNHCR?

The ongoing global developments concerning business ethics are seriously influencing the attitude of the UN Member States vis a vis the operational agencies they have created to carry out the humanitarian mandate of the global organization in line with its founding Charter. UN Member States and the donor community as a whole are raising the bar higher and higher to make sure that integrity, transparency and accountability remain the bedrock of the UN activities worldwide. UNHCR has been very smart in mitigating the reputational consequences of the operational ethical challenges it faced during the last decade by wisely investing in measures to successfully enhance accountability and nurture a culture of integrity. However, ethical challenges will continue haunting UNHCR operations for their geographic and issue specific variety; but there are also opportunities to initiate ethics risk assessment processes in UNHCR that will help review what has been accomplished, what remains to be done to better ground successful practices in the organization and looking forward to what are the emerging ethical risks that may need to be mitigated.
Introduction

The Office of the United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly\(^1\). The agency is mandated to lead and co-ordinate international action to protect refugees\(^2\) and resolve refugee problems worldwide. The UN refugee agency is governed by the UN General Assembly and the Economic and Social Council (ECOSOC). An Executive Committee, composed of 79 members\(^3\), approves the agency's biennial programmes and the corresponding budget. These are presented by the High Commissioner, who is appointed by the UN General Assembly. In 2003, the General Assembly extended UNHCR’s mandate "until the refugee problem is solved." The High Commissioner\(^4\)

\(^1\) United Nations General Assembly Resolution 428(V) dated 4 December 1950.

\(^2\) A refugee is defined as someone who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or owing to such fear, is unwilling to avail himself of the protection of that country” (ref. 1951 Geneva Convention on the protection of refugees).

\(^3\) The current Executive Committee (EXCOM) members are: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Benin, Brazil, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guinea, Holy See, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lesotho, Luxembourg, Madagascar, Mexico, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Slovenia*, Somalia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Venezuela (Bolivarian Republic of), Yemen, Zambia

(*) Elected by the Economic and Social Council on 28 April 2010. This brings the number of Executive Committee members to 79.

\(^4\) http://www.unhcr.org/pages/49c3646c80.html

\(^5\) The current High Commissioner Mr. António Guterres became the 10th UN High Commissioner for Refugees on June 15, 2005. A former Portuguese prime minister, Guterres was elected by the UN General Assembly to a five-year term. In April 2010, the General Assembly re-elected Guterres to a second five-year term.
reports annually to ECOSOC and through the ECOSOC to the General Assembly on the work of the organization.

UNHCR’s primary purpose is, to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to possibly resettle in a third country. It also has a mandate to help stateless people. In more than five decades, the agency has helped tens of millions of people restart their lives. Today, a staff close to 7,000 people (international and local staff combined) are on duty in more than 110 countries to help about 34 million persons.

The United Nations General Assembly also gave responsibilities to the High Commissioner to contribute to the prevention and reduction of statelessness and to further the protection of stateless persons.

Moreover, in the absence of a single agency in the UN system with a comprehensive mandate for the protection and assistance to Internally Displaced Persons (IDPs), the Inter-Agency Standing Committee (IASC) agreed in 2005 to establish the “cluster leadership approach”, or “cluster approach”, which organized nine critical areas of the humanitarian response into “clusters” comprised of a broad range of actors (including NGOs and non-UN intergovernmental organizations) and led by a designated "cluster lead" for each cluster. Within this system, UNHCR accepted a leadership role for the Protection, Emergency Shelter, and Camp Coordination and Camp Management Clusters in situations of conflict-induced internal displacement. UNHCR shares a protection leadership role with UNICEF and the Office of the High Commissioner for Human Rights (OHCHR) for internal displacement due to natural disasters.

6 http://www.unhcr.org/pages/49c3646c80.html

7 http://www.unhcr.org/pages/49c3646c16a.html. “Statelessness is not always well understood and in many countries its scope is ignored. Measuring the magnitude of statelessness is complicated by the very nature of the phenomenon. Stateless people often live in a precarious situation on the margins of society, frequently lack identity documentation and often are subject to discrimination. The identification of stateless people is a prerequisite for addressing the problem. UNHCR, therefore, encourages states to share any statistics they may have on stateless people or individuals with undetermined nationality. Some governments have mechanisms in place to identify these people, while UNHCR, in cooperation with sister agencies, works with others to determine the numbers of stateless. UNHCR cannot provide definitive statistics on the number of stateless people around the world, but we estimate that the total was around 12 million in 2008. That included 6.6 million in the 58 countries for which there were reliable statistics” (ref.http://www.unhcr.org/pages/49c3646c26.html).

8 http://www.humanitarianreform.org/

9 “About two-thirds of the world’s forcibly uprooted people are displaced within their own country. They are known as internally displaced people (IDP) and UNHCR has been playing an increasingly important role in recent years in assisting them. According to the latest figures released by the Geneva-based Internal Displacement Monitoring Centre (IDMC), there were 26 million IDPs around the world in 2008, unchanged from 2007. At the end of 2008, the UN refugee agency was caring for around 14.4 million of these IDPs, more than the total number of refugees of concern to UNHCR. Like refugees, they were forcibly displaced by conflict, generalized violence
Most UNHCR operations are in countries affected by conflicts. The worldwide operation has become highly complex, ranging from recruitment of new staff and ensuring their security in dangerous situations to the procurement of everything from medical supplies and bulk food shipments to aircraft charters. Specific departments, mostly based in the Geneva headquarters, oversee key areas, such as operations, protection, external relations, communications, human resources and finances. A number of regional bureaus liaise between overseas offices and headquarters. In the field, UNHCR's core work is managed from a series of regional offices, branch offices, sub-offices and field offices. The High Commissioner's representatives head operations in the countries where the agency works, while there are also a number of regional representatives10.

This paper holds the view that UNHCR’s evolving role and the operational challenges it faces in its daily work make it the right candidate for a strengthened ethical rules and regulations, accompanied by a clear compliance programme to help the staff respond to and mitigate the consequences of the many ethical dilemmas that may occur not only in field operations but also at Headquarters. Moreover, the importance of ethical behavior in the workplace need no demonstration for it bears such names as: Integrity, Accountability, Transparency, Truthfulness, Non-Discrimination, Respect for Diversity, Team-Spirit, Pride in Serving, Trust, Efficiency, Respectful Communication, Harmonious Workplace, Fairness, Representing UNHCR’s Persons of Concern, Politeness, etc.

The paper will examine the role of ethics in UNHCR by trying to respond to the following questions: Why did UNHCR establish an Ethics Office? i.e. how did the global and the United Nations contexts influence the development of ethics and compliance programme in the refugee agency? How does the ethics governance evolve and is implemented in UNHCR? What are the ongoing commitments to nurture integrity and mitigate reputational risks?

I. The Influence of the Global Context in the Development of Ethics and Compliance Programme in UNHCR

A. Defining Ethics

Ethics refers to rules of distinguishing between right and wrong and the word ethics, morals and values are said to be commonly used for one another11.

and human rights violations. UNHCR helps IDPs as part of a wider intervention by the international community” (ref. http://www.unhcr.org/pages/49c3646c23.html).

http://www.unhcr.org/pages/49c3646c206.html

10 Googling Your Dictionary.com about defining Ethics, one could find a very interesting presentation about “Ethics” as not an easy word to define. It says: “Almost everyone wants to live an ethical life, but knowing what that means is not simple as it sounds. That’s where the phrase “ethical dilemma” comes from. In some situations, there are two contrasting ideas that may seem ethical, but it is hard to determine which actually the right course of action is. Some common ethical dilemmas have little consequence: for example, is it right to tell a fib when someone asks you if they look fat or if their bad tasting dinner is delicious? The ethical dilemma there: which is more ethical, lying or being unkind? Other ethical dilemmas become a big more complex: for example, is it right to
However, “morality” is perceived as “the set of norms through which societies historically define behaviour that is viewed as good or bad, as acceptable or not by the community, while ethics, on the other hand, seen as being synonymous with morality, is the science or theory of moral practices. Ethics is also thought of as the character of ethos of an individual or a group, the hierarchy of values and norms which he/she or they identify for them/herself or themselves against a prevailing moral code.”

This paper believes UNHCR’s Code of Conduct adopted in September 2002 falls within this definition of ethics.

Indeed, as the first set of values which have been adopted with the intention “to serve as an illustrative guide for UNHCR staff to make ethical decisions in their professional lives, and at times in their private lives”, the UNHCR Code of Conduct is the reference tool for the “upgrading of the ethics functions” in UNHCR, although there seems to be other important reasons within the context of the UN system, for the establishment of a full fledged Ethics Office in UNHCR. A review of the international community focus on ethics could help understand why ethics is so grounded in the UN refugee agency. Indeed, “business or professional ethics are [seen as] standards of codes of conduct set by people in a specific profession. A code of ethics is part of the expectations of those involved in many different types of professions. People in a profession don’t want to condone bad, dishonest or responsible behavior if it does occur by someone in their field. By setting out expected behaviors in the form of professional ethics, professionals work together try to uphold a good reputation. Professional ethics are commonly known as ethical business practices.”

Therefore, setting up a “hierarchy of values” or ethics does not simply mean to find ways and means to avoid or respond to the prevailing increasing international pressures on businesses for the increasing number of scandals surrounding their activities due to conflicts of interests, corruption, misconduct and other reprehensible behaviors, but also put together a set of norms that ease life in a workplace and maximize accountability, truthfulness, culture of integrity and other moral values and also increases revenues for profit companies and enhance credibility and efficiency.

steal from the rich to give to the poor? Is it right to fight wars in the name of a good cause, even if innocent people are injured? The answers to these ethical questions depend on your definition of ethics!”

Your Dictionary.com defines ethics as: “1) the study of standards of conduct and moral judgment; moral philosophy. 2) A treatise on this study. 3) The system or code of morals of a particular person, group, profession, etc. According to this definition, ethics can be one of the two things: it can be something that you study and think about, or it can be a code that you follow and live by. Of course, in the real world, ethics is often both. Philosophers who think about ethics usually try to live by an ethical code, while the people who set up a code of ethics often study and think while they are doing so. [...] Knowing that the definition of ethics is a code of morals doesn’t really help to define what is ethical, does it? The moral code itself has to provide that definition. So the question “define ethical” becomes synonymous with the question “define moral”. The dictionary therefore went on defining moral as: “1) relating to, dealing with, or capable of making the distinction between right and wrong in conduct. 2) Relating to serving to teach, or in accordance with the principles of right and wrong. 3) Relating to good or right in conduct or character, etc”. For its part, the Concise Oxford Dictionary in English Dictionaries of Thesaurus defines ethics as “the moral principles governing or influencing conduct”. “a set of moral principles”. This paper adopts that latter definition.

12 Promoting Ethics in the Public Service, ST/ESA/PAD/SER.E/8, United Nations, New York, 2000, p. xv. There is also a very useful effort to define Ethics in the theoretical framework proposed by Leonie Heres, BSc. in his Master’s of Social Research work titled “What Makes the Difference? Ethical Leadership across the Public-Private Continuum”, Published by Dynamics of Governance, Faculty of Social Sciences, VU University, Amsterdam, the Netherlands, 2010. PP. 19-26.


14 ibid. P. 1

15 http://www.wisegeek.com/what-are-professional-ethics.htm
for non-profit institutions, such as UNHCR. It is said that “respect and honesty are the two main components of professional ethics. All employees are expected to represent a business ethically as they are a part of it. This is why business people traditionally speak of "we" or "us" rather than the more personal "I" for the most part”\textsuperscript{16}.

