

**REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS
SUPPLEMENT NO. 10**

Volume VI

Provisional version

ARTICLE 100

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of the *Repertory of Practice of United Nations Organs*)**

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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. Article 100 represents the independence of United Nations staff members and the continuing importance of their role as international officials to be free of any control from Member States or any external influence, and the corollary obligation on the part of Member States to respect that independence.¹ As part of Chapter XV of the United Nations Charter, Article 100 codifies the ideal of an exclusively international Secretariat, whose staff is strongly committed to impartiality and independence, responsible solely to the Organization.²

2. The aim of the present Study is to illustrate any major decisions taken during the period under review that were designed to ensure the continuing independence and impartiality of staff members. It is also the aim to give the reader an idea of the evolution of these decisions and the particular issues and questions that have arisen in connection thereto.

3. The format of this Study largely follows the revised format introduced in the previous Study of Article 100. The subheadings introduced in the previous Study have been maintained in order to offer a more coherent flow of information regarding the factors impacting on the independence of international civil servants.

¹ For a history of the negotiation of this Article and its purpose, reference may be made to the negotiations of the San Francisco conference. See Documents of the United Nations Conference on International Organization.

² See discussion under the Study of this Article in the Repertory of Practice of United Nations Organs.

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4. The General Survey gives an overview of the trends influencing Article 100 and the key issues that have arisen and been addressed by the Organization in the period under review. The Analytical Summary of Practice will explore these issues in more depth, elaborating upon the development of policies and decisions that could be observed in the period under review.

5. In any review of the factors concerning the independence and impartiality of staff members, some overlap will be found with other articles of the Charter, most notably, Article 105, which concerns the privileges and immunities of the Organization.³ Further reference may be made to Article 8 of the Charter in relation to the character and the composition of the Secretariat.⁴ Links with Article 101 can also be found with respect to issues applicable to the recruitment and appointment of staff.⁵

³ Ibid., Article 105.

⁴ Ibid., Article 8.

⁵ See discussion under the Study of Article 101 in this Supplement.

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I. GENERAL SURVEY

6. The General Assembly frequently recalled Article 100 in the period under review, most notably with respect to human resources questions and issues involving respect for privileges and immunities⁶. The Assembly asked that the highest standards of efficiency, competence and integrity serve as the paramount consideration in the employment of international civil servants and referenced Article 100 in that regard⁷. This included the use of consultants, individual contractors, gratis personnel and retired staff despite some limitations⁸. Article 100 was again referenced by the Assembly with respect to the new streamlined system of contractual arrangements with one set of Staff Rules and three types of appointment⁹. The simplified contractual framework was to provide clarity, transparency and fairness for all concerned, as highlighted by the Assembly¹⁰.

7. Article 100 is also intrinsically linked to discussions related to equality in the international character of the Secretariat. Geographical representation was underlined as being of utmost importance¹¹, with emphasis on the use of national competitive examinations in order to reduce non-representation and under-representation of Member States in the Secretariat¹². The use of consultants was to be governed by certain provisions in order not to distort the geographical balance of the Secretariat¹³ and the employment of retirees in decision-making positions should occur only in exceptional circumstances¹⁴. Gender equality became a dominant feature in human resources policies throughout the period under review. The Assembly made many calls for gender parity¹⁵ and the International Civil Service Commission's 2001 standards of conduct for the international

⁶ A/RES/63/138, para. 14.

⁷ See, e.g., A/RES/59/266, A/RES/60/238, A/RES/63/250. See also ST/AI/2005/11.

⁸ A/RES/63/250, sect. XI. See also A/57/735, A/63/526.

⁹ A/RES/63/250.

¹⁰ A/RES/62/274, para. 16; A/RES/298, para. 10.

¹¹ A/RES/57/305, sect. II (8), A/RES/59/266, sect. I (9) and sect. IV, A/RES/61/244, sects. I (2), II (1, 3, 5, 6) and X, A/RES/63/250, sects. III (1, 2), V (2) and IX. See also ST/AI/2002/4.

¹² A/RES/63/250, sect. IV, and A/RES/61/244, sect. III.

¹³ A/RES/53/221, sect. VIII.

¹⁴ A/RES/63/250, sect. XI.

¹⁵ A/RES/55/258, sect. IV, para. 7, and sect. XIV, A/RES/57/305, sect. II, paras. 11, 40 and 41, A/RES/59/266, sect. I, para. 9, sect. VI, A/RES/61/244, sect. II, paras. 2, 5, 8 and 10, and sect. XI, A/RES/63/250, sect. III, para. 2, sect. V, paras. 1 and 2.

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civil service (“ICSC 2001 standards of conduct”) make frequent references to the necessity for all international civil servants to respect the equal rights of all¹⁶ as a main principle of the Charter¹⁷.

