

ARTICLE 100

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TEXT OF ARTICLE 100

1. 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.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

INTRODUCTORY NOTE

1. The status of the Secretariat as a principal organ of the United Nations is laid down, in general terms, under Article 7 (1). ^{1/} Under Chapter XV, in particular, under Article 100, the obligations of the staff of the Secretariat and the obligations of Member States with respect to the Secretariat are set forth; it is further specified that the Secretariat is international in character and responsible only to the Organization.

2. This study deals with the steps which have been taken by the competent organs of the United Nations to protect the constitutional position of the Secretariat, as well as with the particular problems and questions which have arisen in connexion with them.

3. A brief account of those steps and of the questions which have a direct bearing upon Article 100 is contained in the General Survey, while the Analytical Summary deals with the practice in respect of certain questions, and is arranged under the following headings: "The concept of the Secretariat as an international civil service"; "The obligations of members of the Secretariat"; "The obligations of Member States"; and "The relationship between the obligations of a staff member to the United Nations and his obligations to the State of which he is a national".

I. GENERAL SURVEY

4. With a view to safeguarding the international character and the independence of the Secretariat, the General Assembly and the Secretary-General have laid down detailed standards of conduct for staff members based directly upon Article 100. Action by the General Assembly in this respect has taken the form of the adoption of Staff

^{1/} See in this Repertory under Article 7 (1).

Regulations 2/ while the action by the Secretary-General has taken the form of the promulgation of the Staff Rules. 3/

5. The obligations which have been laid down for staff members, whether in the Staff Regulations or Staff Rules, relate not only to their professional behaviour 4/ but also to their personal conduct, 5/ and are based on the concept of the Secretariat as an international civil service and of staff members as international civil servants. Thus, regulation 1.1 of the Staff Regulations adopted by the General Assembly under resolution 590 (VI), provides that:

"Members of the Secretariat are international civil servants. Their responsibilities are not national but exclusively international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the United Nations only in view." 6/

6. In the course of the work of the United Nations, a number of questions which bear directly upon the interpretation and application of Article 100 have arisen. An indication of the nature of such questions may be obtained from the following passage in a statement 7/ made at the seventh session of the General Assembly by the Secretary-General:

"10. Thus, in an international organization that in most respects faithfully reflects the world as it is - a world of sovereign governments - the Secretariat has exclusively international responsibilities. The Secretary-General and his staff have, in some respects, been placed by the Charter in an advanced - and correspondingly exposed - position."

7. The questions which have arisen have ranged from whether staff members should be permitted to accept academic awards 8/ to the action to be taken in respect of staff members alleged to have engaged in subversive activities against the government of a Member State. The latter question arose at the end of 1952 as a result of allegations by United States authorities of subversive activities against the government of the United States by certain staff members of United States nationality.

2/ For a detailed discussion of the relevant Staff Regulations and Rules, see the Analytical Summary of Practice of this study. For a discussion of the Staff Regulations and Rules from the point of view of other conditions of service, see also in this Repertory under Article 101. Unless otherwise indicated, all references to staff rules in the present study are to the Staff Rules promulgated for general application. In addition, special staff rules have been promulgated specifically for temporary staff and for staff recruited exclusively for certain organs or activities. Those special staff rules are dealt with in greater detail in this Repertory under Article 101.

3/ See footnote 2 above.

4/ See paras. 16-22 below.

5/ See paras. 23-85 below.

6/ See also G A resolution 13 (I), annex II, provisional staff regulation 1, and staff rule 2, SGB/81 (25 June 1948); staff rule 2, ST/AFS/SGB/81/Rev.1 (16 June 1950); staff rule 2, ST/AFS/SGB/81/Rev.2 (1 January 1951); staff rule 2, ST/AFS/SGB/81/Rev.3 (6 July 1951).

7/ G A (VII), Plen., 413th mtg., para. 10.

8/ For discussion of this question, see paras. 41-45 below.

8. In his report 9/ on personnel policy to the General Assembly at its seventh session, the Secretary-General discussed in detail the background of the foregoing question and dealt with several aspects of the question bearing directly upon Article 100; these concerned the obligations of the staff and of Member States respectively. Although the report of the Secretary-General gave rise to a debate in which many different views were expressed, 10/ the points raised were not specifically dealt with in the resolution 11/ which the General Assembly adopted at that session.

9. However, under the provisions of that resolution, the General Assembly requested the Secretary-General to submit to it at its eighth session a further report on the progress made in the conduct and development of personnel policy. In compliance with this request, the Secretary-General, at that session, submitted a report 12/ which led to the adoption, under General Assembly resolution 782 (VIII), of a series of amendments 13/ to the Staff Regulations.

10. As regards the obligations of Member States, the Convention on the Privileges and Immunities of the United Nations, 14/ adopted by the General Assembly at its first session under resolution 22 A (I), contains provisions designed to protect the international character and the independence of the Secretariat. No other specific recommendations have been made to Member States by the General Assembly comparable to the action it has taken with respect to the obligations of the staff.

11. Both in the oral statement referred to in paragraph 6 above and in his report 15/ on personnel policy submitted to the General Assembly at its seventh session, the Secretary-General dealt with certain questions 16/ concerning the obligations of Member States under the provisions of Article 100. As already stated, 17/ those questions were not specifically dealt with under General Assembly resolution 708 (VII). Instead, by that resolution, the General Assembly called upon all Member States to assist the Secretary-General in the discharge of his responsibilities as chief administrative officer of the United Nations.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The concept of the Secretariat as an international civil service

12. Regulation 1.1 18/ of the Staff Regulations states that members of the Secretariat are international civil servants. Under this concept, staff members are deemed to be public officials and, more specifically, international public officials. 19/

9/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

10/ G A (VII), Plen., 413th mtg., and 416th-422nd mtgs.

11/ G A resolution 708 (VII), quoted in para. 83 below.

12/ G A (VIII), Annexes, a.i. 51, p. 1, A/2533.

13/ The amendments referred to are discussed in paras. 84 and 85 below; see also in this Repertory under Article 101.

14/ For a more detailed discussion of the Convention, see in this Repertory under Article 105.

15/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

16/ See paras. 90-107 below.

17/ See para. 8 above.

18/ Quoted in para. 5 above. See also Staff Regulations and Rules cited in footnote 6 above.

19/ COORD/Civil Service/5, para. 4.

13. Accordingly, staff members are required to possess, apart from technical qualifications, both the personal moral qualities which any public administration requires of its staff, and the additional qualities appropriate to international service. In order to ensure high standards in the corps of career international civil servants, the Secretary-General has devised a system of control whereby career appointments to the staff are subject to a probationary period and to a subsequent five-yearly review as a means of determining whether the staff members concerned have maintained the standards which originally qualified them for appointment as international civil servants. 20/

14. On the other hand, measures have been adopted to afford staff members some assurance of security of tenure and of a career in the Secretariat, the most important of which is the proffer of a permanent appointment. As the United Nations Administrative Tribunal stated in several of its judgements, 21/ "This type of appointment has been used from the inception of the Secretariat to ensure the stability of the international civil service and to create a genuine body of international civil servants freely selected by the Secretary-General."

15. In his report 22/ on personnel policy to the General Assembly at its eighth session, the Secretary-General discussed briefly the development of the system of permanent appointments. He stated:

"16. The concept of a permanent civil service was adopted by the Organization in its earliest days and repeatedly affirmed. In the interest of both the independence of the Secretariat and the quality of its members, it was considered essential that the staff should enjoy the maximum practicable security of a career service based on permanent appointments. It was not found advisable to delay the transition to a full-fledged career service in order to allow accumulation of wider experience in dealing with the special problems of an international civil service. The transition may be said to have taken place on a trial and error basis, and certain obvious risks were accepted in order to achieve a satisfactory degree of stability as rapidly as possible.

"17. The direction of the efforts is reflected in the restrictively formulated grounds for termination [23/] of permanent appointments and in the legal protection given to staff members of the United Nations through the early institution of an Administrative Tribunal."

B. The obligations of members of the Secretariat

1. *Obligations regarding performance of duties*

a. DISCHARGE OF FUNCTIONS IN THE INTERESTS OF THE UNITED NATIONS

16. With respect to the obligations imposed upon members of the Secretariat by reason of their status as international civil servants, staff regulation 1.1 24/ enjoins staff

20/ ST/ADM/SER.A/267.

21/ AT/DEC/29-37.

22/ G A (VIII), Annexes, a.i. 51, p. 1, A/2533.

23/ For a review of grounds for termination of permanent appointments and additional discussion, see also in this Repertory under Article 101.

24/ See para. 5 above. See also Staff Regulations and Rules cited in footnote 6 above.

members to discharge their functions with the interests of the United Nations only in view. This obligation is also embodied in the oath which staff members are required to take upon appointment, and which reads as follows:

"I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Organization." 25/

b. RESPONSIBILITY TO THE SECRETARY-GENERAL WITH REGARD
TO THE EXERCISE OF FUNCTIONS OF STAFF MEMBERS

17. In consequence of the position of the Secretary-General as chief administrative officer, 26/ staff members are deemed to have accepted his exclusive authority with regard to the exercise of their functions. Staff regulation 1.2 states:

"Staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations. They are responsible to him in the exercise of their functions". 27/

c. NON-ACCEPTANCE OF INSTRUCTIONS FROM EXTERNAL AUTHORITIES

18. The provision of Article 100 under which staff members may not seek or receive instructions from external authorities has been restated in staff regulation 1.3, which reads:

"In the performance of their duties members of the Secretariat shall neither seek nor accept instructions from any government or from any other authority external to the Organization." 28/

19. However, the Secretary-General has interpreted the Charter provision in question as permitting technical assistance experts to be intimately associated in the performance of direct governmental functions as a means of rendering technical assistance to Governments under the United Nations programmes of technical assistance. 29/ Thus, rule 201.5 of the Staff Rules applicable to technical assistance experts, promulgated on 1 January 1954, provides:

"The oath or declaration to which project personnel have subscribed does not prevent the close collaboration of project personnel with a government pursuant to the agreement between that government and the United Nations." 30/

25/ G A resolution 590 (VI), regulation 1.9. See also G A resolution 13 (I), annex II, regulation 2; rule 4, SGB/81 (25 June 1948); rule 4, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 4, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 4, ST/AFS/SGB/81/Rev.3 (6 July 1951).