According to Richard T. De George in “A history of Business Ethics”, “the term business ethics is used in at least three different, although related, senses. Which sense one chooses therefore gives priority to the nature of the history of the topic. The primary sense of the term refers to recent developments and to the period, since roughly the early 1970s, when the term “business ethics” came into common use in the United States. Its origin in this sense is found in the academy, in academic writings and meetings, and in the development of a field of academic teaching, research and publication. That is one strand of the story. As the term entered more general usage in the media and public discourse, it often became equated with either business scandals or more broadly with what can be called “ethics in business.” The author said “in this broader sense the history of business ethics goes back to the origin of business, again taken in a broad sense, meaning commercial exchanges and later meaning economic systems as well. That is another strand of the history. The third stand corresponds to a third sense of business ethics which refers to a movement within business or the movement to explicitly build ethics into the structures of corporations in the form of ethics codes, ethics officers, ethics committees and ethics training”\textsuperscript{17}.

That third sense seems to value the preventive, enhancing and supportive nature of the ethics functions for the organizational culture of integrity, as opposed to the reactive or punitive nature of calls for ethics in business scandals, although the development of ethics culture needs to be accompanied by a consistent compliance programme through sanctions for non-compliance to be imposed on individuals and corporations alike. Within the context of UNHCR’s work, this paper shares S.J. Allen’s view that “the significance of ethical formulations, today, as in all times, is in their power for shaping attitudes and constraining behaviors. Ethics provide for a basic social need by defining the behaviors we expect and will accept from one another. In the ideal, our ethics allow us to live together, productively and in harmony”\textsuperscript{18}. Therefore, professional ethics comprises what a professional should or should not do in the workplace, but also in a great part of private life.

\textsuperscript{16} http://www.wisegeek.com/what-are-professional-ethics.htm

\textsuperscript{17} http://www.scu.edu/ethics/practicing/focusareas/business/conference/presentations/business-ethics-history.html

\textsuperscript{18} http://www.eliewieselfoundation.org/CM_Images//UploadedImages/WinnersEssays/Steven_J_Allen.pdf. (ref. “The meaning of Ethics Today: A critical structure for evaluating modern ethics, by Steven Jeffrey Allen, Edgewood College, Madison, WI, The Elie Wiesel Foundation for Humanity, The Elie Wiesel Prize in Ethics, Second Prize, 1990). In that study, Steven J. Allen stated also that: “as with any complex social problem, the ethical crisis will resist simplistic attempts at resolution. It is a mistake to equate a break-down in the function of the ethics with a deterioration of public morality. Our generation is not simply more self-centered or less moral than our predecessors. I contend that this appearance of moral degeneration is more accurately perceived as moral confusion. When we ask why individuals act unethically, we must also be prepared to ask why it is that our ethics make it seem to be in the individual self-interest to do so. Because our common morality limits our freedom to behave in ways we might otherwise choose to, it is not enough to simply proclaim the wrongness or rightness of an act. In order for our ethical foundation to work, we must agree individually and together on the basis for those morals. Our ethics must provide understandings which help compel us to act with intelligence, compassion and understanding”.
B. Global Resurgence of Ethics and Compliance Culture

Within the current developments in Ethics, it is interesting to note that introducing its handbook on Ethics and Compliance in the United States, the Ethics and Compliance Officer Association Foundation (ECOA) stated that in the wake of the Enron scandal in the USA, “numerous corporations and other organizations, both public and private, looked for models on ways to establish or enhance ethics and compliance programmes, and to create an organizational culture that fosters ethical conduct. Guidance for such work, however, was markedly absent”. ECOA’s book stated it was the United States Sentencing Commission (USSC) Guidelines that “provide the much-needed feedback as to what the government considers an adequate compliance”. In that sense, this paper notes with interest the view from ECOA, i.e. that Ethics and Compliance programme is still an area which is in its early growth.

At the global level, “more than ever, citizens are calling for state institutions that they are democratic, efficient in the use of public funds, effective in delivering public goods while in the meantime remain strong players in the increasingly competitive global system”.22

Private companies and governments alike are adopting codes of ethics to infuse a culture of integrity, transparency and accountability in their way of doing business or dealing with counterparts and clients. As Elia Armstrong noted, “the [ethical] values of integrity, transparency and accountability in public administration have enjoyed resurgence within the past three decades or so. Citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and reliable public services and predictable decision-making inspire public trust and create a level playing field for businesses, thus contributing to well-functioning markets and economic growth. The integrity, transparency and accountability of public administration are a prerequisite to and underpin public trust, as a keystone of good governance. Corruption and

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19 The Enron scandal revealed in October, 2001 and largely publicized worldwide eventually led to the bankruptcy of the Enron Corporation, an American energy company based in Houston, Texas.

20 “The Ethics and Compliance Handbook, a practical guide from leading organizations”, ECOA, 2008. P. 9. According to ECOA, “the main benchmark for organizational programmes was found in an unlikely source: the United States Sentencing Commission (USSC) guidelines. “Chapter eight of the sentencing guidelines listed the criteria for assessing whether a company has an effective compliance programme that could justify the reduction of a criminal sentence”. Since then, these criteria became in the United States the benchmark for ethics compliance programme.

21 Ibidem. P.9

22 “Case evidence on Ethics and Values in civil service reforms”. Capacity Development Group, UNDP.

23 “In public administration, integrity refers to “honesty” or “trustworthiness” in the discharge of official duties, serving as an antithesis to “corruption” or “the abuse of office”. Transparency refers to unfettered access by the public to timely and reliable information on decisions and performance in the public sector. Accountability refers to the obligation on the part of public officials to report on the usage of public resources and answerability for failing to meet stated performance objectives”. (Re: “Integrity, Transparency and Accountability in Public Administration: Recent Trends, Regional and International Developments and Emerging Issues” by Elia Armstrong, in Economic and Social Affairs, United Nations, 2005. P.1.
maladministration in this context could be seen as not only individual acts but also the results of systemic failure and indication of “weak governance”. Publicized corruption and administrative failure cases have had a major negative impact on trust in public decision-making.\textsuperscript{24}

At both global and regional levels international standards have been put in place to fight corruption and ensure accountability and transparency\textsuperscript{25}. Regional specialized institutions have also adopted moral standards. This was, for instance, the case when the African Development Bank Group together with the Asian Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and Development and the European Investment Bank Group joined hands with the World Bank and IMF on February 18, 2006 and agreed to establish a joint International Financial Institution Anti-Corruption Task Force to work towards a consistent and harmonized approach to combat corruption in the activities and operations of the member institutions\textsuperscript{26}. Another example comes from the Stability Pact for South Eastern Europe, which “made the fight against corruption a top priority upon its founding in Cologne (Germany) in June 1999. This was formally endorsed in Sarajevo a month later. On 16th February 2000, again in Sarajevo, Stability Pact countries, including the EU member states, the countries of the South East Europe (SEE) region and the international donor community, adopted an Anti-Corruption Initiative (SPAI)\textsuperscript{27}.

Professional groups do not remain behind the movement to fight for ethical behavior. They keep on enhancing their codes of ethics adopted and published at times, online including issues such as professional respect, avoidance of dishonest or fraudulent activities, etc. To defend their credibility, people within each profession are ready to develop norms and values, including among others, being respectful and honest in their personal dealings. “Professionals are also expected to uphold professional ethics by not getting involved in any type of conflict of interest”\textsuperscript{28}. The “Hippocratic Oath”\textsuperscript{29} that has been existing for over 2,500 years now and which is known to every

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{24} Ibid. PP. 2-3.
\item \textsuperscript{25} “The increasing democratization process worldwide since the end of the Cold War and the impact of globalization by the increasing interpenetration of markets, the interdependence of sovereign states and the fostering of a civil society at global level” are some of the causes of the resurgence of standards on integrity, transparency and accountability in public administration. Elia Armstrong observed in her paper that “from the mid-1990 to 2003, the international community began to set regional and international standards. […] These standards were aimed at prohibiting bribery of foreign public officials. Standards were introduced in conventions such as the Organization of American States (OAS) Inter-American Convention against Corruption (1996), Organization for Economic Cooperation and Development (OECD) Convention against Bribery (1997), Council of Europe’s Criminal and Civil Conventions (1999), African Union Convention on Prevention and Combating Corruption (2003) and the UN Convention against Corruption (2003)”.
\item \textsuperscript{26} http://www.afdb.org/en/documents/integrity-anti-corruption-reports/
\item \textsuperscript{27} http://www.stabilitypact.org/anticorruption/default.asp
\item \textsuperscript{28} http://www.wisegeek.com/what-are-professional-ethics.htm. “A conflict of interest occurs when an individual tries to reach his personal goals by taking advantage of or using his position or profession to get it”.
\item \textsuperscript{29} The Hippocratic Oath
(Original Version)

I SWEAR by Apollo the physician, AEsculapius, and Health, and All-heal, and all the gods and goddesses, that, according to my ability and judgment, I will keep this Oath and this stipulation.
\end{itemize}
\end{footnotesize}
single school of medicine in the world is a testimony that physicians were even long ago organized into a corporation with ethical norms, values and regulations for their practice and for the training of disciples with an “esprit de corps”.

To address gaps on ethics knowledge, teaching institutions on ethics are mushrooming nowadays, making business out of the current trend and the increasing needs from private companies and institutions to have their professionals learn more about general principles of moral values in their work so as to enhance their credibility and attract more clients. Ethics training is more and more included in career development plans. Governmental, non-governmental and other ethics training institutions offer their services in-situ, online or webcasted in areas such as ethics, morals, values and norms, leadership ethics, research ethics, business ethics, etc. It is in this global context, which is more mindful of ethics and compliance programmes that the UN refugee agency is strengthening its own ethical values and norms in the conduct of its operations.

II. Ethics in the United Nations Reform Context

A. The Standards of Conduct for the International Civil Service

It is worth to remember that as early as 1954 in the United Nations history, the International Civil Service Advisory Board prepared the Standards of Conduct in the International Civil Service, which guided the international civil service for the past half century before being revised in 2001 by the International Civil Service Commission (ICSC) on behalf of the so-called United Nations Common System. The International Civil Service Commission (ICSC) is an independent expert body established by the United Nations General Assembly in 1974. Its mandate is to regulate and coordinate the conditions of service of staff in the United Nations common system, while promoting and maintaining high standards in the international civil service. The Commission is composed of fifteen members who serve in their personal capacity. They are appointed by the General Assembly for four-year terms, with due regard
The revised text of the standards of conduct highlights the guiding principles of loyalty to the United Nations Organization, the concept of integrity enshrined in its founding Charter, the principles of non-discrimination, impartiality and independence of the international civil servant and firewalls other issues of concern to working relations such as harassment in any shape or form considered as an affront to human dignity, which international civil servants must avoid; the conflict of interest, which “includes circumstances in which international civil servants, directly or indirectly, would appear to benefit improperly, or allow a third party to benefit improperly, from their association in the management of the holding of a financial interest in an enterprise that engages in any business or transaction with the organization”31.

The ICSC’s rules of conduct for international civil servants cover personal conduct of staff members, including in their private life as there can be situations in which the behavior of an international civil servant can reflect on the organization32. Outside conduct and activities can compromise the image and the interests of the organization. Indeed, “Privileges and immunities that international civil servants enjoy are conferred upon them solely in the interests of the organizations. They do not exempt international civil servants from observing local laws, nor do they provide an excuse for ignoring private legal or financial obligations”33. Some international institutions such as the International Monetary Fund (IMF) clearly prevent the possible “hiding behind” the privileges and immunities by their staff who may abuse the immunity, by including into their standards of conduct the disposition that “failure to meet private legal obligations may be grounds for disciplinary action”34.
The ICSC standards of conduct also provides guidance on outside employment activities, gifts honors and remuneration from outside sources, thus, taking good care of the issue of conflict of interest. “It is therefore improper for international civil servants to engage, without prior authorization, in any outside activity, whether remunerated or not”, that interferes with the obligation to devote the energies to serve the organization “or is incompatible with their status or conflicts with the interest of the organization”. As for gifts and honors, not accepting them from governments as well as commercial firms and other entities without authorization will “protect the international civil service from any appearance of impropriety”. These international standards are, of course, applicable to UNHCR staff.