8. Significant consideration was given to the health and well-being of staff members, notably in regards to their work-life balance, during the period under review. This included introducing flexible working arrangements¹⁸, policies on breastfeeding¹⁹, paternity leave²⁰, updated instructions on sick leave²¹, medical standards and clearance²², medical evacuation²³, policy on HIV/AIDS in the workplace²⁴ and the non-smoking policy²⁵.

9. During the review period there were discussions on the responsibilities of staff members in their professional and personal conduct. A codification of the core idea of conduct befitting an international civil servant was implemented by the International Civil Service Commission in the ICSC 2001 standards of conduct²⁶. Furthermore, the major revision of the Staff Regulations and Rules in 2009 was to underpin the requirements of all staff members and nature of the professional conduct of staff²⁷. This was complemented by the establishment of the Ethics Office and the system wide code of ethics²⁸. During the period under review the provisions related to acceptance of any honour, decoration, favour, gift or remuneration²⁹, partaking in outside activities³⁰ and filing financial disclosure

¹⁶ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 6. See also paras. 3, 13 and 36.

¹⁷ *Ibid.*, para. 14. See also ST/AI/2002/4.

¹⁸ ST/SGB/2003/4. See also A/57/387.

¹⁹ ST/SGB/2003/14.

²⁰ ST/AI/2005/2. The background discussion leading to the drafting of this issuance can be found in the report of the International Civil Service Commission for 2004, A/59/30, Vol. I.

²¹ ST/AI/2005/3.

²² ST/AI/2000/7.

²³ ST/AI/2000/10.

²⁴ ST/SGB/2003/18.

²⁵ ST/SGB/2003/9.

²⁶ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 2.

²⁷ A/RES/63/271.

²⁸ A/RES/60/254. See also ST/SGB/2005/21, ST/SGB/2005/22 and ST/SGB/2007/11.

²⁹ *Ibid.*, Staff Rule 1.2 (k) and (l), ST/IC/2006/31, ST/SGB/2006/5.

³⁰ *Ibid.*, Staff Rule 1.2 (r). See also ST/IC/2000/13.

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statements³¹ were expanded upon. The Assembly also made calls for the strengthening of accountability and for effective accountability mechanisms to be an integral and essential element of human resource management throughout the Organization³². Discretion in personal and professional conduct was also further considered during the period under review³³ and more comprehensive legislation on conflict of interest was established³⁴. Professional conduct must also be underscored by a high level of integrity, something the Assembly repeatedly stated during the period under review³⁵, especially with respect to the employment of staff³⁶, the system of administration of justice³⁷, procurement reform and outsourcing³⁸ and the legal obligations of staff³⁹. The Assembly also called for a “zero-tolerance policy” towards acts of sexual exploitation and abuse⁴⁰. Subsequent policies were implemented in response⁴¹.

10. The issue of staff members committing criminal acts was considered in depth during the period under review. The ICSC 2001 standards of conduct noted that acts that are generally recognized as criminal offences by national criminal laws will normally also be violations of the standards of conduct for the international civil service⁴². The Assembly discussed the topic on a number of occasions⁴³ and in 2007 passed a resolution on the criminal accountability of United Nations officials and experts on mission⁴⁴. Since 2007, the Assembly has been passing a resolution on the matter on an annual basis.⁴⁵

³¹ ST/SGB/2009/7, Staff Regulation 1.2 (n).

³² See, e.g., A/RES/55/221, A/RES/57/155, A/RES/57/287, A/RES/59/266, A/RES/59/283, A/RES/60/283, A/RES/61/244, A/RES/61/246, A/RES/61/261, A/RES/62/228, A/RES/62/269. See also ST/SGB/2006/15 and ST/AI/2004/3.

³³ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 35, and ST/SGB/2007/6, ST/AI/2000/13, ST/AI/2001/5, sect. 2.5.

³⁴ A/56/323, annex III, ST/AI/2000/13, ST/SGB/2005/21, ST/SGB/2006/6.

³⁵ A/RES/55/223, A/RES/59/268

³⁶ A/RES/57/305, A/RES/60/238, A/RES/63/250.

³⁷ A/RES/57/307.

³⁸ A/RES/55/232, A/RES/59/289, A/RES/61/246.

³⁹ ST/AI/2000/12. See also A/RES/52/252.

⁴⁰ A/RES/59/296, sect. XIV.

⁴¹ ST/SGB/2003/13 and ST/SGB/2005/20. See also A/RES/57/306 and ST/SGB/2008/5.

⁴² Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 40.

⁴³ A/RES/61/29 and Official Records of the General Assembly, Sixty-second Session, Supplement No. 54 (A/62/54).

⁴⁴ A/RES/62/63.