26/ See Article 97 of the Charter.

27/ G A resolution 590 (VI), regulation 1.2. See also the text of and other references to the oath of office in paragraph 16 and footnote 25 above, and G A resolution 13 (I), regulation 1; rule 3, SGB/81 (25 June 1948); rule 3, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 3, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 3, ST/AFS/SGB/81/Rev.3 (6 July 1951).

28/ Ibid.

29/ G A resolutions 200 (III) and 304 (IV); E S C resolution 222 (IX).

30/ ST/AFS/SGB/94/Add.3.

d. DISCRETION IN THE PERFORMANCE OF OFFICIAL DUTIES

20. Staff members are obliged to exercise the utmost discretion in regard to all matters of official business. Staff regulation 1.5 states:

"Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Secretary-General...These obligations do not cease upon separation from the Secretariat." 31/

e. IMPARTIALITY IN THE PERFORMANCE OF OFFICIAL DUTIES

21. The obligation of staff members to maintain impartiality in the performance of their official duties has been stressed by the Secretary-General on various occasions. Thus, in the course of the discussions of proposed permanent staff regulations of the United Nations in the Fifth Committee at the sixth session of the General Assembly, the Secretary-General expressed 32/ the view that impartiality was one of the essential requisites of an international civil servant.

22. The Secretary-General made a similar statement in his report 33/ on personnel policy to the General Assembly at its seventh session, in which he stated:

"Inherent in the pledge of loyalty to the United Nations, and in the prescribed standards of conduct, is the obligation of the staff member to maintain impartiality, to avoid bias, in his work and in his behaviour."

2. *Obligations regarding personal conduct*

a. REGULATION OF CONDUCT IN THE INTERESTS OF THE UNITED NATIONS

23. In addition to the obligations of staff members relating to the performance of their duties, the Staff Regulations and Staff Rules impose upon members of the Secretariat obligations which concern their personal conduct. As in the case of the performance of their duties, staff members are required by staff regulation 1.1 34/ to regulate their conduct with the interests of the United Nations only in view. An amplification of this obligation is embodied in staff regulation 1.4 35/ which provides:

31/ G A resolution 590 (VI), regulation 1.5. See also the text of the oath of office quoted in paragraph 16 above, and G A resolution 13 (I), regulation 5; rule 7, SGB/81 (25 June 1948); rule 7, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 7, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 7, ST/AFS/SGB/81/Rev.3 (6 July 1951).

32/ G A (VI), 5th Com., 333rd mtg., para. 15; G A (VI), Annexes, a.i. 45, A/2108, p. 35, para. 9.

33/ G A (VII), Annexes, a.i. 75, p. 3, A/2364, para. 25.

34/ See paragraph 5 above. See also the staff regulations and rules cited in footnote 6 above.

35/ G A resolution 590 (VI), regulation 1.4, as amended by G A resolution 782 (VIII). See also G A resolution 13 (I), regulation 6; rule 6, SGB/81 (25 June 1948); rule 6, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 6, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 6, ST/AFS/SGB/81/Rev.3 (6 July 1951).

"Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status."

24. In his report 36/ on personnel policy submitted to the General Assembly at its seventh session, the Secretary-General made the following statement regarding the personal conduct of staff members:

"Clearly, the staff member's right to his own beliefs, to his political and religious opinions, is inviolable. However, his expression of these beliefs, his actions, any public pronouncements he makes, his general conduct - all must be consonant with his international status, and must conform to the interests of the United Nations to which his service is dedicated. His conduct must be such that he merits the trust and the confidence of the Member nations and their peoples, and that he does not, through loss of that trust and that confidence, jeopardize the reputation and effectiveness of the Organization."

b. OUTSIDE EMPLOYMENT

25. Staff members are prohibited by the provisions of regulation 1.4 from engaging in any activity incompatible with their status as international civil servants, and they are required to obtain the prior approval of the Secretary-General in any case where reasonable doubt might, in principle, arise. Thus, rule 101.6, paragraph (a) of the Staff Rules 37/ promulgated on 1 December 1952 states:

"Staff members shall not engage in any continuous or recurring outside occupation or employment without the prior approval of the Secretary-General."

c. FINANCIAL INTERESTS

26. Staff members are restricted in regard to the financial holdings they may have under the following provisions of rule 101.6 of the Staff Rules: 38/

"(b) No staff member may be actively associated with the management of, or hold a financial interest in, any business concern if it were possible for him to benefit from such association or financial interest by reason of his official position with the United Nations.

36/ G A (VII), Annexes, a.i. 75, p. 3, A/2364, para. 24.

37/ ST/AFS/SGB/94. See also rule 12, SGB/81 (25 June 1948); rule 12, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 12, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 12, ST/AFS/SGB/81/Rev.3 (6 July 1951).

38/ ST/AFS/SGB/94 (1 December 1952). See also rule 10, SGB/81 (25 June 1948); rules 10 and 18, ST/AFS/SGB/81/Rev.1 (16 June 1950); rules 10 and 18, ST/AFS/SGB/81/Rev.2 (1 January 1951); rules 10 and 18, ST/AFS/SGB/81/Rev.3 (6 July 1951).

"(c) A staff member who has occasion to deal in his official capacity with any matter involving a business concern in which he holds a financial interest shall disclose the measure of that interest to the Secretary-General.

"(d) The mere holding of shares in a company shall not constitute a financial interest within the meaning of this rule unless such holding constitutes a substantial control."

d. ACTIVITIES CONNECTED WITH INFORMATION MEDIA

27. With certain exceptions, staff members are specifically prohibited from making public pronouncements relating to the purposes, activities, or interests of the United Nations. This prohibition is contained in rule 101.6 of the Staff Rules 39/ promulgated by the Secretary-General on 1 December 1952, the relevant parts of which provide:

"(e) Staff members shall not, except in the normal course of official duties or with the prior approval of the Secretary-General, perform any one of the following acts, if such act relates to the purposes, activities, or interests of the United Nations:

- (i) issue statements to the press, radio or other agencies of public information;
- (ii) accept speaking engagements;
- (iii) take part in film, theater, radio or television productions;
- (iv) submit articles, books or other material for publication."

e. USE OF UNPUBLISHED INFORMATION TO PRIVATE ADVANTAGE

28. Regulation 1.5 of the Staff Regulations adopted by the General Assembly in resolution 590 (VI) prohibits staff members from using unpublished information to private advantage, and provides that:

"Staff members...shall not communicate to any person any information known to them by reason of their official position which has not been made public ...nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Secretariat."

29. At the sixth session of the General Assembly, during the discussions in the Fifth Committee preceding the adoption of the Staff Regulations annexed to General Assembly resolution 590 (VI), the question was raised 40/ whether any legal sanction could be applied against former staff members who violated the above-quoted staff regulation. In reply to this question, the Chairman of the Committee stated that the United Nations could not take any legal sanctions in such cases, but that the last sentence of the regulation impressed upon former staff members the moral obligation not to use to private advantage any unpublished information obtained by them while

39/ ST/AFS/SGB/94. See also rule 8, SGB/81 (25 June 1948); rule 8, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 8, ST/AFS/SGB/81/Rev. 2 (1 January 1951); rule 8, ST/AFS/SGB/81/Rev.3 (6 July 1951).

40/ G A (VI), 5th Com., 333rd mtg., paras. 39-42.

members of the staff. The Secretary-General associated himself with the reply of the Chairman.

I. NON-ACCEPTANCE OF HONOURS, FAVOURS OR GIFTS

1. In general

30. The Fifth Committee, when discussing the permanent staff regulations at the six session of the General Assembly, had before it two draft texts for a regulation concerning the acceptance of honours, favours or gifts by members of the Secretariat. The draft texts had been submitted by the Secretary-General and by the Advisory Committee on Administrative and Budgetary Questions respectively, 41/ and read as follows:

"No staff member shall accept any honour, decoration, favour, gift or remuneration from any government, or from any other source external to the Organization, if such acceptance is incompatible with his status as an international civil servant." 42/

"No member of the Secretariat shall accept any honour, decoration, favour, gift or fee from any government or from any other source external to the Organization during the period of his appointment, except for war service." 43/

31. In the course of the discussions, 44/ the Chairman of the Advisory Committee on Administrative and Budgetary Questions stated that, in the view of the Advisory Committee, the adoption of a comparatively rigid text was the only method of safeguarding the Secretary-General against embarrassment. In the case of war service the Committee had considered that, in view of the time-lag in the award of military decorations, staff members could not reasonably be deprived of decorations earned before entering the Secretariat. While the solution advocated by the Advisory Committee was not ideal, it seemed preferable to recommend a somewhat rigid text.