B. The impact of the UN Reform Process on UNHCR Ethics

Ethics and internal justice were part of the UN reform movement, which started under Secretary General Kofi Annan between 1997-2006. Most of the recent comments on the UN reform pointed to specific documents which described the bold vision of the then Secretary General. The pointers were also on specific operational challenges the UN faced during the last decade, namely the findings of an internal staff survey, the reported shortcomings in the management of the Oil-for-food Programme in Iraq, the scandal surrounding sexual exploitation and abuse of refugees by aid workers in West Africa and the sexual exploitation and abuse cases in relation with peacekeeping operations in 2005. This was a trauma! In a resolution dated 22 May

35 “Standards of conduct for international civil service”, ICSC, 2002, parag. 41.

36 Ibid. parag. 46


39 On 14 April 1995, acting under Chapter VII of the United Nations Charter, the Security Council adopted resolution 986 establishing the “Oil-for-Food” Programme, providing Iraq with another opportunity to sell oil to finance the purchase of humanitarian goods, and various mandated United Nations activities concerning Iraq. The Programme, as established by the Security Council, was intended to be a “temporary measure to provide...” (Re. http://www.un.org/Depts/oip/background/fact-sheet.html)

40 United Nations doc. A/RES/57/306. The General Assembly “expresses its grave concern at incidents of sexual exploitation and abuse against vulnerable populations, in particular refugees and internally displaced persons in West Africa and elsewhere, emphasizes that the highest standards of conduct and accountability are required of all personnel serving in humanitarian and peacekeeping operations, condemns any exploitation of refugees and internally displaced persons, especially sexual exploitation, and calls for those responsible for such deplorable acts to be brought to justice”; the General Assembly also “emphasizes the need to create an environment free of sexual exploitation and abuse in humanitarian crises through, inter alia, integrating the prevention of and response to sexual exploitation and abuse into the protection and assistance functions of all humanitarian and peacekeeping personnel”. See also infra. P. 19.

41 “It is vital that peacekeepers do not abuse the trust placed in them by the populations they are meant to protect. Sexual exploitation and Abuse (SEA) as defined by the United Nations is “any actual or attempted abuse of a
2003 the General Assembly requested the Secretary-General, in his implementation of the measures pursuant to the report of the Office of Internal Oversight Services on the sexual exploitation of refugees in West Africa, to proceed expeditiously with the implementation of that resolution, inter alia, by issuing as soon as possible a bulletin on protection from sexual exploitation and abuse, and to report thereon to the General Assembly.

Based on that resolution the Secretary General issued a bulletin dated 9 October 2003 on Special measures for Protection from Sexual Exploitation and Sexual Abuse (PSEA) for the purpose of preventing and addressing cases of sexual exploitation and sexual abuse. The bulletin applies to all staff, including staff of separately administered organs and programmes of the United Nations. The Secretary General’s measures followed a Plan of Action developed earlier by Humanitarian Organizations, including UNHCR on Protection from Sexual Exploitation and Abuse in Humanitarian Crises. This was done under the auspices of the Inter-Agency Standing Committee Task Force.

position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, social or politically from the sexual exploitation of another.” The issue of SEA is one that first arose publically in 2001 and has since received significant attention. Several policies and programs have been put in place to address SEA within the UN context. Significant challenges remain however in ensuring that those responsible are held accountable – in particular by their own governments who bear primary responsibility for this”. (Re. http://www.peacewomen.org/themes_theme.php?id=31&subtheme=true).

42 Report of the Office of Internal Oversight Services on the investigation into sexual exploitation of Refugees by Aid Workers in Africa. “Late in November 2001, the Office of Internal Oversight Services (OIOS) was asked by the Office of the United Nations High Commissioner for Refugees (UNHCR) to review allegations of sexual exploitation of female refugees by international and national aid workers, specifically regarding United Nations and non-governmental organization (NGO) staff and peacekeepers in three West African countries: Guinea, Liberia and Sierra Leone. The allegation of widespread sexual exploitation arose from a report by two consultants who had been commissioned by UNHCR and Save the Children (UK) to study the question of sexual exploitation and violence in the refugee communities in the three countries” (Re. http://www.un.org/Depts/oios/reports/a57_465.htm).

43 Every year since, the promulgation of the bulletin, the Secretary General issues a report updating the General Assembly on the scope of the problem and the prevention and response measures taken by the UN. (Re. http://www.un.org/en/pseataskforce/achievements.shtml)


45 UNHCR is in that category of so-called “separately administered organs and programmes of the United Nations”.

46 “Report of the IASC-Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises”, 13 June 2002 (http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-products-products&productcatid=14). The report established six standards of conducted including that: “sexual exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment”; and that “Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief regarding the age of a child is not a defense”.

47 The Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, composed of UN and non-governmental entities, was established in March 2002. It advised the UN on specific measures, developed agreed definitions and adopted standards of behavior to be included in UN and NGO codes of conduct. The goal was to provide a consistent and effective approach across all agencies. (Re. http://www.un.org/en/pseataskforce/achievements.shtml)
Although the oversight work[^48] is not new to the UN nor is the developing concept of ethical leadership management and that of managing interpersonal relations within the Global Organization, the above mentioned reform movements introduced bold changes in the UN with a positive impact on ethics governance processes. From the ethics and internal justice angle, the focus was, indeed, on accountability and improving ethical conduct.

To mention but a few landmark actions:

i. In 2002 the Secretary General, at the request of the General Assembly, established the Office of the UN Ombudsman who has “authority to consider conflicts of any nature related to employment by the United Nations. The term “conflict” is to be construed in its broadest sense and includes, inter alia, matters pertaining to conditions of employment, administration of benefits, managerial practices, as well as professional and staff relations matters”[^49]. From the organizational view point, and from Ethics perspective, this has been one of the most important signs of the UN reform process towards conflict management on behalf of the UN staff.

ii. On 28 July 2006, a so-called Redesign Panel produced a far-reaching report on key processes and structures within the formal and informal justice systems in the UN[^50]. The Redesign Panel recommends a decentralized, streamlined and ultimately cost-efficient system of internal justice for the United Nations. “This new system will be professional and independent and, if well-resourced, will both reduce conflicts within the Organization through more effective informal dispute resolution and ensure the expeditious disposal of cases in the formal justice system. The objective of decentralization is to ensure that staff members serving in field operations, who constitute the majority of staff, are effectively covered by the internal justice system”[^51]. The Panel also recommended that “the Office of the Ombudsman should be strengthened and decentralized with a merger of the existing Offices of Ombudsmen in the Secretariat and funds and programmes. The Office should have professional mediators and should take on a stronger monitoring role regarding institutional management. The Joint Appeals Boards and the Joint Disciplinary

[^48]: The Secretary General created in 2006 an Independent Steering Committee for the comprehensive Review of governance and oversight within the UN System. The Independent Steering Committee issued a report consists of 5 volumes covering the following areas: 1) Executive Summary and project scope, background and context. 2) Governance and oversight principles and practices. 3) Governance – UN current practices, gaps analysis and recommendations. 4) Oversight- UN current practices, gaps analysis and recommendations. 5) Review of the Office of the Internal Oversight Services. The report set out 40 recommendations. (Re. United Nations doc. A/60/883).

[^49]: United Nations doc. ST/SGB/2002/12 of 13/10/2002. “The Ombudsman shall, in the exercise of his or her Judgment, advise staff of their options and of the different avenues open to them. He or she shall facilitate conflict resolution, using any appropriate means for the primary objective of settling conflicts between parties, and obviate recourse to the formal grievance process. The Ombudsman shall not have decision-making powers, but shall advise and make suggestions or recommendations, as appropriate, on actions needed to settle conflicts, taking into account the rights and obligations existing between the Organization and the staff member, and the equities of the situation”.


[^51]: Ibid.
Committees should be replaced with a new, decentralized United Nations Dispute Tribunal presided over by independent, professional judges with power to issue binding decisions. The United Nations Administrative Tribunal should become a mainly appellate court for the internal justice system. Legal representation for staff members should be professionalized and decentralized”52. The General Assembly followed the recommendation of the Panel and establishes the new system of administration of justice at the United Nations, including the strengthening of the Office of the United Nations Ombudsman by creating (a) a single, integrated and geographically decentralized Ombudsman structure that serves the Secretariat, UNDP, UNFPA, UNICEF, UNOPS and UNHCR; (b) a Mediation Division to provide mediation services; and (c) regional offices53.

iii. On 30 December 2005 the Secretary General established the UN Ethics Office “for the purpose of securing the highest standards of integrity of staff members in accordance with article 101, paragraph 3 of the Charter of the United Nations, taking into consideration paragraph 161 of the 2005 World Summit Outcome and pursuant to Assembly resolution 60/248”54.

This paper is of the view that although the history of the creation of the UN Ethics Office seem to have started from the 1997-2007 reform process, the above reference to the Charter of the United Nations betrays the real origin of the ethics and compliance trend in the UN. In fact, it is not only a response to a growing pressure for reform by Member States, but a better reading by the experts of the UN Charter as well as the UN staff rules and regulations to abide by their spirit and letter and put the work of the UN Secretariat and its Agencies on a solid ethical stand55. The institutions of the global organization and its operations alike are expanding year after year with the consequent increase of operational challenges. The new ethical stand seems to have been thought of as a real-time solution.

Indeed, about duties, obligations and privileges, article I of the Staff Rules and Regulations states: 1.2 (a) “Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently,

52 The Redesign Panel “recommends the establishment of the proposed new justice system by a resolution of the General Assembly, further recommends the establishment of an Office of the Administration of Justice in the United Nations to manage this important aspect of the work of the Organization and to ensure the independence of the proposed new internal justice system and, finally, proposes that the new system, if approved by the General Assembly, become operational on 1 January 2008”. (ibid.)

53 United Nations doc. A/RES/62/228 of 06/02/2008. It is worth noting that the internal justice reform includes the establishment by the General Assembly of a five-member Internal Justice Council consisting of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and chaired by a “distinguished jurist” chosen by consensus by the four other members. This decision shows that the General Assembly put a particular emphasis on ethical principles of transparency, fairness and trust of the new system by all parties to any given internal conflict.


55 Indeed, article 101.3 of the Charter of the United Nations states: “The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due consideration shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”. 

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staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them; (b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to probity, impartiality, fairness and truthfulness in all matters affecting their work and status." Therefore, with the increasing nature of UN field operations, the global organization has no choice but to enhance its ethical norms and values, including the establishment of ethics enforcement institutions.

The UN reform process also explored other avenues to ground ethics in all areas of doing business in and with the UN. It provides, for instance, an overall rationale to closely cooperate with the business sector. Indeed, in 2000 the Secretary General launched “the Global Compact” aiming at strengthening the UN relations with the private sector. Guidelines on Cooperation between the United Nations and the Business Sector were adopted to facilitate partnership in a manner that ensures the integrity and the independence of the UN57. Here too the emphasis was on ethical values that should govern the United Nations business relations. The overall objective of the internal justice reform is to strengthen internal control and oversight, and increase transparency, integrity and fairness.