⁴⁵ A/RES/63/119, A/64/110, A/65/20 and A/66/93.

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11. In addition to the personal obligations of staff members, the period under review witnessed considerable discussion and development of the requirements of Member States to uphold the international character and independence of the Secretariat. The Assembly has on many occasions requested the Secretary General to ensure the safety and security of all United Nations staff members⁴⁶. However, the Security Council and the Assembly have stressed that under international law the primary responsibility for the safety and security of such personnel lies with the host Governments, and has accordingly urged all Member States to take protective measures and to prosecute the perpetrators of such acts against staff members⁴⁷.

12. The absence in many cases of timely information being provided by host governments to the Organization in the event of the arrest or detention of United Nations staff members and associated personnel was highlighted as a serious impediment to the improvement of the security of United Nations and associated personnel⁴⁸.

13. In the period in question, there were calls for governments to cooperate with each other in exchanging information to facilitate the conduct of investigations into the criminal acts by staff members⁴⁹. The call for heightened security influenced updated policies within the Secretariat designed to strengthen and enhance system-wide security management⁵⁰.

14. Other issues related to the obligations of Member States came up in the context of military service⁵¹, immunity from taxation⁵², visa issuances⁵³ and travel controls⁵⁴.

⁴⁶ A/RES/55/175, para. 7, A/RES/57/155, para. 9, A/RES/59/211, paras. 14 to 16, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 37. See also ST/SGB/2002/13, Commentary on Regulation 1.2 (c) and A/RES/60/123, A/RES/61/133 and A/RES/62/95.

⁴⁷ S/PRST/2000/4. See also A/RES/56/217, A/RES/57/155, CEB/2004/6, A/RES/59/211, A/RES/60/123, A/RES/54/192, A/RES/55/175, A/RES/64/77, A/RES/56/84. See also Repertory of Practice, Article 105 and A/55/637, A/54/619-S/1999/957, A/RES/56/89, A/RES/57/338, A/RES/58/122, A/RES/62/96.

⁴⁸ See, e.g., A/RES/54/192, A/RES/56/217, A/RES/60/123, A/RES/62/95, and A/RES/64/77.

⁴⁹ A/RES/62/63 and A/RES/63/119.

⁵⁰ A/RES/63/138, A/59/365, A/64/336, ST/SGB/2003/19.

⁵¹ ST/SGB/2009/7, Staff Rule 5.3 (b).

⁵² ST/IC/2004/31, Judgement No. 1185, *Van Leeuwen* (2004), United Nations Juridical Yearbook, 2005, p. 440. See also United Nations Juridical Yearbook, 2003, p. 558, United Nations Yearbook, 2005, p. 446, United Nations Juridical Yearbook, 2007, p. 398, and United Nations Juridical Yearbook, 2008, p. 401.

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15. The period under review saw confirmation that secondment from government service is consistent with, *inter alia*, Article 100 and was of benefit to both the Organization and Member States⁵⁵.

⁵³ ST/AI/2000/19. Additional information provided in ST/IC/2001/27, ST/SGB/2000/11.

⁵⁴ See, e.g., A/RES/55/154, para. 5, A/RES/56/84, para. 4, A/RES/57/22, para. 5, A/RES/58/78, para. 5. See also ST/IC/2004/38, ST/IC/2005/15, ST/IC/2006/10, ST/IC/2005/59, A/RES/60/24, para. 5. See also A/RES/61/41, para. 4, A/RES/62/72, para. 5, A/RES/63/130, para. 4.

⁵⁵ A/RES/55/258, sect. IV, para. 19.

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II. ANALYTICAL SUMMARY OF PRACTICE

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

16. The international context within which the United Nations operates has presented many challenges and unique opportunities for the United Nations Secretariat and the international civil service as a whole. The changing times have placed new demands on the functions and capacity of staff of the United Nations and have had an impact upon the basic tenets on which the international civil service rests. During the period under review, the General Assembly repeatedly recalled Article 100 when requesting that the Secretary-General ensure that the highest standards of efficiency, competence and integrity serve as the paramount consideration in the employment of international civil servants⁵⁶.

17. In this respect, the panel on the strengthening of the international civil service, established by the General Assembly in resolution 57/285 of 20 December 2002⁵⁷, remarked that:

“...the basic principles on which the Charter of the United Nations is based not only retain all their validity but acquire even greater relevance in the new international environment in which the United Nations system is presently operating. Indeed, in relation to the international civil service, the Charter principles of independence (Article 100) and of the “highest standards of efficiency, competence and integrity” (Article 101) should be the overriding values to which all efforts at advancing a modern international civil service, responsive to the changing demands and requirements of the new century, should be geared”⁵⁸.