32. In its report 45/ submitted to the General Assembly at its sixth session, the Advisory Committee, in recommending the adoption of the draft text which it had proposed (see paragraph 30 above), stated:

"The Committee presumes that only in very exceptional cases will the Secretary-General concur in any derogation from the provision, for example, where it is proposed to confer an honorary degree upon a member of the Secretariat or to award a decoration in recognition of services rendered prior to a member's appointment to the Secretariat."

33. With reference to the draft text (see paragraph 30 above) submitted by him, the Secretary-General stated 46/ in the Fifth Committee that he had tried to keep the number of awards as low as possible, but that he always had to bear in mind the need

41/ For the functions of the Advisory Committee on Administrative and Budgetary Questions, and its relationship to the Fifth Committee, see in this Repertory under Article 101.

42/ G A (VI), Annexes, a.i. 45, A/1855, appendix, para. 1.7.

43/ Ibid.

44/ G A (VI), 5th Com., 333rd mtg., paras. 53-75; 334th mtg., paras. 1-12.

45/ G A (VI), Annexes, a.i. 45, A/1855, appendix, para. 1.7.

46/ G A (VI), 5th Com., 333rd mtg., paras. 66 and 67.

to avoid giving offence. Awards served to enhance the prestige of the Organization, and they had never been a source of embarrassment either to him or to his staff. Honours conferred on them were regarded as honours conferred on the United Nations.

34. In support of the draft text submitted by the Advisory Committee, it was stated that members of the Secretariat worked anonymously and that any decorations, honours et cetera, should be conferred upon the Organization and not upon individual members of the staff. Any decorations or honours should be granted to a member of the Secretariat after separation, and not while he or she was serving with the United Nations.

35. In support of the draft text submitted by the Secretary-General, it was stated that the draft text proposed by the Advisory Committee was too rigid. Notwithstanding the interpretation given by the Advisory Committee to its own text, the Secretary-General would be precluded from authorizing any departures at all from the regulation.

36. The Secretary-General indicated his willingness to accept the draft text submitted by the Advisory Committee on condition that a reference to the interpretation 47/ of that text by the Advisory Committee be included in the report of the Rapporteur to the General Assembly. The draft text submitted by the Advisory Committee was thereupon adopted by the Fifth Committee and became staff regulation 1.6. 48/ However, the Fifth Committee expressly decided 49/ against making specific reference in its report to the interpretation of that text by the Advisory Committee.

37. In his report 50/ on personnel policy, submitted to the General Assembly at its ninth session, the Secretary-General proposed that staff regulation 1.6 on the acceptance by members of the Secretariat of honours, decorations, gifts et cetera, be revised as experience had proved the regulation to be unsatisfactory and, in many instances, unworkable. He proposed that the current regulation be replaced by a text identical with the draft text (see paragraph 30 above) which he had submitted to the Assembly at its sixth session.

38. At the request of the Fifth Committee, the Advisory Committee on Administrative and Budgetary Questions considered the above-mentioned proposal. In its report, 51/ submitted at the same session, the Advisory Committee expressed the opinion that, while grounds might exist for some relaxation of the rigid principle embodied in the text then in existence, there was, nevertheless, some advantage in maintaining that text, and recommended instead that the Secretary-General should be authorized, in applying the regulation, to be guided by the interpretative comment (see paragraph 32 above) which the Advisory Committee had previously offered.

39. In the discussion 52/ of the proposal of the Secretary-General in the Fifth Committee, most of the views advanced at the sixth session on the same question were reiterated. On the one hand, there was support for the restrictive text of regulation 1.6 adopted by the General Assembly by resolution 590 (VI), with no

47/ See paragraph 32 above.

48/ G A resolution 590 (VI). See also G A resolution 13 (I), regulation 9; rule 11, SGB/81 (25 June 1948); rule 11, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 11, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 11, ST/AFS/SGB/81/Rev.3 (6 July 1951).

49/ G A (VI), Annexes, a.i. 45, A/2108, p. 35, para. 12.

50/ G A (IX), Annexes, a.i. 54, A/2777, paras. 10-13.

51/ *Ibid.*, A/2788, paras. 6-8.

52/ G A (IX), 5th Com., 469th-472nd mtgs.

exceptions to be permitted in its application, and on the other hand it was felt that some relaxation in its provisions was justified. Of the representatives who took the latter view, some agreed with the method suggested by the Advisory Committee for achieving that purpose, others were prepared to accept the revision of the rule as proposed by the Secretary-General, while a third group wished to see the principle embodied in the proposal submitted by the Secretary-General expressed in clearer and more precise terms.

40. The opinion was also expressed that a distinction should be made between honours, decorations, favours, gifts and remuneration accorded by a Government, and those accorded by sources external to the United Nations other than Governments. A draft resolution 53/ under which this distinction would be taken into account was adopted by the Fifth Committee. It was adopted by the General Assembly and became resolution 882 (IX), and under its terms the text of regulation 1.6 of the Staff Regulations adopted by the General Assembly under resolution 590 (VI) was replaced by the following text:

"No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 of the staff regulations and with the individual's status as an international civil servant."

ii. Academic awards

41. During the discussions on the Staff Regulations in the Fifth Committee at the sixth session of the General Assembly, consideration was given to the question whether the term "honour" should be deemed to include academic awards so as to preclude acceptance of such awards by members of the Secretariat.

42. The Chairman of the Advisory Committee, in explaining the text proposed by that Committee, stated 54/ in the Fifth Committee that the Advisory Committee had decided against making an exception in favour of academic awards, having been guided by the fact that universities in some countries were state institutions the decisions of which might be influenced by political considerations.

43. The Secretary-General declared 55/ that he did not interpret the word "honour" to cover academic awards. He added that some four awards of that kind were accepted annually, and were regarded as an honour to the United Nations. If the intention was to preclude the acceptance of academic awards, that should be clearly indicated in the regulation. In his own view, however, acceptance of such awards should be permitted.

44. Some representatives were of the opinion that there was justification for making a distinction between scientific or academic awards and other honours or decorations. While the latter should be conferred upon the United Nations as such, academic awards were conferred upon individuals. If the United Nations was to have a highly qualified staff, staff members must be free to undertake academic work and to receive any awards to which they might, as a result, be entitled.

53/ G A (IX), Annexes, a.i. 54, p. 9, A/C.5/L.314.

54/ G A (VI), 5th Com., 333rd mtg., para. 64.

55/ Ibid., paras. 66 and 67.

45. The Committee did not specifically settle the question whether the acceptance of academic awards should be precluded. However, it included in its report 56/ to the General Assembly the statement by the Secretary-General that he did not interpret the word "honour", as used in the proposed regulation, to cover academic awards.

iii. Travelling expenses, commemorative tokens, and social gifts

46. Regulation 1.6 of the Staff Regulations adopted by the General Assembly under resolution 590 (VI) was interpreted in rule 101.7 57/ of the Staff Rules, promulgated on 1 December 1952, to exclude certain items from the general prohibition set forth in the regulation. The rule provides:

"Staff Regulation 1.6 shall not preclude staff members from:

- (a) accepting reimbursement of actual travelling and subsistence expenses for participating in film, theater, radio or television productions, or for lecture or speaking engagements;
- (b) accepting tokens of a commemorative or honorary character in recognition of important achievement in work related to the United Nations such as commemorative scrolls, trophies or other like articles;
- (c) accepting courtesies which constitute a part of normal social relations;"

g. POLITICAL ACTIVITIES

47. Staff regulation 1.7, 58/ as originally adopted by the General Assembly under resolution 590 (VI), read as follows:

"Any member of the Secretariat who becomes a candidate for a public office of a political character shall resign from the Secretariat."

48. In his report 59/ on personnel policy submitted to the General Assembly at its eighth session, the Secretary-General proposed that this regulation be modified. The pertinent paragraphs of the report read as follows:

"23. Perhaps the most obvious need for clarification or amplification concerns political activities of staff members. In contrast to activities of a subversive or otherwise criminal nature, it is, of course, normally considered a right of citizenship, and at times even a duty, for a person to engage in the political life of his society.

"24. Such participation in itself, of course, cannot be said to 'reflect unfavourably' on a staff member. Even less can the fact that a staff member engages in political activities be regarded a priori as 'unsatisfactory service' or 'misconduct'. On the other hand, the special nature of

56/ G A (VI), Annexes, a.i. 45, A/2108, para. 12.

57/ ST/AFS/SGB/94.

58/ See also G A resolution 13 (I), regulation 8; and rule 13, SGB/81 (25 June 1948); rule 13, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 13, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 13, ST/AFS/SGB/81/Rev.3 (6 July 1951).

59/ G A (VIII), Annexes, a.i. 51, p. 5, A/2533.

international service, the often highly delicate relations of the Secretariat with the governments of Member States, and similar circumstances may make it most inadvisable for an international civil servant to engage in political activities. In a particular case, for example, it may be obvious to the Secretary-General that certain political activities of a staff member impede or frustrate the proper working of the Organization because those activities cast doubt on the neutrality and independence of the staff in relation to domestic controversies in a Member State or with respect to differences between Member States.

"25. The Secretary-General, as chief administrative officer of the Organization, should have the right to exercise his judgment in these matters, though, of course, this should always be done in a way free from arbitrariness and discrimination. This is necessary in order to permit him to meet his responsibility for the maintenance of the Charter standards and the impartiality of the staff. A staff member may consider his political activities appropriate to and consistent with his international status, and may, for that reason, be unwilling to accept the judgment of the Secretary-General to the contrary. It is my considered view that the sound operation of the Organization requires that such a staff member choose between continuing his political activities or remaining an employee of the United Nations.