Within the international context of the moment, the reference to paragraph 161 of the 2005 General Assembly Resolution 60/1, which is the key World Summit Outcome document for the UN reform process, shows a clear follow-up move from the Secretary General to implement the relevant conclusions reached by the highest representatives of the States Parties during the Summit as relating to accountability, transparency and integrity (i.e. Ethics) of the UN. In that document, World Leaders clearly stated: “We recognize that in order to effectively comply with the principles and objectives of the Charter, we need an efficient, effective and accountable Secretariat. Its staff shall act in accordance with Article 100 of the Charter58, in a culture of organizational accountability, transparency and integrity”. The World Leaders “urge the Secretary-General to ensure that the highest standards of efficiency, competence, and integrity shall be the paramount consideration in the employment of the staff, with due regard to the principle of equitable geographical distribution, in accordance with Article 101 of the Charter”60.


57 The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment, and anti-corruption: For more information see www.unglobalcompact.org

58 Article 100 of the Charter of the United Nations states: “In the performance of their duties the Secretary General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization”.


60 Ibid. parag. 161.c. For the reading of the relevant paragraph of article 101 of the Charter, see supra. P. 11.
In the same move, the Secretary General added two other documents to the UN Ethics legal infrastructure, namely: A policy for “Protection against retaliation for reporting misconduct” or the “whistleblower protection” and the “Guidelines on financial disclosure and declaration of interests”. Both policies were adopted under the auspices of the World Summit Outcome document. The whistleblower protection policy named “Protection against retaliation for misconduct and for cooperation with duly authorized audits or investigations” refers to paragraph 161 (d) of the Outcome document and was said to have been adopted for the purpose of “ensuring that the organization functions in an open, transparent and fair manner, with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations.” As for the “Financial disclosure and declaration of interest statements”, the Secretary General’s Bulletin clearly stated that it was promulgated for the purpose of implementing the following specific staff regulations: staff regulation 1.2 (m) and staff regulation 1.2 (n), both of which deal with the issue of conflict of interests.

Without referring to the above-mentioned paragraph 161 of the Outcome document the Secretary General’s Bulletin on the financial disclosure and declaration of interest implements in the same manner the will of the World Summit expressed in that paragraph 161 (d), which states: “Welcome the Secretary-General’s efforts to ensure ethical conduct, more extensive financial disclosure for United Nations officials and enhanced protection for those who reveal wrongdoing within the Organization. We urge the Secretary-General to scrupulously apply the existing standards of conduct and develop a system-wide code of ethics for all United Nations personnel. In this regard, we request the Secretary-General to submit details on an ethics office with independent status, which he intends to create, to the General Assembly at its sixtieth session”. Paragraph 161 of the World Summit Outcome document is, therefore, the key disposition that calls upon the Secretary General to enhance the ethics governance in the United Nations. It is of crucial importance to the UN system as a whole, therefore, to UNHCR.

Indeed, in 2007 the Secretary General referred to the same paragraph 161 of the World Summit Outcome document to request the heads of separately administered organs and programmes of the United Nations to establish their respective Ethics Offices. The Secretary General’s Bulletin states: “the ultimate goal and principle of an Ethics Office of a separately administered organ or programme of the United Nations”.

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63 Staff regulation 1.2 (m): “Staff members shall not be actively associated with the management of or hold a financial interest in any profit-making business or other concern, if it were possible for the staff member or the profit-making business or other concern, to benefit from such association or financial interest by reason of his or her position with the United Nations”. The Staff regulation 1.2 (n) states: “All staff members at D-1 and above shall be required to file financial disclosure statements on appointment and at intervals thereafter as prescribed by the Secretary General, in respect of themselves, their spouses and their dependent children, and to assist the Secretary-General, in verifying the accuracy of the information submitted when so requested. The financial disclosure statement shall include certification that the assets and economic activities of the staff member, their spouses and their dependent children do not pose a conflict of interest with their official duties or the interest of the United Nations. The financial disclosure statement will remain confidential and will only be used, as prescribed by the Secretary-General, in making determination pursuant to staff regulation 1.2 (m). The Secretary-General may require other staff to file financial disclosure statement as he or she deems necessary in the interest of the Organization” (Re: United Nations doc. ST/SGB/2009/7 of 16 June 2009 on provisional Staff Rules).
Nations, established by the Executive Head of the organ or programme, pursuant to the bulletin, shall be to cultivate and nurture a culture of ethics, integrity and accountability, and thereby enhance the trust in, and the credibility of the United Nations, both internally and externally.”

UNHCR, as one of the so-called separately administered organs and programmes, has no choice but to abide by the terms of the Secretary General’s Bulletin, if not it has to rally from its Geneva Headquarters, the authority of the UN Ethics Office of the Secretariat based in New York.

Critics of the UN ethics governance believe that by allowing UN separately administered organs and programmes to establish their own Ethics offices, the Secretary-General dilutes the authority of the UN Ethics Office and adds another unnecessary and costly bureaucratic layer to the system. It was said the protection from retaliation or “whistleblower protection policy”, in particular, might be weakened by the increasing number of Ethics Offices. Indeed, the multiplicity of the UN organs and programmes may represent a real challenge to a unified policy of protection from retaliation. The counter-argument this paper shares is, however, that the UN separately administered organs and programmes have their own respective governing bodies. Such bodies may wish to have a say on the ethical governance of the organ or programme under their supervision and, if necessary, re-direct the work of their respective organs and programmes including, if necessary, the conduct of the ethics compliance business by the separate Ethics Office itself. The strategy seems to guarantee the independence of these separate Ethics Offices vis-à-vis their Executive Heads by stating that “solely at the discretion of the head of a separately administered organ’s or programme’s Ethics Office, he or she may refer any matter within the Office’s area of responsibility, at any time, to the chairperson of the United Nations Ethics Committee for advice and guidance, and shall inform the Executive Head of the separately administered organ or programme of the referral made.” This paper is of the view that the Secretary General’s strategy brings the UN ethical governance and enforcement prospects closer to the users.

Moreover, the Secretary General’s Bulletin of 30 November 2007 gives authority to the Chairperson of the UN Ethics Committee to provide functional leadership to all Ethics Officers and to provide input into their annual performance assessment. The Chairperson of the UN Ethics Committee may formally consider a request submitted by a staff member, if it has not been formally considered by the Ethics Office of a UN separately administered organ or programme within forty-five days of its submission. The Secretary General Bulletin also provides for a review by the Chairperson of the UN Ethics Committee at the request of the staff member, if she or he is not satisfied with the conclusion of the Ethics Officer of the UN separately administered organ or programme.

Therefore, despite the challenge of a “diluted authority”, the current UN ethics governance offers a range of possibilities for the staff member to get access to the overall supervisory role of the UN Ethics Office, including a kind of appeal to its

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65 Ibid. Section 4.1.

66 Ibid. Section 4.3
director, Chairperson of the UN Ethics Committee⁶⁷ to consider situations that the staff member believes has not been properly dealt with by the Ethics Office of the separately administered organ or programme. The creation of the United Nations Ethics Committee offers a possibility for a collegial review of cases related to whistleblower protection for example, and ensures coherence in ethics advice.

III. UNHCR’s Specific Developments Towards Ethics and Compliance

A. UNHCR Operational challenges to the UN International Standards of Conduct

Within the above-narratives on the global and the United Nations context this paper believes it has been a normal outcome for the current High Commissioner for Refugees to create a specialized working unit in charge of ethics namely the UNHCR Ethics Office. A brief description of the specific developments in UNHCR that has formed the background history of Ethics in UNHCR may help understands how the ethics work is rooted in the UN refugee agency.

First of all, the appointment by the High Commissioner in 1993 of the first UNHCR Mediator⁶⁸ launched an era of advocacy for informal conflict resolution, due process and procedural fairness in solving conflicts in a manner that is acceptable to all parties (mainly the staff member and the UNHCR management). Right after the creation of the Office of the Mediator, UNHCR strengthened its administrative oversight functions by creating the Office of Inspection and Evaluation in 1994. “Inspections provide the High Commissioner with comprehensive and systematic assessments of UNHCR operations, focusing on those factors, both internal and external to UNHCR, considered most relevant to the effective and efficient discharge of UNHCR’s responsibilities”⁶⁹. For its field oriented operations these two institutions seem to have created a new and stronger framework for transparency, accountability⁷⁰ and

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⁶⁷ The United Nations Ethics Committee is composed of “the heads of Ethics Offices of the separately administered organs and programmes of the United Nations and the Ethics Office of the United Nations Secretariat. The United Nations Ethics Committee shall be chaired by the head of the Ethics Office of the United Nations” (Re. Ibid. section 5.1).


⁶⁹ “UNHCR’s inspection activities”, in Refugee Survey Quarterly, vol. 18, No.4, 1999 and United Nations doc. A/AC.96/918. “A review of evaluation within UNHCR undertaken by an external consultant in the second half of 1998 recommended the separation of inspection and evaluation functions. This recommendation was accepted, and in February 1999 responsibility for evaluation was transferred to a new Evaluation and Policy Analysis Unit in the Department of Operations, under the direct supervision of the Assistant High Commissioner. At that time, the then Inspection and Evaluation Section (IES) was renamed the Inspector General’s Office (IGO)”.

⁷⁰ “In recent years, UNHCR has also invested in more traditional accountability mechanisms such as the elaboration of an internal financial control framework, regulations governing partner selection and audit certification and a resource allocation framework as well as the establishment of an Inspector General’s Office, Oversight Committee and internal audit service (in the Division for Financial and Administrative Management). In the area of international protection, guidelines, and standard operating procedures have been promulgated for UNHCR’s work with women and children as well as for camp management, the prevention of sexual and gender based violence, refugee status determination, and resettlement” (Volker Turk and Elizabeth Eyster: “Strengthening accountability in UNHCR, in The International Journal of Refugee Law, 2010, Re: http://ijrl.oxfordjournals.org/content/early/2010/03/25/ijrl.eeq013.full#sec-6).
fairness at the level of UNHCR, as a separately administered programme, at an earlier stage than the further detailed work of the UN Reform process lead by the Secretariat General to re-adjust the internal justice system and strengthen internal oversight, accountability, integrity, transparency and fairness, which are the backbones of the UN administrative reform.

Secondly, UNHCR’s highly publicized operational challenges that were calling for urgent measures to address them were developing at the beginning of the last decade as the UN reform was unfolding. These challenges to refugee operations were addressed alongside the progressive implementation of the UN Reform process. This paper believes the most important measures taken that may have positively impacted the culture of ethics and ethics governance in UNHCR were in relation to the above-mentioned refugee sexual exploitation and sexual abuse scandal that occurred in three country operations in West-Africa namely Guinea, Liberia and Sierra-Leone in 2001. UNHCR initiated a study jointly conducted with Save the Children-UK in West Africa on sexual violence/exploitation and refugee children in Guinea, Liberia and Sierra Leone. “The Study gathered concrete data on the nature and scope sexual and gender based violence was affecting refugee/returnee children in West Africa and on the responses of UN agencies, NGOs, local communities and the children themselves. The results of this assessment were to help UNHCR and child protection agencies to strengthen their programmes in the region”71. UNHCR staff in Guinea, and Sierra Leone began to work on country-specific standards of accountability for the humanitarian community, applicable to all UN agencies and international and local NGOs, while work on UNHCR Code of Conduct which started earlier was accelerated for the Code to be issued in 200272. The joint study was the most important assessment of a potential ethics risk area in UN field operations.

UNHCR recognizes that sexual and gender-based violence is not confined to West Africa alone; therefore, it details global preventive and remedial measures to address the issue. Other specific measures such as the conducts of NGO partner agencies were included in the clauses governing all implementation agreements with NGOs. "Guidelines on Prevention and Response to Sexual and Gender based Violence against Refugees, Returnees and IDPs" have been field tested and finalized for dissemination by the end of 2002. Mechanisms for accountability to beneficiaries were translated in a form of protection management training workshop. These mechanisms were focused on accountability for protection management, including for sexual and gender-based violence and more specifically the sexual exploitation and abuse of children73.