18. This panel noted that a strong international civil service is dependent upon attracting staff of the highest calibre⁵⁹, staff who are “versatile, mobile and multi-skilled”⁶⁰ and for Member States to give the highest possible attention to driving the management of human

⁵⁶ See, e.g., A/RES/59/266, A/RES/60/238, A/RES/63/250.

⁵⁷ See also the Report of the Secretary-General on “Strengthening of the international civil service,” A/57/612.

⁵⁸ A/59/153, para. 12.

⁵⁹ Ibid., para. 19.

⁶⁰ Ibid., para. 19.

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resources as an investment in the future of the UN system⁶¹. In reply to the report of the panel, the Secretary-General recommended that the General Assembly reaffirm, *inter alia*, the continuing validity and special relevance of Article 100⁶² when considering the strengthening of the international civil service.

19. The independence of the international civil service has been in the forefront of any reform of the Secretariat in the period under review. The ICSC 2001 standards of conduct, as welcomed by the General Assembly in its resolution 56/244, state that:

“If the impartiality of the international civil service is to be maintained, international civil servants must remain independent of any authority outside their organization; their conduct must reflect that independence.”⁶³

20. Indeed, the ICSC Framework for Human Resources Management, which fed into these new standards of conduct, underlined that its philosophy was grounded “in the principles emanating from the provisions of the United Nations Charter, namely, the independence of the international civil service and the need for the organizations to recruit staff with the highest standards of efficiency, competence and integrity, with due regard to the importance of recruiting the staff on as wide a geographical basis as possible and to the equal participation of men and women in the work of the organizations”⁶⁴.

21. The diversification of the Secretariat’s business needs has had an impact upon appointments in the United Nations system which saw a move towards building a workforce based on a more rapid response capability. This led to the creation of an array of contractual arrangements and, as discussed in the report of the Panel on the Strengthening of the International Civil Service:

⁶¹ Ibid., para. 20.

⁶² A/59/399, para. 28.

⁶³ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 8.

⁶⁴ “Framework for Human Resources Management” found at http://icsc.un.org/resources/hrpd/hrm/ICSC_hrm_eng.pdf

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“These arrangements should reflect best practices, provide the necessary degree of operational and administrative flexibility, and be tailored to the needs of a modern, global international civil service”⁶⁵.

22. In 2009 the Assembly approved the new streamlined system of contractual arrangements with three types of appointment, namely ‘temporary’, ‘fixed-term’ and ‘continuing’⁶⁶. Further streamlining the contractual arrangements under one set of Staff Rules (as opposed to the 100, 200 and 300 series) was designed to “assist the United Nations in fulfilling its mandate and provide greater simplicity, clarity, transparency and fairness for all concerned”⁶⁷ and to “promote the equitable treatment of staff members”⁶⁸.

23. The Secretary-General’s report on “Investing in the United Nations: for a stronger Organization worldwide”⁶⁹ envisaged “an independent international civil service which will once again be known for its high standards of ethics, fairness, transparency and accountability”⁷⁰. This was to be done through the introduction of a new human resources framework, which would include not only the streamlining of contractual arrangements but also proactive, targeted and faster recruitment, a strengthened system of staff mobility and targeted training⁷¹. Leading on from this, a report issued in 2006⁷² reiterated the desire for “an independent international civil service with the highest standards of performance and accountability”⁷³ and built upon these reform plans with the aim of “adapting the Organization’s human resources management framework to meet evolving requirements, increase transparency and clarify accountability lines”⁷⁴. These reform measures helped conserve the independence and strength of the international civil service.

⁶⁵ A/59/153, p. 12.

⁶⁶ A/RES/63/250.

⁶⁷ A/62/274, para. 15.

⁶⁸ Ibid., para. 16.

⁶⁹ A/60/692.

⁷⁰ Ibid., para. 26.

⁷¹ Ibid.

⁷² A/61/255.

⁷³ Ibid., para. 6.

⁷⁴ Ibid., para. 400.

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24. Throughout the period under review geographic representation was also highlighted as an area for reform⁷⁵ and the Assembly made calls for further efforts to recruit staff members on as wide a geographical basis as possible⁷⁶. The Assembly also underlined the importance of maintaining the use of national competitive examinations in order to reduce non-representation and under-representation of Member States in the Secretariat⁷⁷.

25. The issue of gratis personnel and their impact on an impartial Secretariat was also considered. As discussed in the previous Study, the use of gratis personnel was to be limited by certain provisions⁷⁸. The Advisory Committee on Administrative and Budgetary Questions requested that the Secretary-General include all information on gratis personnel when considering the broader context of the composition of the Secretariat with more detailed information on those who are classified as type 1 gratis personnel (that is, associate experts, technical cooperation experts and interns)⁷⁹. An administrative instruction released in 2005 prohibited interns (type 1 gratis personnel) from applying or being appointed to any international position at the professional level and above for a period of six months following the end of their internship⁸⁰. This rule was to prevent any unfair advantage in recruitment in order to preserve the independence and equality of the Secretariat.