"26. However, the right of the Secretary-General, in spite of its background in Article 100 of the Charter, to place such a choice before an employee is, under the present regulations, at best doubtful. This is a weakness in the present system, requiring a clarification which would give expression to the right of the Secretary-General to decide whether or not certain political activities are compatible with an employee's international status. I have reached the conclusion that, for this reason, there should be added to the staff regulations an explicit statement that political activities, apart from the civic right of voting, shall be prohibited, unless otherwise authorized in accordance with staff rules issued by the Secretary-General."

The revised text of the regulation proposed by the Secretary-General in this connexion together with his comments thereon and an account of further discussion (see paragraph 50 below) concerning political activities by staff members were included in another part of his report as shown below:

"73. It is proposed to replace the present staff regulation 1.7 by a new provision reading as follows:

'Unless otherwise authorized in accordance with staff rules issued by the Secretary-General, staff members shall not engage in any political activities outside the scope of their official duties, other than voting.'

"74. Staff members should obviously not take part in political campaigns, or in political canvassing or management. This covers also, for example, public statements on issues of a political character, outside the scope of their official functions. The provision recognizes the principle that in certain areas of activities, legitimately open to the ordinary citizen, the international civil servant can play no part, or only a limited part. Some types of political activities cannot adversely affect the United Nations; this might be the case, for example, with purely local political activities not involving issues of more than local interest, such as service under

ordinary conditions on a school board or town council. Similar considerations are applicable in cases of organizations which primarily are of a non-political character - for example professional or philanthropic associations.

"75. It is too early to define in detail the implementation of the prohibition, which must be left to be worked out in practice by the Secretary-General.

"76. The provision, of course, has no retroactive implications. Previous activities are of significance only if they should reflect unfavourably on the staff member's present integrity or administrative suitability under the standards established by the Charter.

"77. In the implementation of the provision the staff member's rights to his religious or political convictions should be fully respected."

49. The proposed text of staff regulation 1.7 submitted by the Secretary-General evoked the following comment 60/ from the Advisory Committee on Administrative and Budgetary Questions to which the above-mentioned report of the Secretary-General had been referred by the Fifth Committee:

"18. The Advisory Committee concurs in the substitution of a new provision for the existing staff regulation 1.7. The first phrase, however, of the paragraph proposed by the Secretary-General appears to be unnecessary. A political activity that falls outside the scope of a staff member's official duties cannot be regarded as an activity compatible with the discharge of those duties. It is therefore precluded under regulation 1.4. The Committee considers that the revised text which it recommends as adequate for any possible contingency."

Except for the deletion of the words "Unless otherwise authorized in accordance with staff rules issued by the Secretary-General," the text proposed by the Advisory Committee was the same as that proposed by the Secretary-General.

50. The proceedings in the Fifth Committee on this point were summarized in its report 61/ to the General Assembly, as follows:

"14. There was a greater difference in opinion with regard to the Secretary-General's proposed amendment to staff regulation 1.7 relative to political activities on the part of staff members...A text was also submitted by the United Kingdom (A/C.5/L.255) which, with drafting amendments accepted by the representative of the United Kingdom, provided that staff members might exercise the right to vote but should not engage in any political activity which was inconsistent with or might reflect upon the independence and impartiality required by their status as international civil servants. The representative of the United Kingdom explained that his text linked staff regulation 1.7 with the amendment to staff regulation 1.4 which had already been approved. The representative of the Netherlands believed that there was no wide difference in substance between the text proposed by the Secretary-General and that of the United Kingdom (A/C.5/L.255).

60/ G A (VIII), Annexes, a.i. 51, p. 21, A/2555.

61/ G A (VIII), Annexes, a.i. 51, p. 38, A/2615. For discussion of the proposed amendment to staff regulation 1.4 referred to in paragraph 14 of the quotation, see in this Repertory under Article 101.

"15. A few representatives believed that a proposal to limit the political activities of staff members would interfere with their civic rights as well as the basic right of free association; others, while stating that members of their national service had the right to engage in political activities, recognized that special requirements for members of the international Secretariat were necessary to ensure their impartiality; it was noted that prohibition of political activities had been approved by the representatives of the staff. Still other representatives, while agreeing in principle with the amendment, felt that the term 'political activities' should be more clearly defined, particularly as to whether it included passive membership in a political party. The Chairman of the Advisory Committee, at the 417th meeting of the Fifth Committee, explained that the term 'political activity' in the Advisory Committee text referred only to active participation and not to passive membership in a political party. Representatives favouring the Advisory Committee text thought that it would avoid difficulty in determining what political activities were compatible with employment, and would not require the Secretary-General to act as arbiter.

"16. The Committee noted the statement of the Secretary-General, made at the 412th meeting of the Fifth Committee on 25 November, that it was his intention to implement the regulation prohibiting political activities by a staff rule which, in the case of party membership, would be drafted along the following tentative lines: 'Membership of a legal political party is permitted, provided that such membership, in the case of the staff member concerned, does not entail subjection to party discipline or action in favour of the party, other than the payment of normal financial contributions'. The Committee suggests that the Secretary-General, when he is making the final draft of this rule, should also consider the text put forward by the United Kingdom which is as follows:

'Membership of a political party is permitted, provided that such membership does not entail any positive action, current or potential, other than voting or payment of normal financial contributions, contrary to the provisions of staff regulation 1.7. In any case of doubt, the staff member should consult the Secretary-General'.

"The Secretary-General explained that his reference to a legal political party did not imply that membership in a party which was illegal under the laws of the country of the staff member concerned would in all cases be a violation of staff regulation 1.7 but that each such case would have to be considered individually. The representative of the United Kingdom explained that the United Kingdom proposal deliberately omitted the word 'legal', as membership of illegal parties would be debarred under staff regulation 1.4. The representative of Syria, who had suggested the addition of the phrase 'political movement' said that he would not insist on this proposal in view of the statement by the representative of the United Kingdom that the term 'political activity' was broad enough to include the term.

"17. The text proposed by the United Kingdom was approved at the 417th meeting on 1 December by 41 votes to none, with 8 abstentions."

51. On the basis of this decision, the Fifth Committee recommended the adoption by the General Assembly of a draft resolution under which the revised text of staff regulation 1.7 would read as follows:

"Staff members may exercise the right to vote but shall not engage in any political activity which is inconsistent with or might reflect upon the independence and impartiality required by their status as international civil servants."

52. The draft resolution recommended by the Fifth Committee was adopted by the General Assembly and became resolution 782 (VIII).

53. On 8 March 1954, the Secretary-General promulgated rule 101.8 implementing the new text of regulation 1.7. This new staff rule reads as follows:

"(a) Membership in a political party is permitted provided that such membership does not entail action, or obligation to action, contrary to staff regulation 1.7. The payment of normal financial contributions shall not be construed as an activity contrary to staff regulation 1.7.

"(b) In any case of doubt as to the interpretation or application of staff regulation 1.7 and the present rule, the staff member concerned shall request a ruling from the Secretary-General." 62/

h. THE QUESTION OF ALLEGED SUBVERSIVE ACTIVITIES

1. Background

54. The question of alleged subversive activities by staff members of the United Nations is one to which much attention has been devoted by the organs concerned.

55. The background and basic questions involved were fully discussed by the Secretary-General in his report 63/ on personnel policy submitted to the General Assembly at its seventh session. The views expressed in this report were based upon conclusions and recommendations 64/ of an ad hoc Commission of Jurists appointed by the Secretary-General to advise him on the action he should take to deal with the situation which arose out of allegations made by United States authorities of subversive activities on the part of certain staff members of United States nationality.

56. With regard to the background of the problem, the Secretary-General stated in his report 65/ to the General Assembly that:

"10. To place the problem in its proper setting, it should also be kept in mind that the Secretariat of the United Nations works in a glass house not only physically, but in every respect. It is not a profitable place for spies and saboteurs. Almost all meetings and documentation of the United Nations are open for all to see and hear. No military secrets are ever handled by the Secretariat. Furthermore, the policies and programmes of the United Nations in all fields, political, economic, social and financial, are determined by the governments of Member States, not by the Secretariat. The work of the Secretariat in carrying out these policies and programmes is subject to the constant scrutiny of the governments."

62/ ST/SGB/94/Amend.1.

63/ G A (VII), Annexes, a.1. 75, p. 3, A/2364.

64/ Ibid., A/2364, annex III.

65/ Ibid., A/2364, p. 5.

The report also stated:

"45. It should be noted that, with a single exception, no staff member has ever been indicted or charged in any court with espionage or any other subversive activity. In one case a staff member - not of United States nationality - was convicted of espionage in the United States and left the country. The espionage in no way related to the staff member's functions as a United Nations official. In a further case a staff member - also not of United States nationality - was terminated while on home leave, after the United States Government said he had attempted espionage."

57. The report of the Secretary-General was considered by the General Assembly at its seventh session in plenary meeting. The views 66/ expressed by the Secretary-General in his report and by representatives in the course of the discussion, as well as the action taken by the Assembly, are set forth below.