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71 Supra. P. 19.
72 http://www.unhcr.org/cgi-
73 Ibid.
74 Ibid.
Another ethical challenge to UNHCR operations occurred in 2000 in Kenya with another highly publicized scandal: an alleged fraud to refugee resettlement that has been investigated by the UN Office of Internal Oversight Services (OIOS). Some 12 recommendations were drawn by the oversight services including on enforcing closer oversight on the activities of the staff members in Branch Office Kenya.

To mention but a few, Recommendation 6 states: “the UNHCR Inspector General should establish a procedure for speedy referral to the Office of Internal Oversight Services of information obtained via the external reporting process relating to UNHCR staff wrongdoing”. UNHCR observed that “the Office of the Inspector General is in close consultation with the Office of Internal Oversight Services on developing both the relationship between the two investigation functions and the development of the UNHCR investigation strategy and framework”.

Recommendation 4 deals with very specific rules enforcing ethical behaviors for humanitarian workers while dealing with refugees. An external reporting process, that is, “a telephone number or mailing address to the UNHCR Office of the Inspector General should be made available to refugees when they first come in contact with UNHCR or its partner non-governmental organizations. This number and/or address should be posted in plain sight (large poster form) at all UNHCR facilities and partner non-governmental organizations facilities. The posters should inform the refugees in several languages and in pictorials of the following: (a) UNHCR and partner non-governmental organizations services are free of charge; (b) Physical and sexual abuse or other maltreatment by staff members is not tolerated; (c) Staff members should not ask refugees for monetary compensation, or otherwise, that is, sexual favors; (d) Refugees should immediately report wrongdoing via the provided number/address. There should also be an advisory to staff members that if they are caught doing any of the aforementioned forbidden activities they will be terminated and/or criminally prosecuted.”

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76 United Nations doc. A/56/733 of 21 December 2001. “The Office of Internal Oversight Services noted the problem of poor management in UNHCR, especially at the Branch Office, which provided the opportunities for the criminally minded to achieve unjust enrichment at the expense of the refugees. The Office of Internal Oversight Services understands that, since June 2001, the senior management of UNHCR has taken substantial measures to correct the management failings identified and to undertake necessary improvements in the operations in Kenya, although action to improve management failings at the office started much earlier than June 2001”. The Office of the Internal Oversight Services also noted that: “While the investigation was ongoing, the senior management of UNHCR, including the Director of International Protection, the Regional Director for the East and Horn of Africa, the Inspector General and the newly appointed Representative to Kenya, were able to review the situation. As a result, action has been initiated to redress the situation in Kenya and, equally importantly, to start a review of our procedures in refugee status determination and resettlement globally. This action was taken under the overall coordination of the Deputy High Commissioner. The general findings of the UNHCR review on which the current action is based are very similar to the recommendation in this report. The situation that led to the need for this investigation is indeed regrettable, but UNHCR has been able to learn and implement many lessons from the investigation. As a result of the experience in Kenya, UNHCR will in the coming months become a much more accountable organization, management and performance will be strengthened and the oversight and investigation capacity will be improved.”

77 Ibid.

78 Ibid.
Thus, recommendation 4 is an important disposition aimed at enforcing ethics in UNHCR. Indeed, UNHCR agreed with the recommendation and said “Action is being taken at different levels to address this recommendation, including mass information activities with refugees on their rights and obligations. The Department of International Protection is developing a protection management strategy to be implemented at all UNHCR offices worldwide. The Office of the Inspector General is formulating a global complaints procedure, in consultation with the Office of Internal Oversight Services, which is part of an overall redefinition of its investigation strategy and capacity. Any such complaints procedure must be well developed and able to deal professionally and rapidly with all incoming complaints”79.

The above-mentioned accountability mechanisms that were put in place under the auspice of the Inspector General’s Office were part of the procedures advised by these recommendations80.

**B. The UNHCR Code of Conduct**

While the above mentioned ICSC standards of conduct are applicable to UNHCR staff “it has been recognized that some aspects of UNHCR’s work require the highlighting of additional types of behavior”82. In support of the principle of elaborating a specific Code of Conduct for UNHCR staff, the notes on UNHCR Code of Conduct explain that in “addition, the Office of the Inspector General has in its regular inspections of UNHCR activities identified the need for a UNHCR-specific code of conduct to address some of the most frequently identified issues about which UNHCR staff should concern themselves”83. Indeed, within the UN System family, UNHCR seems to be the agency most exposed to challenges because of its usually massive field presence at the delivery points of the UN protection and assistance programmes far away from capital cities and accessible communities.

These above-mentioned events and the subsequent measures taken to address them represented, in fact, a compilation of risk assessment conclusions and follow-up actions that fuelled the work on UNHCR Code of Conduct. The Code of Conduct, therefore, focuses on identified risk areas. A systematic program of Code of Conduct training, mandatory signing of the Code of Conduct and annual Code of Conduct refresher sessions were immediately implemented84. The mandatory Code of Conduct refresher session is one of the most important measures adopted by UNHCR to disseminate and promote its ethical values, mitigate risks and protect its reputation.

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79 Ibid.

80 Supra. P.20.

81 Supra. PP.10-11.


83 Ibid. It is also explained that “parallel processes such as the development of a policy on harassment; greater attention to the importance of a work/life balance; the concern for health, welfare and safety of staff; and the increasing desire for more consistent and effective performance management in UNHCR have suggested that a UNHCR-specific code would contribute to a positive organizational culture in the Office”.

84 Re. ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docld=1061172
All UNHCR staff members are required to sign the following statement: “the UNHCR Code of Conduct is intended to serve as an illustrative guide for staff and other people working for - or otherwise associated with - UNHCR to make ethical decisions in their professional lives and, at times, in their private lives. It is a moral code that does not have the force of law. It is designed to assist staff and other people working for or otherwise associated with UNHCR to better understand the obligations placed upon their conduct by the terms of their association with UNHCR. I have read the UNHCR Code of Conduct and I understand that I am expected to live up to the standards of behavior described therein. I have also read, and accept to be bound by, the standards of conduct contained in ST/SGB/2003/13 on “Special Measures for Protection from Sexual Exploitation and sexual abuse”.

Introducing the adopted UNHCR Code of conduct the explanatory notes state that “UNHCR’s capacity to ensure the protection of and assistance to refugees and other persons of concern depends on the ability of its staff to uphold and promote the highest standards of ethical and professional conduct... We, the staff members of UNHCR, are personally and collectively responsible for maintaining these standards. And that “it is recognized UNHCR’s work often puts its staff in positions of power in relation to its beneficiaries. Staff has an obligation not to abuse this power”.

Despite the mandatory signing required from the staff members there is a word of caution to re-assure those of them who might be worried of a new set of norms whose elaboration coincided with the above-mentioned ethical challenges to UNHCR operations. It is therefore, stated that: “this Code of Conduct is intended to serve as an illustrative guide for staff to make ethical decisions in their professional lives, and at times in their private lives. It is a moral code that does not have the force of law. It is designed to assist staff to better understand the obligations placed upon their conduct by the Charter of the United Nations and the Staff Regulations and Rules, which remain the only legal instruments that determine acceptable conduct in UNHCR. Signing the Code does not take away any acquired rights of UNHCR Staff”.

The UNHCR Code of Conduct contains the core values enshrined in the Charter of the United Nations including respect for fundamental human rights, social justice and human dignity, respect for the equal rights of men and women, non-discrimination as to race, religion, culture or social origin, etc. Then, to address specific risk areas, the

85 “The Code applies to all UNHCR staff members, who will be requested to sign it. Persons holding a UNHCR consultant contract and interns will also receive the Code and be requested to confirm that they uphold its standards as far as applicable to their status. Governmental and non-governmental organizations and companies which, through their employees, work for UNHCR, will be requested to make the principles contained in the Code known to those persons in an appropriate manner. All UNHCR staff are responsible for encouraging, advocating and promoting the dissemination of the Code of Conduct. They also have a role in implementing, monitoring and enforcing its standards. Staff are also urged to encourage partners to adhere to these standards and to join UNHCR staff in upholding them” (Re. www.unhcr.org/422dbc89a.html)


87 Re. www.unhcr.org/422dbc89a.html

88 Supra. PP. 19-21

89 Re. www.unhcr.org/422dbc89a.html

90 Code of Conduct & Explanatory Notes, UNHCR 2004 PP. 3-4
Code enunciated guiding principles for UNHCR staff in the conduct of the mandate of the Office. The style adopted is to highlight the individual nature of commitment, speaking in first person singular: “I commit myself to...”. The guiding principles spell out, in the following terms, what is and what is not acceptable for any person working for UNHCR:

“I commit myself to:
1) Treat all refugees and other persons of concern fairly, and with respect and dignity.
2) Uphold the integrity of UNHCR, by ensuring that my personal and professional conduct is, and is seen to be, of the highest standard.
3) Perform my official duties and conduct my private affairs in a manner that avoids conflicts of interest, thereby preserving and enhancing public confidence in UNHCR.
4) Contribute to building a harmonious workplace based on team spirit, mutual respect and understanding.
5) Promote the safety, health and welfare of all UNHCR staff as a necessary condition for effective and consistent performance.
6) Safeguard and make responsible use of the information and resources to which I have access by reason of my employment with UNHCR.
7) Prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern.
8) Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of UNHCR.
9) Refrain from any form of harassment, discrimination, physical or verbal abuse, intimidation or favoritism in the workplace.”

With reference to the definition of ethics that this paper shares, the UNHCR Code of Conduct has been the bedrock on which the Ethics Office’s work is being conducted.

C. UNHCR Ethics Governance: the UNHCR, Ethics Office

Before the creation of a full fledged UNHCR Ethics Office under the leadership of a Director in September 2008, the Division Human Resources and Management (DHRM) was hosting a working Unit named Ethics and Diversity Issues, under the direct authority of the head of the Legal Advice Section in UNHCR. That working unit on Ethics and Diversity has played a crucial role in the development of the

91 Ibid.
92 Supra, pp. 5-7
93 UNHCR report on the Ethics Office (Re. UN doc. EC/60/SC/CRP.21)
94 http://docs.google.com/viewer?a=v&q=cache:4ko4TEQXg7U:notesapps.unon.org/notesapps/unonbb.nsf/0/fceb53c
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8zmWTLsTaToUJiI&sig=AHIEtbShbQATCtpYicljIKdfsclNRVK ww
UNHCR Code of Conduct and its dissemination and promotion in UNHCR field operations through mandatory annual refresher sessions. The upgrading of the Ethics in UNHCR followed the course of actions in the UN reform process as described above. Also in 2006 the UN Joint Inspection Unit adopted a series of recommendations, which may have found their way into the Secretary General’s Bulletin on UN system-wide application of ethics for separately administered organs and programmes and influenced the decision of the UNHCR governing body.

The objective of the newly upgraded Ethics Office is (a) to ensure that all staff members understand, observe and perform their functions consistent with the highest standards of integrity required by the Charter of the United Nations, the UN staff regulations and rules, related UN(HCR) administrative issuances and the UNHCR Code of Conduct; and (b) to foster a culture of ethics, respect, transparency and accountability. This objective turned the Ethics Office into the guardian of the UNHCR code of conduct. Indeed, the main responsibilities of the Ethics Office are to: 1) provide confidential advice and guidance to staff and senior management on ethical issues; 2) promote a culture of integrity and accountability; 3) raise awareness and develop standards and education on ethics issues; 4) administer the financial disclosure programme; and 5) implement the policy on protection of staff against retaliation. Other important mechanisms are in place that play a role from the perspective of enhancing ethical governance through accountability, transparency and integrity in UNHCR. This section of the paper will essentially focus on these 5 components of responsibilities attributed to UNHCR Ethics Office as means to analyse UNHCR ethical governance:

1) Providing Confidential Advice and Guidance to Staff and Senior Management on Ethics

“Raising concerns or question about ethics and compliance issues in the workplace can be stressful for employees, who may fear that posing an inquiry will cause their own actions to be scrutinized or will generate resentment from their coworkers.”