26. The Assembly further revisited the use of consultants, individual contractors, gratis personnel and employment of retired staff in its resolution on Human Resources Management in 2009⁸¹. Concerns were raised with respect to the increased use of consultants. One such concern was that the use of consultants could distort the geographical balance of the Secretariat⁸². The Assembly also requested that the employment of retirees in decision-making positions should occur only in exceptional circumstances⁸³.

⁷⁵ A/60/692, A/61/255.

⁷⁶ A/RES/55/258, sect. IV (8), A/RES/57/305, sect. II (8), A/RES/59/266, sect. I(9) and sect. IV, A/RES/61/244, sect. I(2), II(1, 3, 5, 6) and X, A/RES/63/250, sect. III (1, 2), V (2) and IX.

⁷⁷ A/RES/63/250, sect. IV; A/RES/61/244, sect. III.

⁷⁸ See also A/RES/51/243.

⁷⁹ A/57/735, A/63/526.

⁸⁰ ST/AI/2005/11.

⁸¹ A/RES/63/250, sect. XI.

⁸² See, e.g., A/RES/53/221, sect. VIII.

⁸³ A/RES/63/250, sect. XI.

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B. The obligations of members of the Secretariat

1. RESPONSIBILITIES OF THE SECRETARY-GENERAL WITH REGARD TO
THE EXERCISE OF FUNCTIONS OF STAFF MEMBERS

27. Staff regulation 1.1 (c) “codifies an implicit duty that falls on the Secretary-General ... to ensure that the rights and duties of staff members are respected”⁸⁴.

28. In the 2005 World Summit Outcome Document, which was adopted by the General Assembly, the Member States reaffirmed the role of the Secretary-General as the chief administrative officer of the Organization⁸⁵, and underlined his right to make proposals on the conditions and measures necessary for him to carry out his managerial responsibilities effectively⁸⁶.

29. In the changes to the staff rules in 2009, the necessity for staff members to follow the directions and instructions properly issued by the Secretary-General and by their supervisors⁸⁷ became the first provision under the ‘basic rights and obligations of staff’.

30. In exercising his authority as the Chief Administrative Officer of the Organization, the Secretary-General takes into consideration the overall health and well-being of staff. The Secretary-General called for the introduction of flexible working arrangements in a report in 2002⁸⁸, citing a better balance between the professional and personal lives of staff members as a way to attract and retain quality staff, in particular women. The need for all staff members to have a healthy work-life balance was recognised with the issuance of new policies defining the options for flexible working arrangements⁸⁹, and on breastfeeding⁹⁰. Another significant change to the work-life balance of staff members was the introduction

⁸⁴ ST/SGB/2002/13, Commentary on Regulation 1.1 (c).

⁸⁵ A/RES/60/1, para. 162.

⁸⁶ Ibid.

⁸⁷ ST/SGB/2009/7, Staff Rule 1.2 (a).

⁸⁸ A/57/387.

⁸⁹ ST/SGB/2003/4.

⁹⁰ ST/SGB/2003/14.

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of paternity leave in 2005⁹¹. Other related issuances included updated instructions on sick leave⁹², medical standards and clearance⁹³ and on medical evacuation⁹⁴, as well as bulletins on HIV/AIDS in the workplace⁹⁵ and the new non-smoking policy⁹⁶.

31. The Assembly has on many occasions requested the Secretary-General to ensure the safety and security of all United Nations staff members⁹⁷. This “inherent responsibility”⁹⁸ has been recognised as a basic right of staff⁹⁹. The Assembly has called on the Secretary-General to take the necessary measures to ensure full respect of the human rights, privileges and immunities of staff carrying out activities in fulfilment of the mandate of a United Nations operation¹⁰⁰, and to seek the inclusion, in negotiations of headquarters and, *inter alia*, other mission agreements, of the applicable conditions contained in the conventions relating to [the] privileges and immunities, and to the safety of United Nations and associated personnel¹⁰¹. In particular, the inclusion of key provisions such as those on the prevention of attacks, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders was underlined¹⁰². The Assembly requested that the Secretary-General take measures to ensure that all staff members are properly informed of the minimum operating security standards and relevant codes of conduct and that they are adequately trained in security, human rights law and international humanitarian law¹⁰³. The Assembly also called for adequate security training to be provided on, *inter alia*, cultural awareness and stress management¹⁰⁴.

⁹¹ ST/AI/2005/2. The background discussion leading to the drafting of this issuance can be found in the report of the International Civil Service Commission for 2004, A/59/30, Vol. I.

⁹² ST/AI/2005/3.