58. It may be noted here that a report 67/ on personnel policy was also submitted by the Secretary-General and discussed by the General Assembly at its eighth session. The second report was broader in scope than the first, but also dealt with the question of alleged subversive activities. However, since many of the views expressed on that question during the discussion 68/ at the eighth session on the Secretary-General's report were restatements of opinions advanced during the seventh session, only those of the views expressed during the eighth session which had not been advanced at the seventh session are dealt with below.

ii. The definition of the term "subversive activities"

59. In expressing his views as to the action which should be taken with regard to a staff member who might engage in subversive activities against the government of a Member State, the Secretary-General, in his report, explained 69/ the context in which he used the term "subversive activities" as follows:

66/ For texts of relevant statements, see G A (VII), Plen., 416th mtg.: Belgium, paras. 120-159; Cuba, paras. 64-95; Greece, paras. 172-187; India, paras. 96-119; New Zealand, paras. 30-63; Norway, paras. 188-212; Sweden, paras. 160-171; United States, paras. 1-29; 417th mtg.: Australia, paras. 119-158; Ecuador, paras. 75-118; Egypt, paras. 5-33; Netherlands, paras. 34-74; 418th mtg.: Argentina, paras. 154-173; Byelorussian SSR, paras. 1-39; Canada, paras. 54-82; China, paras. 195-203; France, paras. 83-123; Israel, paras. 40-53; Syria, paras. 124-153; Union of South Africa, paras. 174-194; 419th mtg.: Dominican Republic, paras. 57-80; El Salvador, paras. 123-149; Indonesia, paras. 1-33; Mexico, paras. 81-122; Panama, paras. 34-56; 420th mtg.: Philippines, paras. 33-62; Poland, paras. 4-32; Uruguay, paras. 82-133; Venezuela, paras. 63-81; 421st mtg.: Chile, paras. 71-99; Iraq, paras. 55-70; Liberia, paras. 1-21; United Kingdom, paras. 22-54; Yugoslavia, paras. 100-121.

67/ G A (VIII), Annexes, a.i. 51, p. 1, A/2533.

68/ G A (VIII), 5th Com., 406th-422nd mtgs.

69/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

"97...The expression 'subversive activities' is used, not with any special technical meaning, but in its ordinary sense, which denotes activities directed toward the overthrow of a government by force, including conspiracy toward such overthrow and incitement and advocacy of it."

iii. Policy towards a staff member who might engage in subversive activities

60. As regards his policy towards a staff member who might engage in subversive activities, the Secretary-General, in his report, 70/ stated that:

"7...[The Secretary-General] has always upheld the policy that no member of the Secretariat should engage in subversive activities against the government of any Member State. This does not mean that a staff member must agree with the government of the State of which he is a national. But so long as he remains in the Secretariat, it is his clear obligation under the Charter and the Staff Regulations to take no part in any activity, either open or secret, aimed at subverting or overthrowing the government of a Member State."

61. There was general agreement in the General Assembly that subversive activities by staff members against a Member State would constitute a serious breach of the provisions of Article 100, and could not be tolerated or condoned under any circumstances.

iv. Basis for action in specified cases

(a) In general: evidence required

62. In his report, the Secretary-General dealt 71/ with the question of the factors upon which action on particular cases which might arise should be based. As to the general principle involved, he stated:

"9. It is, moreover, of fundamental importance that the Organization should comply with elementary requirements of justice and fairness in dealing with individual cases. Vague suspicions without backing must not take the place of tangible and convincing evidence; idle or malicious accusations must be guarded against and arbitrary and hasty inferences must be avoided. In the words of the Assistant Secretary-General for Administrative and Financial Services, in the memorandum attached to the present report as annex I, '...no organization dedicated to law and order in world affairs can hope to survive if its own administrative actions are arbitrary and precipitate, based on mere suspicion and devoid of the due process to which all civilized peoples are dedicated'."

63. Similar views were expressed by a number of representatives who referred to the question dealt with in the above-quoted passage.

(b) Claim of the privilege against self-incrimination

64. With regard to claims of the privilege against self-incrimination, and refusals to reply to questions put by authorized governmental organs, the Secretary-General in his report, asserted that cases might exist in which the United Nations should ignore

70/ Ibid.
71/ Ibid.

the claim when made in a context which had no bearing on the functioning of the Organization or on the fitness of the employee to be an international civil servant. However, the Secretary-General went on, the plea of privilege would be of concern to the United Nations in an inquiry concerning such matters as subversive activities. The report of the Secretary-General continued: 72/

"89. Thus, in the cases of the United Nations staff members who refused to answer questions before the Senate Sub-Committee it was apparent that the possible area of guilt related to crimes involving subversive activities. The use of the privilege in that context naturally gave rise to the belief that there was reasonable ground for the witness to fear that he might be convicted of a crime involving the security of the United States.

"90. It cannot be doubted that a situation of this kind impairs the relationship of mutual confidence and trust which must exist between the international official and the governments of Member States. Especially in a time of serious political tension and concern over national security, the United Nations staff member has a positive obligation to refrain from conduct which will draw upon himself grave suspicion of being a danger to the security of a particular State. When he has refused to answer official interrogations relating to crimes involving subversive activities, he has by his own free choice violated that obligation; he has thereby contributed substantially to undermining the confidence which the international official is required to maintain.

"91. For these reasons, the Secretary-General has followed the recommendation of the Commission of Jurists that in the future staff members should be dismissed for violation of their fundamental obligations, particularly under article 1.4 of the Staff Regulations, when they have used the privilege against self-incrimination in official inquiries concerned with subversive activities and espionage."

65. Several representatives agreed with the view of the Secretary-General as well as with the reasons upon which it was based. The opinion was expressed that staff members should bear the full consequences arising out of the claim of the privilege against self-incrimination, notwithstanding their right to invoke the privilege.

66. The opinions set forth below were among those expressed by representatives who disagreed with the views of the Secretary-General. (1) Automatic dismissal resulting from a plea of the privilege would be in disagreement with the principles of law and justice accepted in most jurisdictions since those who claimed the privilege could not ipso facto be considered guilty of subversive activities. (2) The plea of the privilege should lead the Secretary-General to institute inquiries rather than result in the automatic dismissal of the staff member concerned. (3) It was doubtful whether the mere plea of the privilege could constitute a breach of fundamental obligations, and whether and to what extent a breach of fundamental obligations was, or should be, a ground for the termination of the staff member concerned. (4) It was difficult to understand how the use of a privilege accorded by law could be regarded as misconduct under the Staff Regulations and the Staff Rules.

67. In his report on personnel policy to the General Assembly at its eighth session,

72/ G A (VII), Annexes, a.i. 75, p.3, A/2364. For a discussion of the meaning and application of this privilege under the law of the United States, see ibid., paras. 75-85.

the Secretary-General declared 73/ with regard to the privilege against self-incrimination, that:

"70. ...Such use of the privilege is a constitutional right in some countries and consequently, it may be inappropriate to consider it as a ground for disciplinary action. However, the invocation of the privilege in an official inquiry concerning subversive activities must be recognized as a serious matter, since it may give rise to doubt as to the staff member's integrity. Under certain conditions it may be considered as incompatible with the status of an international civil servant. But a conclusion to the effect that the staff member should cease to serve in the Secretariat because of his invoking the privilege cannot be drawn without further investigation. It can be reached only after investigation of the circumstances; the staff member should be given an opportunity to present his side of the case and to inform the Secretary-General of the reasons why he invoked the privilege. If this investigation gives an explanation of the action which removes its unfavourable implications, termination is not justified on the basis of the standards proper to the United Nations."

(c) Mere accusation or suspicion

68. Amplifying his earlier remarks concerning the requirements of justice and fairness in dealing with individual cases, the Secretary-General stated 74/ in his report on personnel policy to the General Assembly at its seventh session, with respect to staff members accused or suspected of subversive activities, that:

"94. The Secretary-General's authority to dismiss staff members cannot be exercised arbitrarily. Such decisions must not only remain within the limit of his powers as defined by the Charter and the Staff Regulations, but must comply with the elementary requirements of justice. For the Secretary-General to dismiss a staff member on the basis of the mere suspicion of a government of a Member State or a bare conclusion arrived at by that government on evidence which is denied the Secretary-General would amount to receiving instructions in violation of his obligation under Article 100, paragraph 1 of the Charter not to receive, in the performance of his duties, instructions from any government. Further, his dismissal of a permanent official without adequate evidence would be a denial of that reasonable security of tenure which has repeatedly been recognized as indispensable to the creation of an efficient and devoted international civil service.

"...

"98. It should be required that there be reasonable ground for believing accusations of this type against staff members. This means that charges must be supported by a preponderance of the evidence. In determining whether there is such reasonable ground, the Advisory Panel and the Secretary-General should give proper weight to national laws and legislative findings and to the findings of fact of national courts and tribunals, in addition to the evidence of the facts of each case."

69. In this connexion, it was asserted by several representatives that presumptions under law must always be respected, and that the burden of proof was on the authority submitting derogatory information.

73/ G A (VIII), Annexes, a.i. 51, p. 1, A/2533.

74/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

(d) Past conduct as indicative of present or future conduct

70. The Secretary-General stated in his report on personnel policy to the General Assembly at its seventh session, that a staff member should not be retained in the employment of the United Nations if there was reasonable ground for believing that the staff member was "likely to engage" in subversive activities. He added: 75/

"99. For a finding that a staff member is likely to engage in subversive activities, something more than a remote possibility of his doing so must be shown. Of necessity, such a finding must largely be based upon the staff member's past conduct. However, convincing evidence that in the past an official had engaged in subversive activities would not necessarily lead to a finding that he was likely to be engaged in such activities either at present or in the future. Later conduct and attitudes might show there was no likelihood of his engaging in such activities again."

71. In support of the above-quoted view of the Secretary-General, it was asserted in the discussion in the General Assembly that past conduct was a relevant and probably the only guide to future performance. No one was ever considered for employment without a scrutiny of his previous record, although appraisal of future conduct was admittedly difficult.