The UNHCR code of conduct booklet provides useful contact information for UNHCR staff in need of advice or support. Other relevant pamphlets have been issued by the Ethics Office and widely disseminated worldwide to introduce the ethics functions to the staff including a “who should I contact” paragraph. Moreover, a booklet on “addressing grievances in UNHCR- where to go for help” provides a list of

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95 Supra, pp. 12-18

96 JIU/REP/2006/2: “oversight Lacunae in the United Nations System”. Recommendation 15 stated that: “The legislative bodies in each organization should direct their respective executive heads to put forward proposals for the: (a) Establishment of an ethics function with clear terms of reference which should be publicized through the organization’s website and other media; (b) Establishment of a post of ethics officer at the D-1/P-5 level, as appropriate, within the office of the executive head; (c) Mandatory integrity and ethics training for all staff, particularly newly recruited staff.


98 Ibid.


working units which can play a support role and advice on behalf of staff members. In 2009, in its first report to the Standing Committee of UNHCR’s Executive Committee, the governing body of the UN refugee agency, the Ethics Office confirmed that “advising individuals who seek advice in confidence regarding ethical behaviour, issues and standards is one of the most critical and advancing areas of the Ethics Office’s work”101.

According to the report, areas of advice include the following: Interpretation of standards of conduct and their applicability in specific contexts; issues related to: protection from sexual exploitation and abuse; matters concerning the implementation of the whistleblower protection policy and queries regarding the financial disclosure statements. To have a better idea on whether the Ethics Office is placed in a position to fully play this challenging advisory role, it would be interesting to see how this particular function evolves during the coming years in terms of numbers of people who sought advice with the Ethics Office on ethical dilemmas and concerns.

As for the advice to management, the public report of the Ethics Office to the Standing Committee highlighted its assistance in the development, dissemination and promotion of ethics related policies102. An example of such policy advice is the follow-up role of the Ethics Office vis-à-vis UNHCR senior management for the implementation of the Secretary General’s Bulletin on protection from sexual exploitation and abuse103 and the on-going inter-agency work for the review of the content of the UN mandatory training on workplace harassment. ECOA rightly advises in its Ethics and Compliance Handbook that the role of the senior management in setting the tone from the top will be crucial for the Ethics Office to fully play its advisory role104. In UNHCR, the active participation of the senior management to the Code of Conduct refresher sessions, side by side with the rest of the staff creates a convivial atmosphere for discussions on ethical dilemmas the UN refugee agency may face in its operations.

2) Promoting a Culture of Integrity and Accountability

The annual code of conduct refresher sessions are among the most important vehicles for the promotion and dissemination of a culture of integrity and accountability as they focus on re-asserting the organizational ethical values and the specific ethical principles governing UNHCR work105. Through a Facilitator’s Manual, which contains a great number of practical cases and a series of questions relating to ethical dilemmas, UNHCR Ethics Office offers a methodological advice in facilitating the refresher sessions and endeavours to propose annual common themes for indepth analysis and discussions among participants in light of the code of conduct values and

102 Ibid. P. 11
104 The Ethics and Compliance Handbook, ECOA, 2008 – providing ethical advice and receiving allegations, PP.77-93
105 Refresher sessions are mandatory throughout UNHCR. Senior managers participate from their respective working divisions. The executive office has its own session including its staff.
principles. The Challenge here is how to measure the impact of the culture of integrity and accountability on the staff of UNHCR in general and more particularly on those who are at the frontline of implementing UNHCR’s mandate, which is to secure international protection and provide assistance to persons of concern. Ethics surveys have to be conducted at a regular intervals to better assess impact.

3) Raising Awareness and Developing Standards and Education on Ethics

In its public report to the Standing Committee of the UNHCR Executive Committee, the Ethics Office informed on initiatives taken to raise awareness and disseminate information including through staff group briefings, town-hall meetings and launch of an intranet site dedicated to ethics. The above-mentioned information brochures and booklets contribute to the same awareness raising activities. The Ethics Office updates these booklets and brochures or assist in updating the information on ethics education tools. As in any institution, active co-operation between the Ethics Office and other working units in charge of education, training and staff development projects remains an ongoing commitment that will ensure ethical values and principles find their way into training programmes and materials.

4) Administering the Financial Disclosure Programme

The JIU recommended that each organization should establish its own financial disclosure programme, but UNHCR joined forces with the UN Secretariat for the implementation of the UN Financial Disclosure Programme contracted to a private company Price Waterhouse & Coopers (PwC) in charge of the confidential review of the statements for compliance with the programme. The move ensures confidentiality and trust in the system as no one will understand that his or her confidential information will fall in the hands of or treated by another staff member within UNHCR. The main purpose of the financial disclosure programme is to ensure that potential conflict of interests arising from UN staff members’ financial holdings or private affiliations can be identified, and proper advice provided to the


107 Supra. P. 25.

108 JIU recommendation 16 states: The legislative bodies in each organization should direct their respective executive heads to put forward proposals for the: (a) Establishment of confidential financial disclosure requirements for all elected officials and all staff at the D-1 level and above, as well as those staff mentioned in paragraph 50 above; (b) Annual filing of the financial disclosure statements to the ethics office(r) for review. (Re: UN doc. JIU/REP/2006/2).


110 As mentioned above (p. 14) the notion of conflict of interest is defined by Staff Regulation 1.2 (m) and Staff Rule 1.2 (p) of ST/SG/2010/6: Staff Regulation 1.2 (m): “ Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations”. Staff Rule 1.2 (p): “ A staff member who has occasion to deal in his or her official capacity with any matter involving a profit-making business or other concern, including a concern in which he or she holds a financial interest, directly or indirectly, shall disclose that interest to the Secretary-General and, except as otherwise authorized by the Secretary-General, either dispose of that financial interest or formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to the conflict of interest situation”.

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staff on possible options that can help address any identified conflict of interest. The Financial Disclosure Programme is dealt with by a Secretary General Bulletin\textsuperscript{111}, which provides in details for the obligation to file a financial disclosure statement or a declaration of interest statement, the scope of financial statements with respect to staff members, their spouse and their dependent children and the scope of declaration of interest statements.

The Secretary General’s Bulletin precisely identifies who has to file a financial disclosure: “All staff members at D-1 or L-6 level and above; all staff members who are procurement officers, or whose principal occupational duties are the procurement of goods and services for the United Nations; all staff members whose principal occupational duties relate to do investment of the assets of the United Nations Joint Staff Pension Fund or of any accounts for which the United Nations has fiduciary or custodial responsibility; other staff members whose direct access to confidential procurement or investment information warrants the filling of a financial disclosure statement; all staff members serving in the Ethics Office”\textsuperscript{112}. The onus is placed on the relevant supervisors to determine, in accordance with guidelines issued by the Ethics Office, the staff members who shall file financial disclosure statements under the above category of staff. Staff members on “when actually employed” appointments, individuals on one dollar per year appointments or those serving for short duration who fall under the above-mentioned category have the obligation to file the financial disclosure statement, but with a shorter form called “declaration of interest”.

The real challenge is about the consequences of non-compliance by an eligible staff member. Disciplinary action as a consequence for non-compliance may ease willingness to disclose and increase participation of eligible staff members. Indeed, as an administrat instruction, non-compliance with the Financial Disclosure Programme bears consequences stated for under staff rules\textsuperscript{113}. However, attention should also be paid to a strategy for relevant advices to staff that could raise awareness on ethical principles of integrity and transparency as well as the protection of individual reputation that such a programme may help to enhance, rather than punishment through individual sanctions. Such a focus may perhaps better increase honest participation from relevant staff members at lower levels. After all, Ethics is about raising awareness to ensure the highest standards of conduct among staff, not about spreading mere fear of sanctions among employees. Here also, measuring the impact of such a programme will be possible only over time, through relevant staff surveys.

5) Implementing the Policy on Protection of Staff from Retaliation

\textsuperscript{111} UN doc. ST/SGB/2006/6 of 10 April 2006 on financial disclosure and declaration of interest statements.

\textsuperscript{112} Ibid. Section 2.1.

\textsuperscript{113} Provisional staff rule 10.1(a) provides that the “failure by a staff member to comply with his or her obligation under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct”. Additionally, provisional staff rule 10.1 (c) provides that “the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary General or officials with delegated authority”.

28
UNHCR policy on protection of individuals against retaliation (Whistleblower policy)\textsuperscript{114} adopted on 15 September 2008 is an adaptation to the refugee agency of the Secretary General policy on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigation put in place three years earlier in 2005\textsuperscript{115}. The policy states that its purpose in UNHCR is to ensure that the Organization “functions in an open and fair manner, with the objective of enhancing protection for individuals who report misconduct, provide information in good faith on alleged wrongdoing, or cooperate with, or participate in a duly authorized audit, inspection, investigation or inquiry or the activities of the Office of the Mediator and, to maintain accountability…”\textsuperscript{116}. The implementation of such a policy needs the participation of the staff as a whole and the support of the senior management.

A guide to protection against retaliation for reporting misconduct or cooperating with authorized authority is widely shared annually with the Agency’s staff, including online. It defines retaliation as “any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity protected by the whistleblower policy”\textsuperscript{117}. It explains the forms of actions the policy covers, i.e. the instances where the individual concerned can be protected: i) “reported misconduct to an appropriate authority such as the inspector general; ii) cooperated with or participated in a duly authorized audit, inspection, investigation or inquiry or with the Ombudsman; and ii) has been retaliated against or threatened as a result”\textsuperscript{118}.

The role of the Ethics Office is detailed in the guide in a very simple language for the staff to understand. Since the adoption of the policy, it was reported that some staff members have contacted the Ethics Office for advice as well as to lodge complaints\textsuperscript{119}. ECOA Handbook advises that “retaliation can take many forms: at the most basic level, it is any negative action taken against an employee because he or she reported potentially inappropriate activities or participated in an internal investigation. Retaliation can range from inappropriate work-related determination (e.g. undesirable workload reassignment, reduced bonus, or negative performance review) to serious employment actions (e.g. demotion or firing). It can also include unofficial acts – from ostracism to threats of physical or reputational injury”\textsuperscript{120}.

\textsuperscript{114} UNHCR Inter-Office Memorandum No. 043/2008 – Field Office Memorandum No. 045/2008 of 15 September 2008.

\textsuperscript{115} UN doc. ST/SGB/2005/21 of 19 December 2005 “Secretary General’s Bulletin: Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations.

\textsuperscript{116} UNHCR IOM-FOM 043/2008-045/2008 of 15 September 2008 paragraph 1.


\textsuperscript{118} UNHCR, “The UNHCR Ethics Office: A guide to Protection Against Retaliation for Reporting Misconduct or Cooperating with Authorized Authority, August 2010.


\textsuperscript{120} The Ethics and Compliance Handbook: A Practical Guide from Leading Organizations, ECOAS, 2008 p. 90.
The challenge here is how to make sure that staff members are not engaging themselves in a sort of self-censorship for fear of being attacked\textsuperscript{121}. This challenge points to the eminent role of managers in the prevention of retaliation. Subtle forms of retaliation are another challenge in the whistleblower protection policy. Legal or administritative arguments such as UNHCR rotation policy, for instance, can be used to destabilize a staff member who may have reported misconduct. Staff members should also know that providing false reports of misconduct is a misconduct in itself and is punishable. Such situations, when they exist represent a challenge to the whistleblower protection policy\textsuperscript{122}.