⁹³ ST/AI/2000/7.

⁹⁴ ST/AI/2000/10.

⁹⁵ ST/SGB/2003/18.

⁹⁶ ST/SGB/2003/9.

⁹⁷ A/RES/55/175, para. 7, A/RES/57/155, para. 9, A/RES/59/211, paras. 14-16.

⁹⁸ ST/SGB/2002/13, Commentary on Regulation 1.2 (c).

⁹⁹ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 37.

¹⁰⁰ A/RES/63/138, para. 14.

¹⁰¹ *Ibid.*, para. 14.

¹⁰² *Ibid.*, para. 15.

¹⁰³ *Ibid.*, para. 22.

¹⁰⁴ *Ibid.*, para. 23.

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32. Staff Regulation 1.1 (d) provides that the Secretary-General shall seek to ensure that the paramount consideration in the determination of the conditions of service shall be the necessity of securing staff members of the highest standards of efficiency, competence and integrity, which are required from all international civil servants.

33. The Secretary-General's bulletin on the "Status, basic rights and duties of United Nations staff members" clarifies that:

"Staff regulation 1.1 (d) places on the Secretary-General an affirmative duty to seek to ensure that the criteria set out in Article 101, paragraph 3, of the Charter for the determination of the conditions of service of the staff are implemented. This provision is not intended to affect the role of legislative bodies involved in the process of establishing conditions of service. It does, however, seek to formulate the responsibility of the Secretary-General to advocate, in the appropriate forums, the adoption of what he or she considers being the appropriate conditions of service to secure the recruitment and retention of staff possessing the highest standards of efficiency, competence and integrity"¹⁰⁵.

34. In 2006 the United Nations Office of Legal Affairs (OLA) prepared a note on the powers and role of the Secretary-General¹⁰⁶. The note highlighted that the Secretary-General has the sole authority to appoint and administer his staff, although he must do so under regulations established by the General Assembly. The note further clarified that the United Nations Staff Regulations delegate to the Secretary-General the power to make subsidiary legislation so long as it is consistent with the Staff Regulations, which supports the view that the General Assembly deals with the generic, while the Secretary-General deals with the specific matters related to staff. Nevertheless, the note observed instances in which the General Assembly dealt with specific matters of staff administration, such as discouraging the use of retired staff to present reports to any intergovernmental body¹⁰⁷ and limiting the

¹⁰⁵ ST/SGB/2002/13, Commentary Regulation 1.1(d).

¹⁰⁶ United Nations Juridical Yearbook, 2006, p. 462.

¹⁰⁷ A/RES/57/305, sect. VI, para. 7.

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number of posts to which successful candidates from the G-to-P exam could be appointed¹⁰⁸.

2. OBLIGATIONS OF STAFF MEMBERS REGARDING THE PERFORMANCE
OF THEIR DUTIES

a. Overall professional responsibility of staff

35. The Secretary-General's bulletin on "Organizational Competences for the future"¹⁰⁹, defines "integrity" as a core value and "accountability" as an essential core competency. Staff members are thus required to carry out their duties professionally, in compliance with these core values.

36. Conduct befitting an international civil servant was considered by the International Civil Service Commission in the ICSC 2001 standards of conduct¹¹⁰. The Commission stated that:

"... international civil servants have a special calling: to serve the ideals of peace, of respect for fundamental rights, of economic and social progress, and of international cooperation. It is therefore incumbent on international civil servants to adhere to the highest standards of conduct; for ultimately, it is the international civil service that will enable the United Nations system to bring about a just and peaceful world."¹¹¹

37. The Staff Regulations and Rules also define the professional responsibility of staff. The major revision of these regulations and rules in 2009, as promulgated in ST/SGB/2009/7, underpins the nature of the professional conduct required of staff and further codifies the responsibilities of staff.

¹⁰⁸ A/RES/59/266, sect. III, paras. 2-3.

¹⁰⁹ ST/SGB/1999/15.

¹¹⁰ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 2.

¹¹¹ *Ibid.*, para. 2.

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38. The scope of the written declaration called for under Staff Regulation 1.1 (b) where staff members promise to “exercise loyalty, discretion and conscience” was extended to include the time after a staff member ends his or her service with the United Nations¹¹².

39. This requirement for professional behaviour was also extended in the revised Staff Rule 1.5 concerning the recruitment process:

“Staff members shall be responsible for supplying the Secretary-General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations and Staff Rules as well as for the purpose of completing administrative arrangements in connection with their employment. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide”¹¹³.

40. The revisions added new rules on the acceptance of any “honour, decoration, favour, gift or remuneration”¹¹⁴ and on a staff member partaking in outside activities¹¹⁵. There was also a change in the level of staff member required to file financial disclosure statements¹¹⁶. These additions are discussed in greater depth below.