72. On the other hand, there was dissent on the ground that staff members should not be punished for presumed inclination or intent, which could not be proved and which belonged not to the domain of acts but to the realm of conscience. The concept of "likelihood" was not only extraneous to the Staff Regulations, but hazardous as well.

73. A new approach was taken by the Secretary-General in his report to the General Assembly at its eighth session. He stated: 76/

"65. The last report of the Secretary-General on personnel policy introduced the discussion of the problem of past subversive activities by staff members the criterion whether the person concerned could be reasonably believed to be 'likely to engage' in such activities. This criterion, from a legal point of view, is open to the objection that it involves a judgment as to what may be anticipated in the future. The notion of a consideration of past activities in terms of future possibilities should be discarded. The only sense in which the assumed likelihood may be of relevance should be covered by the standard of integrity required by Article 101 of the Charter and thus considered in the light of the rules concerning present suitability generally applied."

(e) Information furnished by Governments and other sources

74. Discussing the policy to be followed with respect to derogatory information about staff members, the Secretary-General stated in his report to the General Assembly at its seventh session: 77/

"100. ...Such information may be transmitted by a government or may come from other sources. In the latter case it may be of such slight weight or relevance that the Secretary-General should decide that no action is required; or on the

75/ Ibid.

76/ G A (VIII), Annexes, a.i. 51, p.1, A/2533.

77/ G A (VII), Annexes, a.i. 75, p.3, A/2364. For additional discussion, see paras. 90-92 below.

other hand, it may warrant further investigation and submission to the Advisory Panel.

"101. The Secretary-General should give the most serious consideration to evidence transmitted to him by the government of a Member State. Any communication from a government concerning subversive activities on the part of a staff member puts the Secretary-General on inquiry, and such cases, particularly when permanent staff members are involved, should in the ordinary course be submitted to the Advisory Panel."

75. In the discussion on this subject in the General Assembly, the view was expressed that, as regards the findings of Governments concerning activities of members of the staff, such findings arrived at in extra-judicial procedures, or as a result of investigations which fell short of generally accepted standards of due process of law, could not in themselves be a valid reason for discharge or termination.

(f) Admissions by staff members

76. With respect to admissions made by the staff member himself, the report of the Secretary-General stated: 78/

"103. Finally, some evidence, for example admissions by a staff member in the course of an official proceeding, may be sufficiently conclusive under the standard set out above to permit the Secretary-General to take action immediately without any need of advice from the Panel."

v. Actions with regard to personnel taken by the Secretary-General involving application of policy

77. In his report to the General Assembly at its seventh session, the Secretary-General explained the actions with regard to personnel taken by him to give effect to the policy he had adopted. In this connexion the report stated: 79/

"65. While awaiting the report of the jurists the Secretary-General had in the meantime taken such action as he considered was clearly within his authority. Temporary employees who had invoked the privilege against self-incrimination during the hearings of the United States Senate Internal Security Sub-Committee and with respect to whom the Secretary-General had subsequently received additional confidential information from reliable sources, were dismissed on the ground that their employment was no longer in the interest of the United Nations. Those staff members with permanent appointments who had refused to answer questions on the ground of the privilege of self-incrimination were placed on compulsory leave. On 5 December, acting on the basis of the jurists' opinion, the Secretary-General terminated the permanent staff members who had pleaded the privilege after first giving them an opportunity to change their minds about testifying. In his letters of termination the Secretary-General wrote:

'On 1 December 1952, I sent you a copy of the opinion of the Commission of Jurists which was submitted to me on 29 November 1952, and told you of my decision to accept the recommendation of the Commission to the effect that a person who has

78/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

79/ Ibid. For subsequent proceedings relating to the Administrative Tribunal, see also in this Repertory under Article 101.

refused to answer such questions is unsuitable for continued employment by the United Nations.

'In my letter I stated that unless I was informed by noon yesterday that you had notified the appropriate United States authorities of your intention to withdraw the plea of privilege and answer the pertinent questions put to you, I would be compelled to take action in your case in accordance with the recommendation of the Commission of Jurists.

'Since your letter of... does not so inform me, I have decided that your action constitutes a fundamental breach of the obligations laid down in Staff Regulation 1.4 and that you are unsuitable for continued employment in the Secretariat.'

78. The Secretary-General also informed 80/ the General Assembly that he had decided to accept the recommendation of the Commission of Jurists with regard to the establishment of an Advisory Panel to assist him in the application of his policy with respect to specific cases that might arise in future.

79. In the course of the discussion in the General Assembly, the opinion was expressed, on the one hand, that the Secretary-General had acted within his constitutional authority and in conformity with the principles that it was his function to interpret. On the other hand, it was asserted that the Secretary-General had acted in a manner not provided for in the Staff Regulations, and that a new form of separation, partly bearing the character of a termination and partly that of a disciplinary measure, had been created. 81/

vi. Action taken by the General Assembly

80. The General Assembly, at its seventh session, had before it two draft resolutions relating to the report of the Secretary-General on personnel policy.

81. The first 82/ of these draft resolutions read as follows:

"The General Assembly,

"Having received the report of the Secretary-General on personnel policy (A/2364),

"Taking note of the satisfaction reported by the Secretary-General with respect to the efficiency and integrity of the Secretariat,

"Considering the importance of maintaining and developing an international civil service in accordance with the purposes and provisions of the Charter,

"Considering that the problem calls for a close and detailed study,

"1. Resolves to appoint a Committee composed of fifteen members to be nominated by the President, to study the report of the Secretary-General on personnel policy in all its implications and to report to the General Assembly at its eighth session;

80/ G A (VII), Annexes, a.i. 75, A/2364, paras. 63 and 71, and Annexes III and IV; see also G A (VII), Plen., 413th mtg., para. 57.

81/ For reasons of termination of appointments of staff members, see also in this Repertory under Article 101.

82/ G A (VII), Annexes, a.i. 75, p. 46, A/L.145/Rev.4.

"2. Requests the Secretary-General to communicate the report of the Committee to Member States."

82. The General Assembly rejected 83/ this draft resolution by 29 votes to 21, with 8 abstentions. By 41 votes to 13, with 4 abstentions, the Assembly then adopted 84/ the second draft resolution, which became resolution 708 (VII), the text of which reads as follows:

"The General Assembly,

"Recalling the following provisions of Article 100 and 101 of the Charter:

"Article 100

"1. 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.

"2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

"Article 101

"1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

"...

"3. 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 regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.',
and

"Having reviewed and considered the report of the Secretary-General on personnel policy,

"1. Expresses its confidence that the Secretary-General will conduct personnel policy with these considerations in mind;

"2. Requests the Secretary-General to submit to the General Assembly at its eighth session a report on the progress made in the conduct and development of personnel policy, together with the comments of the Advisory Committee on Administrative and Budgetary Questions thereon;

"3. Invites the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions to submit, after appropriate consultations with the

83/ G A (VII), Plen., 422nd mtg.

84/ Ibid.

administrative heads of the specialized agencies, their recommendations as to any further action that may be required of the General Assembly;

"4. Calls upon all Members of the United Nations to assist the Secretary-General in the discharge of his responsibilities as chief administrative officer of the United Nations."

i. CRIMINAL ACTIVITIES

83. In his report to the General Assembly at its eighth session, the Secretary-General dealt with the possibility of criminal activities on the part of staff members. He stated: 85/

"71. A special problem, which can be dealt with by a new staff rule and which does not require an amendment to the staff regulations, is that of criminal activities on the part of staff members. The Secretary-General intends to provide in a new staff rule, issued under staff regulation 1.4, that any staff member who is arrested, indicted or summoned into court as a defendant in a criminal proceeding, or convicted, fined or imprisoned for the violation of any law (excluding minor traffic violations) shall report that fact to the Secretary-General.

"72. The standard of conduct applicable to staff members is more exacting than ordinary legal standards. A conviction by a national court will usually be persuasive evidence of the commission of the act for which the defendant was prosecuted. And acts which are generally recognized as offences by national criminal laws normally will be violations also of the independent standard of integrity developed by, and proper to, the United Nations. However, the Organization must remain free to take no account of convictions of staff members for trivial offences or for offences which are generally held not to reflect on integrity, or of conviction made without observance of the generally recognized requirements of due process of law."

84. Accordingly, the Secretary-General, on 8 March 1954, promulgated the following new provision 86/ in the Staff Rules:

"A staff member who is arrested, charged with an offence other than a minor traffic violation, or summoned before a Court as a defendant in a criminal proceeding, or convicted, fined or imprisoned for any offence other than a minor traffic violation, shall immediately report the fact to the Secretary-General."

C. The obligations of Member States

85. It has been seen that restraints have been imposed upon staff members as regards both their professional behaviour and their personal conduct. The international character and the independence of the Secretariat have also been reflected in certain obligations which have been assumed by Member States. In his report on personnel policy to the General Assembly at its seventh session, the Secretary-General referred 87/ to the obligation of each Member State to respect that international character as a "correlative undertaking" to the restraints imposed upon the staff.

85/ G A (VIII), Annexes, a.i. 51, p. 1, A/2533.

86/ ST/SGB/94/Amend.1, rule 104.4.

87/ G A (VII), Annexes, a.i. 75, A/2364, para. 108.