D. Implementing and Enforcing Ethics and Compliance in UNHCR

What would be the consequences for non-compliance with ethical values in UNHCR? This is a recurring question from UNHCR staff members. The UNHCR Code of Conduct does not clearly describe what would happen in case of a violation\textsuperscript{123}, leaving the staff to wonder whether not abiding by the code of conduct would have any consequence at all. The common practice in the business world seems to impose sanctions for violations of the code of conduct. The departure point for business ethics is that business should be conducted in accordance with all applicable laws and regulations. However, compliance with the law does not comprise the entire ethical responsibilities. Rather, it is a minimum and absolutely essential condition for performance of duties. The question there seems to have a clearer answer i.e. if an employee does not abide by the law, the business is running the risk of being ruined; therefore, he should be punished for having adopted a dangerous and detrimental behavior to the reputation of the enterprise. However the effectiveness of implementation of sanctions for non-compliance with ethical values and norms remains often to be demonstrated. "Both the promise of rewards for ethical conduct and the threat of discipline for violations can help an organization achieve its ethics and compliance goals"\textsuperscript{124}.

In UNHCR the question was reportedly often asked during the early days of the Code of Conduct by the staff already on board who were requested to sign the Code to show that they "have read and understood that [they] are expected to live up to the standards of behaviour in the text"\textsuperscript{125}. It is being alledged that these questions remain a recurring one from new recruits as well at the signing of their employment offer, which includes also the signing of the Code of Conduct. This paper believes that the notes on UNHCR Code of Conduct provides enough answer to that important question despite the precautionary advice. The explanatory notes state: "The code does not have the force of law. It is simply a guide to the kind of professional and personal behaviour which is expected of all staff. However, failure to comply with the Code

\textsuperscript{121} Barb Wigler, The state of UNHCR’s organization culture, UNHCR, May 2005, pp. 37-38.

\textsuperscript{122} \textquotedblleft An ethics and compliance programme must be predicated on employees making their claims in good faith. Anything else should not be tolerated and employees who make allegations they know to be false should be subject to discipline\textquotedblright\ (Re. The Ethics and Compliance Handbook, ECOA, 2008, p. 92).

\textsuperscript{123} Supra. P. 22-23

\textsuperscript{124} The Ethics and Compliance Handbook, ECOA, 2008, p. 111.

may amount to misconduct, if by any action or omission, the staff member has violated a Staff Regulation or Rule, taking into account all the circumstances of the case."[126] In other words the Code of Conduct includes professional values enshrined in the staff regulations and rules. Therefore, non-compliance may amount to not complying with the staff regulations and rules, which are the law, with consequences stated in these regulations and rules, but not in the Code of Conduct, which is a morale guide.

The above sentence, “failure to comply with the Code may amount to misconduct […]” shows that not complying with UNHCR values may lead to some consequences for the staff member concerned. To illustrate the understanding of the values enshrined in the Code, the explanatory notes also refer to consequences for non-compliance with some specific values. For instance “sexual exploitation and abuse, constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal”[127]. Moreover, if one carefully reads the explanatory notes to the UNHCR Code of Conduct one could note that each ethics guiding principle in that Code refers to specific Staff Regulations and Rules as clearly shown on the footnotes of the text of the explanatory notes. Principle 1 on treating all refugees and other persons of concern fairly and with respect and dignity is, for instance, linked to Staff Regulation 1.2 (a) (b) and (c), which deals with staff core values. Principle 2 on upholding the integrity of UNHCR is in relation to Staff Regulation 1.1 (f) on staff privileges and immunities, but also in relation to the above-mentioned regulations 1.2 (a) and (b), etc. Relating to paragraph 31, 34, 35 of the staff rules, for instance, committement to principle 6 of the Code clearly stated: “I will exercise due care in all matters of official business, and not divulge any confidential information about refugees, colleagues and other work-related matters in accordance with Staff Regulations and Rules and current guidelines.”[128]

Therefore, it is right to say that without clearly specifying the sanctions attached to non-compliance with UNHCR ethical values, the organization is expecting its staff to abide by them as they reflect the spirit of the law. This is certainly so as according to the explanatory notes “the High Commisioner wants every UNHCR staff member to read and sign the Code and this has become a condition of recruitment as of 15 October 2002”[129]. It would be interesting to find out the kind of concerns raised by the staff members already on board who refused to sign the Code of Conduct after it was introduced. One should also wonder whether there were cases where some candidates to UNHCR employment have declined the offer as they were asked to sign the Code. Answers to such questions cannot be in the public domain for obvious confidentiality reasons.

Enforcement of ethics and compliance in UNHCR is also characterized by mandatory Code of Conduct refresher sessions. The goal of these courses is to encourage staff members to develop and maintain the ethical mindset that must underlie all UNHCR

[127] Ibid. p. 32; see also supra p. 19-22.
[128] Ibid. p. 8.
staff practice. The refresher sessions are supported by an useful and informative implementation tool: “The Facilitator’s Manual: UNHCR Code of Conduct”. The Manual, which is accessible to all staff, provides guidance and orientation to staff members who serve as focal points and/or facilitators of Code of Conduct training courses. The guide provides managers and team leaders with detailed instructions for conducting many educational activities in relation to professional values and team building. To ensure full compliance with the mandatory nature of the refresher sessions for UNHCR staff members, the Ethics Office developed monitoring tools such as the individual evaluation form of the session and the senior manager’s annual report. While the individual evaluation offers a possibility to learn from the views of individual participants after a session, the senior manager’s report provides information on whether all staff members of a given office have participated to the session and if not, why? In this report there is room for managers to express their views about a session and make proposals to improve it or to offer comments and lessons learnt from the annual themes of the refresher session.

Enforcing ethics should be perceived as implementing all five above-mentioned components of responsibilities attributed to UNHCR Ethics Office\textsuperscript{130} together with other relevant provisions that nurture the culture of ethics and compliance and help the staff to get access for that reason to the Ethics Office, but also other relevant working units in charge of specific conflict management responsibilities, oversight activities, legal matters or staff welfare issues. Although UNHCR Ethics Office is not managing a 24/24 hours helpline/hotline, there is a specific email address dedicated to Ethics, a website on UNHCR intranet and a possibility for the staff to access the blackberry number of the Ethics Officer.

\textbf{E. Ongoing Major Commitments and Initiatives to Enhance Integrity Awareness.}

As mentioned above\textsuperscript{131} the history of ethics in UNHCR has been built upon operational challenges that have created increasing ethical dilemmas for the staff, senior management and the Organization as a whole. These ethical challenges resulted in the adoption of a code of conduct and the establishment of an Ethics Office\textsuperscript{132}. This paper is of the view that owing to the particular nature of the work of the organization, i.e. providing worldwide international protection and assistance to refugees and other persons of concern to the UN, these operational challenges will continue haunting the staff, and the UN Refugee Agency, particularly in remote areas, complex emergency situations and within contexts of competition for scarce resources and increasing vulnerability of the population of concern. The drafters of the explanatory notes to the Code of Conduct were mindful of the situation. They advised the staff on ethical dilemmas related to each of the 9 guiding principles of the Code of Conduct and touched upon ethical challenges, which this paper believe should be constantly kept on the screen so as to fill the gaps that may remain in addressing them with a view to

\textsuperscript{130} Supra. pp. 25-29

\textsuperscript{131} Supra. P. 19

\textsuperscript{132} Supra. PP. 22-26
enhancing ethics and compliance in UNHCR. Although the list of challenges is not that easy to establish, nor could it be exhaustive, this paper suggests that the following risk areas should be closely monitored as ongoing activities and commitments to nurture the culture of Ethics in UNHCR:

1. Addressing/Mitigating Conflict of Interest

Conflict of interest is one of the most common and complex ethical challenges. It needs a special treatment in an organization like UNHCR, due to its international status, the diversity of its staff, including their diverse cultural backgrounds and the nature of its protection and assistance work. The UN refugee agency’s work to find durable solutions on behalf of one of the most vulnerable groups of the world’s populations i.e. refugees and other persons of concern to the international community, such as the Internally Displaced Persons and the Stateless People.

The above mentioned definition of conflict of interest\textsuperscript{133} by the UN staff regulations and rules places emphasis on financial interest and holdings. However, the wider definition from the business practice\textsuperscript{134} helps including a relatively wider range of issues such as nepotism, conflict of interest between a charitable organization that a staff member is serving during his spare time and the interest of UNHCR, the issue of gifts and honours, privileges and immunities, commercial transactions for personal profits such as using corporate office to promote one’s own transactions, use of IT facilities for personal business, use of office telephone installations for private calls, the misuse of privileges and immunities for private gains, etc, in other words using one’s position to gain some advantages and profits. Nurturing a culture of integrity against these tempting advantages that a position with a humanitarian organization may offer is an ongoing commitment that the Code of Conduct refresher sessions and its practical case studies help to address.

Although only a relevant survey may help identify specific conflict of interest risk areas in an institution such as UNHCR, the wide range of UNHCR activities makes them vulnerable to conflict of interest and fraud\textsuperscript{135}. Therefore, this particular ethical risk should be carefully monitored. UNHCR recruits internationally, it buys and transports goods across boundaries, it helps refugees to get new countries of asylum through its resettlement programmes (a solution that may be envied by economic migrants within the current context of global economic crisis and unlawful migratory movements), it provides material assistance to individuals, and families of people of concern to the international community. People may be tempted to engage into corrupt activities with the staff to get access to the patterns of solutions to their economic or social problems. Addressing conflict of interest at early stages help putting a special focus on the key elements of ethics, i.e. integrity, transparency,

\textsuperscript{133} Supra. foot note 63.

\textsuperscript{134} Supra. Foot note 28.

\textsuperscript{135} Supra. PP. 3-5
accountability and professionalism. The objective of addressing conflict of interest is to help the staff maintaining a high level of personnel and professional behavior including truthfulness and honesty to prevent corruption and other fraudulent practices. From the financial and accounting perspectives, UNHCR like any UN agency has a range of governing rules and regulations that help monitor implementation to protect its operations against fraudulent practices and enhance efficiency, including through results-based management. When such fraudulent practices occur despite the existing safeguards, there are provisions to punish established violations in accordance with the relevant UN(HCR) regulations and rules.

The explanatory notes on the Code of Conduct made a very important statement about the ethics of the matter: “It is recognized that UNHCR’s work puts its staff members in positions of power in relation to its beneficiaries. Staff have an obligation not to abuse this power”\textsuperscript{136}. Professional behavior in terms of integrity, transparency, professionalism and the duty of loyalty in an international organization like UNHCR has to do with watching out for issues such as abuse of privileges and immunities, non respect of local laws and cultures, ignoring private legal or financial obligations, establishing personal relationships that put staff in an awkward situation and causing embarassment for the UN or the host country, etc. In such situations risk awareness is key, including for newly recruited staff members that are so frequently needed and brought on board in UNHCR emergency operations. They should be placed in a position to understand the importance of abiding by UNHCR values, norms and principles. The UN Financial Disclosure Programme in which UNHCR staff has been participating since 2006 is an important tool that helps mitigating possible conflict of interest. However, conflict of interest is said to depend on personal context. The related transaction is highly discretionary, including the ability for the individual concerned to conceal the conflict of interest.