41. A principal concern related to the professional responsibility of staff during the period of this Study was the increasing emphasis placed on measures to strengthen accountability. The main impetus for this approach to accountability came at the World Summit in 2005 when Member States called for “effective and efficient mechanisms for responsibility and accountability of the Secretariat”¹¹⁷. The Assembly has also made many

¹¹² Ibid., Staff Rule 1.1 (a) reads: “The declaration made by a staff member on appointment pursuant to staff regulation 1.1 (b) shall be placed in his or her official status file. A new declaration shall be made after a break in service that exceeds three months. The obligations outlined in the declaration do not lapse upon cessation of his or her service with the United Nations.”

¹¹³ Ibid., Staff Rule 1.5.

¹¹⁴ Ibid., Staff Rule 1.2 (k) and (l).

¹¹⁵ Ibid., Staff Rule 1.2 (r). See also discussion *infra*.

¹¹⁶ ST/SGB/2009/7, Staff Regulation 1.2 (n).

¹¹⁷ A/RES/60/1, para. 161.

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calls for the strengthening of accountability and for effective accountability mechanisms to be an integral and essential element of human resource management throughout the Organization¹¹⁸. They referred to, *inter alia*, accountability of officials other than Secretariat officials and experts on mission¹¹⁹, the use of the Office of Internal Oversight Services in strengthening accountability¹²⁰, a culture of accountability in ensuring the safety of all staff members¹²¹, accountability in the administration of justice,¹²² in procurement reform¹²³ and criminal accountability of officials and experts on mission¹²⁴.

42. In 2000, a Secretary-General's bulletin established an Accountability Panel¹²⁵ in order "to ensure that the Secretariat addresses the findings of its oversight review bodies from a systemic perspective, and to reinforce existing accountability mechanisms"¹²⁶. In 2005, the Accountability Panel was replaced with the Management Performance Board.¹²⁷ In his 2005 report on measures to strengthen accountability at the United Nations, the Secretary-General indicated that the Management Performance Board had "clearer and better defined" terms of reference and responsibilities than the Accountability Panel¹²⁸. He also reported a number of additional measures designed to support accountability at the United Nations, namely: the establishment of a Senior Management Group in order to improve executive-level decision-making; the introduction of new mandatory induction programmes for senior officials; the development of new performance indicators; and the enhancement of the Performance Appraisal System¹²⁹.

43. With regard to accountability arising from financial liabilities, an administrative instruction was promulgated in 2004, which sets out the conditions under which staff

¹¹⁸ See, e.g., A/RES/59/266, sect. 1, para. 8, A/RES/60/283, sect. I, para. 2, and A/RES/61/244, sect. XII.

¹¹⁹ A/RES/55/221.

¹²⁰ A/RES/57/287 C.

¹²¹ A/RES/57/155.

¹²² A/RES/59/283, A/RES/61/261, A/RES/62/228.

¹²³ A/RES/61/246, A/RES/62/269.

¹²⁴ A/RES/61/29, A/RES/62/63, A/RES/63/119, A/RES/64/110, A/RES/65/20, A/RES/66/93.

¹²⁵ ST/SGB/2000/14.

¹²⁶ *Ibid.*, sect. 1.

¹²⁷ A/60/312. See also ST/SGB/2005/13.

¹²⁸ A/60/312, para. 5.

¹²⁹ The new ePAS formal tool for accountability represented an enhancement on the Performance Appraisal System as set out in ST/AI/2002/3.

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members may be required to reimburse the organization, either partially or fully, for any financial loss suffered by the United Nations as a result of that staff member's gross negligence or of his or her violation of any regulation, rule or administrative instruction¹³⁰. This instruction implemented the proposal initially presented to the General Assembly in 2000¹³¹ and the Assembly reiterated its approval for such a policy in 2003¹³².

44. In 2002, the Office of the Ombudsman¹³³ was established as an informal system for the resolution of conflicts. In 2009, a new two-tiered formal system of administration of justice, with a trial and an appellate jurisdiction, was also established¹³⁴.

45. The Assembly requested the Secretary-General in 2009¹³⁵ to make clear proposals on greater accountability mechanisms, including, *inter alia*, clear parameters for their application and the instruments for their rigorous enforcement¹³⁶. The subsequent changes are under the purview of the next report.

46. In 2005, the Secretary-General, as requested by the Assembly¹³⁷, presented his proposals for the creation of an Ethics Office¹³⁸, which was established "for the purpose of securing the highest standard of integrity of staff members"¹³⁹. The General Assembly welcomed the establishment of the Ethics Office¹⁴⁰, and requested the Secretary-General to finalize a system-wide code of ethics for all staff members. In his bulletin of 2005, the Secretary-General outlined the terms of reference for the Office, namely: administering the Organization's financial disclosure programme; protecting staff members against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations; providing confidential advice and guidance to staff members on ethical issues and

¹³⁰ ST/AI/2004/3.