1. *Privileges and immunities of the Secretariat*

86. The only express formulation of the obligations assumed by Member States to protect the international character and the independence of the Secretariat is to be found in the General Convention on the Privileges and Immunities of the United Nations 88/ adopted by the General Assembly under resolution 22 A (I) and in other similar agreements concluded between the United Nations and individual Governments. The Preparatory Commission of the United Nations had referred to the question of the relationship between privileges and immunities and the independence of the Secretariat in the following terms: 89/

"An adequate system of immunities and privileges, as provided in Article 105 of the Charter, is essential if officials are to be free from pressure by individual governments and to discharge their duties efficiently. These immunities and privileges, however, furnish the officials who enjoy them no excuse for evading their private obligations, or for failing to observe laws and police regulations. Whenever these immunities and privileges are invoked, it lies within the discretion of the Secretary-General to decide whether they should be waived."

87. The Convention on the Privileges and Immunities of the United Nations was adopted by the General Assembly at its first session, and embodied provisions safeguarding the constitutional position of the Secretariat.

88. At the same time, however, steps have been taken by the General Assembly and by the Secretary-General to ensure that those privileges and immunities are used strictly for the purpose for which they were intended. In this connexion, staff regulation 1.8 provides: 90/

"The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations. In any case where these privileges and immunities arise, the staff member shall immediately report to the Secretary-General, with whom alone it rests to decide whether they shall be waived."

2. *The question of Governments providing the Secretary-General with information relating to staff members: compatibility with the obligation of Member States not to instruct the Secretary-General*

89. In his report 91/ on personnel policy to the General Assembly at its seventh session, the Secretary-General explained that he had sought the assistance of Governments in checking the character and records of staff members, reserving for himself the final decision on the basis of all the facts. Amplifying the views

88/ For a more detailed discussion of the General Convention and of the agreements referred to, see also in this Repertory under Article 105.

89/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, p. 85, para. 6.

90/ G A resolution 590 (VI). See also G A resolution 13 (I), regulation 4; rule 15, SGB/81 (25 June 1948); rule 15, ST/AFS/SGB/81/Rev.1 (16 June 1950); rule 15, ST/AFS/SGB/81/Rev.2 (1 January 1951); rule 15, ST/AFS/SGB/81/Rev.3 (6 July 1951).

91/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

expressed in his written report, he made the following remarks in his oral statement in plenary meeting: 92/

"Finally, in the appointment and retention of staff, it has often been necessary for me to seek the assistance of governments of Member States in checking the character and record of applicants and staff members. While the Charter confers upon the Secretary-General exclusive and independent authority for the selection of personnel, the United Nations does not - and clearly cannot - have all the necessary facilities for personnel selection that are at the disposal of national governments. To request and receive assistance in providing facts needed by the Secretary-General to arrive at a correct judgment about personnel does not derogate from his exclusive authority to make the decision. On the contrary, such assistance, when properly exercised, is necessary to enable him to make the right decisions in the building of a strong and independent secretariat of the highest competence and integrity. I have, in fact, requested and received this assistance from most of the governments of Member States over the past seven years, and for this I am very thankful. With this help, and the development of our recruitment procedures, the United Nations now has a strong international staff, coming from fifty-six Member nations, two-thirds of whom are serving under permanent appointments."

90. During the discussion 93/ of the report of the Secretary-General in the General Assembly, approval of this practice was expressed, on the one hand. The provision of information of the nature in question to the Secretary-General was considered to be a service to the United Nations in the interest of maintaining a Secretariat which measured up to the standard for international civil servants laid down in the Charter. It was thought both right and just that the Secretary-General, before making an appointment, should ask the Government of an applicant for employment in the United Nations whether it had any derogatory information with respect to the applicant from the point of view of security and the basic interest of the State of which he was a national. No violation of the Charter was involved, since the final decision on whether to offer or to terminate an appointment would be taken by the Secretary-General himself.

91. On the other hand, it was argued that, under the Charter, the Secretary-General did not have the right to request information concerning staff members from Member States and that the practice followed by the Secretary-General was therefore illegal. The opinion was also expressed that the giving and receiving of information concerning

92/ G A (VII), Plen., 413th mtg., para. 17.

93/ For texts of relevant statements, see G A (VII), Plen.,
 416th mtg.: Belgium, paras. 120-159; Cuba, paras. 64-95; Greece, paras. 172-187;
 India, paras. 96-119; New Zealand, paras. 30-63; Norway, paras. 188-
 212; Sweden, paras. 160-171; United States, paras. 1-29;
 417th mtg.: Australia, paras. 119-158; Ecuador, paras. 75-118; Egypt, paras. 5-33;
 Netherlands, paras. 34-74;
 418th mtg.: Argentina, paras. 154-173; Byelorussian SSR, paras. 1-39; Canada,
 paras. 54-82; China, paras. 195-203; France, paras. 83-123; Israel,
 paras. 40-53; Syria, paras. 124-153; Union of South Africa, paras.
 174-194;
 419th mtg.: Dominican Republic, paras. 57-80; El Salvador, paras. 123-149;
 Indonesia, paras. 1-33; Mexico, paras. 81-122; Panama, paras. 34-56;
 420th mtg.: Philippines, paras. 33-62; Poland, paras. 4-32; Uruguay, paras. 82-
 133; Venezuela, paras. 63-81;
 421st mtg.: Chile, paras. 71-99; Iraq, paras. 55-70; Liberia, paras. 1-21; United
 Kingdom, paras. 22-54; Yugoslavia, paras. 100-121.

staff members amounted to the giving and receiving of instructions concerning the recruitment of the staff.

3. *The question of the investigation by a Member Government of its nationals on the staff*

a. COMPATIBILITY WITH THE OBLIGATION OF MEMBER STATES
NOT TO INSTRUCT THE SECRETARY-GENERAL

92. In presenting his report 94/ on personnel policy to the General Assembly at its seventh session, the Secretary-General explained 95/ in an oral statement in plenary meeting that he had sought the assistance of the United States Government in finding qualified personnel and in checking the character and records of applicants for employment of United States nationality. The Secretary-General stated that, in most cases, all that had been provided him by the United States Government was a bare opinion, when that opinion was adverse on security grounds, without any of the facts or evidence to support the opinion. The Secretary-General went on to say that he could not act on the basis of a mere adverse comment - usually expressed in a single word - without in effect accepting instructions from the Government in question. He was, therefore, placed in the position of being put on notice that there might be derogatory information relating to a Secretariat official, but being left entirely in the dark as to the evidence.

93. The Secretary-General said that the same problem confronted him with regard to staff members of United States nationality who had invoked their constitutional privilege against self-incrimination. In view of the seriousness of charges made by certain organs of the United States Government that there had been an infiltration into the United Nations of a large group of disloyal United States citizens, and that this situation constituted a menace to the security of the United States, he had requested the United States Government to provide him with the evidence upon which the charges were based. This request had been denied for the reason that under the law, the evidence in question was secret and could not be disclosed to him.

94. The Secretary-General then turned to the matter of an investigation of United States citizens on the staff then being undertaken by agencies of the United States Government under an Executive Order of that Government, dated 9 January 1953. In this connexion he said: 96/

"This Order required, as you know, a full field investigation by the United States Federal Bureau of Investigation of all United States citizens employed on the professional staff of the United Nations, and a less extensive investigation by the Civil Service Commission of all other United States citizens employed by the United Nations. The full text of the Executive Order is reproduced as annex V to the report. I shall not attempt here to review its provisions in detail.

"I do want to emphasize, however, that the Executive Order was not promulgated as the result of an agreement of any sort between the United States Government and the Secretary-General. It was an action of the United States Government alone. I have given my co-operation in the implementation in so far as action on my part has been necessary, because I believe this desirable from the standpoint of both the United Nations and the United States citizens on the Secretariat staff. However, the

94/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

95/ G A (VII), Plen., 413th mtg., paras. 30-32.

96/ Ibid., paras. 54-56.

investigations and hearings carried out under the Executive Order are matters entirely between the individual staff members of United States nationality and their government. Furthermore, under the Executive Order, the United States Government does not undertake to instruct the Secretary-General as to whom, among United States citizens, he shall or shall not employ. In a most important respect the Executive Order promises, however, to have consequences of benefit to the United Nations in the present situation; for the United States Government, under the Order, has promised to turn over to the Secretary-General information and evidence arising from the investigations, instead of mere adverse comment.

"I therefore welcomed the Executive Order as a step forward in establishing orderly procedures and in facilitating the constitutional discharge of my responsibilities and those of my successors for the selection and retention of staff."

95. In the course of the ensuing discussion, the view was expressed that the action taken by the United States Government in instituting an inquiry into the background of its nationals on the staff did not constitute a breach of the provisions of Article 100. It was pointed out that every Government had the right to inquire into the background of its nationals, and that to object to the exercise of this right would constitute intervention in matters within the domestic jurisdiction of the Government concerned.

96. The opinion was also expressed that any such action taken by a government was res inter alios acta as far as the United Nations was concerned and could not affect the right of the Secretary-General to employ or to continue to employ any persons he deemed qualified.

97. In opposition to the views set forth above, it was stated that the investigation being conducted by the United States Government was illegal and a violation of the provisions of Article 100.

b. THE QUESTION OF THE USE OF UNITED NATIONS PREMISES
FOR THE CARRYING OUT OF INVESTIGATIONS

98. In discussing the investigation of its nationals on the staff instituted by the United States Government, the Secretary-General made the following statement 97/ in order to justify the co-operation he had given in regard to the investigation:

"I have been criticized by some because I permitted the finger-printing required under the Executive Order of the United States Government to be conducted in this building and because the Secretariat assisted in the distribution of the questionnaire that United States staff members were called upon to fill out under the Executive Order.