Ongoing commitments will help address this ethical challenge, including on behalf of newly recruited staff members. The strategy should be always reviewed to comprise: assessing potential risks, formulating relevant policies, conducting oversight, monitoring, investigation and training activities, and if necessary as the investigative work of the Inspector General’s Office\textsuperscript{137} offers the possibility to get access to facts, applying corresponding sanctions for non-compliance. Such a policy may also need to be periodically re-assessed to possibly re-adapt it to the evolving situation. Therefore, sustained help to staff to understand that it is in their interest that conflict of interest be mitigated to protect their own reputation and the credibility of the Organization they are working with, remains indeed, a major ongoing commitment.

2. Non-harassment (including sexual harassment), non-discrimination, and respect for diversity


\textsuperscript{137} UNHCR segregates between the investigative role attributed to the Inspector General’s Office (IGO) and the work of the Ethics Office, including in issues such as whistle blower protection claims, which are reviewed for a prima facie determination and transferred to IGO for investigation.
Closely linked to the previous cluster of ethical challenges related to conflict of interest, this second group of ethical challenges concerns workplace issues that need to be closely watched to maximize efficiency in providing protection and assistance to refugees and other people of concern to UNHCR. UNHCR’s working environment in terms of location of duty stations, cultural and gender diversity, number and origin of people of concern represents a challenge to ethical behavior. “Politness, respect, tolerance, and moderation should be the norm”, as the Explanatory Notes put it. Issues such as sexual harassment, sexual exploitation and abuse of beneficiaries of international protection and assistance, abuse of power, etc will remain serious ethical challenges particularly in isolated non family duty stations. Views have been expressed to revisit some of the principles of the Code of Conduct to readapt them to operational contexts such as protracted refugee situations in remote refugee sites. Sexual relationship with beneficiaries of international protection and assistance, however consensual it may be, is one of the ethical dilemmas also in terms of optics and shall remain on the radar screen of the UN refugee agency for the negative impact this may have on operations and on the reputation of the Office. Mandatory arrangements designed to relieve staff (both local and international) from stress should be applied in a more systematic manner in their mandatory aspect, so as to accompany promotion of ethical values and norms with humanly acceptable working conditions and work-life balance policies. Indeed, the culture of sacrifice, which prevails in humanitarian organizations often dilute practical considerations that may have helped the leadership “to place reasonable boundaries around what [the staff can] do”.

3. Addressing Retaliation Risks: the Whistleblower Protection

UNHCR has moved swiftly in adopting a whistleblower protection policy as provided for by the UN resolutions. The next step is to remain alert in mitigating any risks of retaliation and create a work environment that maximises results in protecting, assisting and providing durable solutions to the plight of people of concern to the organization.

“Leaders must create an atmosphere in which personnel feel comfortable raising concerns for resolution, discussion, or action without fear of reprisal”. Including risk of retaliation in its risk assessment missions remains the way forward in raising awareness of the problem. The whistleblower protection policy is to be accompanied with a strong awareness campaign and outreach for respectful workplace environment through integrity, transparency, fairness and professionalism as provided for by principle 4 of the Code of Conduct. Access to Ethics Office is a key guide to the

138 Ibid. P. 23.

139 “The state of UNHCR’s organization culture” by Barb Wigley, Consultant, UNHCR, EPAU/2005/08, May 2005, p.117.

140 Supra. P. 14 and pp 28-29.

implementation of the policy. Therefore, during the Code of Conduct refresher sessions the session on “where to go for help” is as important as the rest of the themes.

4. The Ethical leadership: Setting Good Example at the Top

Ethical leadership is an excellent tool for ethics and compliance programme in UNHCR. Introducing the explanatory notes on UNHCR Code of Conduct the authors of the Notes clearly focused on the role of managers as the main vehicles of ethical behavior in these terms: “Managers have a particular responsibility to uphold these standards, to set a good example, and to create a working environment that supports and empowers staff”142. Indeed, managers are the first concerned by ethics and ethical leadership. “They are the ones [who] carry both implicit and explicit responsibility for unethical conduct of and within the organization and they are the ones who have the means and authority to set the ethical tone of the organization”143.

What constitutes ethical leadership and what characteristics and behavior should be considered to be typical of and conducive to ethical leadership144 is not really a difficult questions for the wealth of experience managers have in UNHCR. Leonie Heres defines ethical leadership as “the quality of leaders consistently making decisions and acting in accordance with relevant moral values, norms, rules, and obligations, and promoting such decision-making and behavior among followers”145. The Center for Ethical Leadership defines ethical leadership as knowing one’s “core values and having the courage to live them in all parts of [one’s] life in service of the common good”146.

The risk exists that due to the emergency nature of many UNHCR operations, new managers may be appointed with no prior preparation to display enough ethical leadership skills in face of ethical dilemmas and challenges. The commitment in UNHCR to continue engaging in staff induction and orientation, including ethics training in support of its staff rotation and recruitment policy is an ongoing activity that not only the Code of Conduct refresher session should be offering but most of training and staff development activities should adhere to. There is a need to constantly enhance staff orientation and nurture a culture of ethical leadership behavior in an organization where staff rotation and turnover is absolutely high in duty stations. The objective is to maintain a working environment that help the new generation of leaders to nurture the courage to “live out ethical values even in face of pressures to compromise or to rationalize” and to make sure the values that managers uphold “contribute to the common good”147.

142 UNHCR Code of Conduct & Explanatory Notes, June 2004. P. 1
143 Leonie Heres, BSc. What makes the Difference? Ethical Leadership Across the Public-Private Continuum. VU University Amsterdam, 2009, p. 11.
144 Ibid. P. 12.
145 Ibid. P.12.
146 Re: http://www.ethicalleadership.org/philosophies/ethical-leadership
147 ibid.
5. Measuring Impact: the real time consistency

Last but not least, measuring impact is a concern that is often forgotten on the places of emergency situations and increasing demands upon humanitarian staff. Real-time measurement of ethical behavior should be part of the terms of reference of evaluation missions if an organization like UNHCR wishes to continue inculcating the culture of ethics and compliance to its staff at the early stage of its field operations to maximise efficiency. The challenging question about that issue is how to measure the impact of the Code of Conduct on staff behavior. This paper believes that the senior managers’ annual report on the Code of Conduct refresher sessions is a modest but easy avenue for senior managers to register ethical dilemmas discussed during the sessions and the answer provided or not to address them. The report may also register expectations from the staff relating to the role of UNHCR Ethics Office and other working units in charge of issues of conflict resolution, accountability, fairness, transparency and staff welfare including staff security issues.

However, the impact of ethics and compliance norms should be measured in a more consistent manner through global staff surveys so as to know how the culture of integrity, truthfulness, fairness and transparency is evolving in UNHCR. The results of such a survey would help identify emerging ethical concerns to be addressed in the organization with the support of the Ethics Office and its partners in a team spirit. So far, UNHCR has been able to include questions related to ethics into global staff survey questionnaires as a way to measure impact and to assess the overall situation regarding specific issues these questions were supposed to help address.

CONCLUSION

The current global developments concerning business ethics are seriously influencing the attitude of the UN Member States vis a vis the operational agencies they have created to carry out the mandate of the global organization in line with its founding Charter. UN Member States and the donor community as a whole are raising the bar higher and higher to make sure that integrity, transparency and accountability remain the bedrock of the UN activities worldwide. UNHCR has been very smart in mitigating the reputational consequences of the operational ethical challenges it faced during the last decade by wisely investing in measures to successfully enhance accountability and nurture a culture of integrity.

Indeed, UNHCR has been very prompt to progressively espouse ethic governance; first of all as a response to the staff growing needs for fairness and transparency it created the Mediator’s Office, which become the Ombudsman’s Office. The UN refugee agency then took advantage of its operational challenges and the experience it gained in implementing, monitoring and evaluating its protection and assistance programmes on behalf of refugees and other persons of concern to the UN to strengthen its oversight functions. UNHCR’s various assessment, control, monitoring and evaluation tools established a solid basis that helped develop values and norms that govern field operations, and the work and behavior of the staff. In the wake of serious ethical challenges to its operations in 2000, UNHCR has been able to
promptly respond to the challenge by turning what was largely perceived as terrible scandals taxing the delivery of humanitarian work, to an opportunity to grow by nurturing the culture of integrity, accountability, transparency and fairness.

The adoption of a Code of Conduct under the leadership of the Ethics and Diversity Unit, already in existence under the human resource management division was a landmark event in the UN family in the early 2000s. Calls during the last decade for the UN to play a model and lead-role in transparency and accountability added to the growing will in UNHCR to strengthen an ethics and compliance programme, clearly marked by the enforcement of its Code of Conduct. Implementing the UN financial disclosure programme in UNHCR provided since 2006, an additional tool to monitor and mitigate conflicts of interest while the whistleblower protection policy published in 2008 provided the overall environment to ensure that the UN refugee agency functions in an open, transparent and fair manner by protecting individuals who report, in good faith, any misconduct.

Despite that apparent success, ethical challenges will continue haunting UNHCR operations. The beginning of the current decade is marked by the global move towards strengthening ethics and compliance programmes in both public and private institutions. This also offers an opportunity to initiate ethics risk assessment processes in UNHCR that will help review what has been accomplished, what remains to be done to better ground successful practices and looking forward to what are the emerging ethical risks that may need to be mitigated. The above major commitments are based on UNHCR’s operational experience in related risk areas prone to such assessments.

UNHCR Ethics Office, which has been operational since 2008 is also a useful window of opportunity; but like most of the Ethics Offices of the UN system-wide organizations, it is understaffed compared to the challenges ahead. It needs to be better resourced to carry out risk assessment missions at the field level. Joining forces with existing UNHCR oversight units, conflict prevention and resolution institutions/mechanisms to include ethics concerns into their assessment missions is a viable strategy that is being contemplated. The results and knowledge of such assessment missions will help initiate and adapt ethics and compliance programmes to be implemented, monitored and re-assessed during a further cycle so as to always remain at the top of any emerging ethical dilemmas and risks. Focus groups, individual or group consultations on Ethics are ongoing activities to be encouraged for a wider ownership of and support to the Ethics Office.
BIBLIOGRAPHY


ECOA. The Ethics and Compliance Handbook, a practical guide from leading organizations, ECOA, Berryville, Virginia/USA, 2008 (www.theecoa.org).

HERES, Leonie. What Makes the Difference? Ethical Leadership across the Public-Private Continuum”, Published by Dynamics of Governance, Faculty of Social Sciences, VU University, Amsterdam, the Netherlands, 2009.


POWERS, Joan, S. Overview of the rules on conduct and ethics at the IMF. Google pdf.

Refugee Survey Quarterly, vol. 18, No.4, 1999, “UNHCR’s Inspection Activities”.


UNITED NATIONS DOCUMENTS


United Nations General Assembly Resolution 428(V) dated 4 December 1950.


United Nations Document A/60/692 of 07/03/2006 “Investing in the UN” for a stronger organization worldwide: Secretary General’s Statement to the General Assembly.


United Nations doc. ST/SGB/2006/6 of 10 April 2006 on financial disclosure and declaration of interest statements.

**UNHCR DOCUMENTS**


**INTERNET SOURCES**

http://www.unhcr.org/pages/49c3646c1d.html
http://www.unhcr.org/pages/49c3646c80.html
http://www.unhcr.org/pages/49c3646c16a.html
http://www.unhcr.org/pages/49c3646c23.html
http://www.humanitarianreform.org/
http://www.unhcr.org/pages/49c3646c206.html
http://www.wisegeek.com/what-are-professional-ethics.htm
http://www.theecoa.org
http://www.stabilitypact.org/anticorruption/default.asp
http://nktiuro.tripod.com/hippocra.htm
http://whistleblower.org/storage/documents/UN_Integrity_Survey.pdf
http://www.peacewomen.org/themes_theme.php?id=31&subtheme=true
http://icsc.un.org/about3.asp
http://ijrl.oxfordjournals.org/content/early/2010/03/25/ijrl.eeq013.full#sec-6