"Let it be fully understood that I issued no order or instruction requiring United States staff members to comply with the United States Executive Order, although I advised and expected them to do so. The co-operation I offered was simply to facilitate the rapid implementation of the Executive Order and to make it as easy as possible for United States staff members to comply with the Order of their own Government.

"The same consideration prompted me to permit United States staff members who might be interviewed in the course of the investigation to carry out the interviews

97/ G A (VII), Plen., 413th mtg., paras. 62-65.

in their offices, if they preferred that to doing so at home or elsewhere. This means only that a staff member of whom an interview is requested may invite the agent to his office in the building for the purpose of that interview and that interview alone. There is no question of any blanket authorization, and the provisions of the Headquarters Agreement in this respect are being fully observed both by me and by the United States Government.

"Of course, I might have insisted that the finger-printing be done in police stations or other United States government premises. Of course, I might have insisted that the questionnaires must be mailed to the home addresses of the staff members and taken to their offices the next day. I might even have refused to furnish the home addresses of the staff members on the ground that these were part of the official archives of the United Nations. Such a position might have been more acceptable to some experts on privileges and immunities of international organizations, but in practical terms it would have delayed by weeks and months the completion of the investigations and therefore contributed to undermining still further the position and morale of the Secretariat in the political circumstances in which we found ourselves."

99. In the course of the discussion which followed upon the statement of the Secretary-General, the action of the Secretary-General evoked the comments that the convenience of the staff was not a valid ground for a procedure not in keeping with the international character of the Organization. The view was expressed that it was inconsistent with respect for that international character for a host State to request, and for the Secretary-General to permit or to propose, the use of the premises and facilities of the Organization to enforce the internal laws and regulations of that State.

100. In reply to these comments, the Secretary-General reiterated the reasons he had previously given and cited 98/ precedents in support of his action as follows:

"It has happened in the past, when the interests of the United Nations have required it, that national police and other officials have been admitted to United Nations premises. This was not the first time, and I think we have some of them here today too. At the first part of the first session in London, British security police were admitted to Church House for the purpose of protection, and French security police were invited and admitted to the Palais de Chaillot during the third and sixth session of the Assembly in Paris, both for security and for investigative reasons. Any secretary-general must have some latitude or discretion in specific circumstances to admit national officials to United Nations premises when he believes that the interests of the United Nations require it."

4. The question of special rights of a host country in determining the employment of its nationals

101. The *ad hoc* Commission of Jurists consulted 99/ by the Secretary-General in connexion with the various legal aspects of the question of alleged subversive activities by staff members expressed certain views in the opinion 100/ which it

98/ G A (VII), Plen., 421st mtg., para. 130.

99/ See para. 55 above.

100/ G A (VII), Annexes, a.i. 75, A/2364, annex 111.

rendered with regard to the related question of special rights of a host country in determining the employment of its nationals. In the course of the discussion 101/ of the report 102/ on personnel policy of the Secretary-General, to which the opinion of the Commission of Jurists was annexed, in plenary meeting at the seventh session of the General Assembly, the views in question expressed by the Commission were interpreted as implying that a host country should receive special consideration in regulating the employment of its nationals within the Secretariat. Although this theory was not accepted 103/ by the Secretary-General, it nevertheless evoked the expression of divergent opinions during the discussions.

102. It was said, on the one hand, that the host country had every right to require that its nationals in the Secretariat should be acceptable to it and should not be of the type to work against its interests; and that it was only natural that a host country would have a particular interest in the behaviour of such individuals.

103. The dissenting views set forth below were among those expressed. (1) It was obvious that harmonious relationships should exist between the Organization and the host country, but there was nothing special in such a relationship. (2) In his administration of the Secretariat, the Secretary-General should be guided exclusively by the principles laid down in the Charter, and not by principles applied, or ideas current, in the host State. Otherwise, the Secretary-General would no longer be acting independently with the interests of the United Nations only in view, and the Secretariat would lose its international character. (3) The personnel policy of the United Nations should be uniform for all staff members, and should not vary according to the nationality of a staff member. (4) The concept of a "host country", implying special rights for that country, had no validity, since the activities of the United Nations were widely distributed from a geographical point of view and, in that sense, all Member States were "host countries".

5. *Requests to appoint or to replace officials*

104. In his oral statement 104/ at the seventh session of the General Assembly, the Secretary-General made the following reference to his actions in respect of requests for appointment or replacement of staff members:

"So far as matters of personnel are concerned, I have resisted strong requests - in some cases what might fairly be termed strong pressures - coming from many quarters to appoint or replace Secretariat officials, when to yield would have been against my own judgment and, therefore, would have weakened the constitutional status of the Secretariat as provided in the Charter. I have, for example, refused to replace competent and qualified personnel simply because revolutions, coups d'état or elections have brought about a change of government in their countries. I shall continue to do so as long as I am in office, and I feel that no Secretary-General can succeed unless he does the same."

101/ See footnote 93 above.

102/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

103/ The Secretary-General expressly disclaimed this theory in a statement at the 421st plenary meeting of the General Assembly (G A (VII), Plen., 421st mtg., para. 126).

104/ G A (VII), Plen., 413th mtg., para. 19.

6. *Refusal to grant passports to nationals on the staff*

105. The possibility of Member States using their control over the issuance of national passports as a means of regulating the selection of their nationals for employment with the United Nations was discounted by the Secretary-General in his report on personnel policy to the General Assembly at its seventh session. He stated that the assumption that this could be done was not in keeping with the actual legal position of the staff of the Organization. The Secretary-General stated: 105/

"114. In the first place, of course, Article 101 of the Charter specifies that the staff shall be appointed by the Secretary-General under regulations established by the General Assembly. Moreover, section 24 of the Convention undertakes to implement in this field the provision in Article 105 of the Charter for the independent exercise of their functions in connexion with the Organization. This section authorizes the Organization to issue United Nations laissez-passer to its officials, and requires that these laissez-passer 'be recognized and accepted as valid travel documents by the authorities of Members'.

"115. The Secretary-General has never treated this provision as in any way exempting staff from meeting the normal travel and documentary requirements of the governments concerned. On the other hand, it is clear that Member States should not, under the provisions of the Charter, seek to interpose their passport or visa requirements in such a manner as to prevent staff from taking up their post of duty with the United Nations or from travelling from country to country on its business."

106. In the course of discussion on this subject in plenary meeting at the seventh session of the General Assembly, there was disagreement with the above-quoted interpretation of the General Convention on Privileges and Immunities. The view was expressed that when a Member State informed the Secretary-General that a passport had been refused to a staff member, he should immediately inquire into the circumstances of such a refusal and should refrain from issuing a laissez-passer to the officer concerned pending the results of such an inquiry.

D. The question of the relationship between the international loyalty of a staff member and his loyalty to the State of which he is a national

107. The preceding section of this study reflects the importance which has been accorded to the requirement of strict international loyalty on the part of members of the Secretariat together with the necessary corollary that an official will not be penalized if his duties require him to take an attitude which is contrary to the policy of the State of which he is a national. Consideration has also been given at various times to the question of the definition of the term "international loyalty", as well as to the establishment of a proper balance between the loyalty of a staff member towards the Organization and his loyalty towards his country.

1. *The definition of the term "international loyalty"*

108. The Preparatory Commission of the United Nations expressed 106/ the opinion that loyalty to the Organization involved a broad international outlook and a detachment

105/ G A (VII), Annexes, a.1. 75, A/2364, paras. 114 and 115.

106/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, p. 85, para. 4.

from national prejudices and narrow national interests. Similarly, the International Civil Service Advisory Board has stated 107/ that the highest type of loyal international civil servant is one who finds that whatever his personal views, he can willingly conform to the observance of his international obligations and support the decisions of the international organization which he serves.

109. During the discussions 108/ on personnel policy which took place at the seventh session of the General Assembly, it was declared that the sum total of sixty national loyalties did not amount to international loyalty. At the same time, however, it was recognized that international loyalty did not imply the denationalized loyalty of a man without a country. International loyalty did not require that a staff member give up his national sentiments; on the contrary, it was required of international officials that they should reflect the points of view of their own cultures on the problems with which they were called upon to deal.

2. The question of the compatibility between international and national loyalty

110. It has been generally agreed that international loyalty is not necessarily incompatible with national loyalty. The Preparatory Commission of the United Nations stated 109/ that in serving the United Nations, the international official was serving the higher interest of his own country. The International Civil Service Advisory Board expressed 110/ similar views when it stated that legitimate national interests could only be served by the promotion of world peace and prosperity and the successful progress of the international organizations toward these objectives.

3. The principle applicable to irreconcilable conflict of loyalties

111. Reference has been made to the possibility of a situation in which the conflict between national and international loyalties was irreconcilable.

112. During the debates 111/ on personnel policy at the seventh session of the General Assembly, it was asserted that when a situation involving an irreconcilable conflict of loyalties arose, and when a staff member wished to let himself be guided by the dictates of his national loyalty, the staff member might be relieved of the particular task which had given rise to the conflict of loyalties. If that could not be done for some reason, the official should adhere strictly to his international loyalty or submit his resignation.

113. A similar view has been expressed 112/ by the International Civil Service Advisory Board.

107/ COORD/CIVIL SERVICE/5, para. 5.

108/ See footnote 93 above.

109/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, p. 65, para. 4.

110/ COORD/CIVIL SERVICE/5, para. 22.

111/ See footnote 93 above.

112/ See footnote 19 above. See also a statement by the Chairman of the Advisory Committee on Administrative and Budgetary Questions (G A (IX), 5th Com., 470th mtg., para. 27).