¹³¹ A/54/793.

¹³² A/RES/57/307.

¹³³ ST/SGB/2002/12.

¹³⁴ A/RES/61/261, A/RES/62/228, A/RES/63/253, A/RES/64/119.

¹³⁵ A/RES/63/276.

¹³⁶ In 2010, the Secretary-General presented his report entitled "Towards an accountability system in the United Nations Secretariat" (A/64/640).

¹³⁷ A/RES/60/1.

¹³⁸ A/60/568 & Corr.1, 2.

¹³⁹ ST/SGB/2005/22.

¹⁴⁰ A/RES/60/254.

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developing standards, training and education on ethics issues¹⁴¹. A separate bulletin was promulgated in 2007 to provide governing principles applicable to Ethics Offices of separately administered organs and programmes of the United Nations¹⁴². Under this bulletin, an Ethics Committee was established to draft “a unified set of standards and policies of the United Nations Secretariat and of the separately administered organs and programmes”¹⁴³. This Committee assisted the Secretary-General in drafting a system-wide Code of Ethics for United Nations Personnel, which contained 12 core values and principles¹⁴⁴ on the professional conduct expected of all staff members in the performance of their official duties.

47. In 2008, OLA reviewed a request for advice regarding the rights and obligations of staff representatives as compared with other staff members¹⁴⁵. The specific issue at stake was whether staff representatives were exempt from the obligations to report misconduct and to abide by the confidentiality requirement in investigations, given their status as staff representatives exercising their right to freedom of expression and association. Based on its analysis of the applicable Staff Regulations and Rules, administrative issuances, and the jurisprudence of the former UN Administrative Tribunal and of the International Labour Organization Administrative Tribunal, OLA determined that staff representatives do not enjoy an exemption from the duties and obligations of other staff members by virtue of their status as staff representatives and their right to freedom of expression and association. Accordingly, the OLA concluded that staff representatives were “not exempt from the obligations to report misconduct and to comply with the confidentiality provisions applicable to investigations”¹⁴⁶.

¹⁴¹ See ST/SGB/2005/22. The Secretary-General released another bulletin in 2005 entitled “Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations,” which included provisions on: reporting misconduct through internal and external mechanisms; reporting retaliation to the Ethics Office; the protection of the person who suffered retaliation; action against the person who engaged in retaliation; and on the prohibition of retaliation against outside parties (ST/SGB/2005/21)..

¹⁴² ST/SGB/2007/11.

¹⁴³ *Ibid.*, sect. 5.

¹⁴⁴ Annex to A/64/316.

¹⁴⁵ United Nations Judicial Yearbook, 2008, p. 450.

¹⁴⁶ *Ibid.*, para. 14, p. 453.

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b. Responsibility to the Secretary-General in the performance of duties

48. Certain amendments to the Staff Regulations and Rules in 2009 concerned the responsibility of staff members to seek authorization from the Secretary-General in the course of their duties. Some of the revisions, for instance, called for the staff member to seek authorisation to accept any honour, decoration, favour, gift or remuneration from any Government or non-Government source¹⁴⁷.

49. The Assembly also addressed the Secretary-General's power to delegate authority. The Assembly emphasized that any delegation of authority "should be in accordance with the Charter and the regulations and rules of the Organization and should entail clear lines of authority and accountability as well as improvements in the administration of justice, taking into account the central role played by the Office of Human Resources Management in setting the policies and guidelines in respect of the human resources management of the Organization and monitoring their observance and implementation"¹⁴⁸. The Assembly also requested the Secretary-General to ensure that well designed mechanisms of accountability were in place before delegating authority to programme managers in an effort to streamline management¹⁴⁹.

c. Acceptance of instructions from external authorities

50. Staff Regulation 1.2 (d) states that:

"In the performance of their duties staff members shall neither seek nor accept instructions from any Government or from any other source external to the Organization."

¹⁴⁷ ST/SGB/2009/6, Staff Rule 1.2 (j), (k) and (l).

¹⁴⁸ A/RES/55/258, sect. VII, para. 4.

¹⁴⁹ See, e.g., A/RES/53/221, sect. IV, A/RES/55/258, sect. VII, and A/RES/53/221, sect. IV.

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51. Staff Rule 1.2(i)¹⁵⁰ and Staff Rule 5.3(a)(v)¹⁵¹ remained unchanged in the 2009 revisions and are recalled here for their continued bearing on the question of external influence.

52. The International Civil Service Commission, in the ICSC 2001 standards of conduct, which were welcomed by the General Assembly in its resolution 56/244, noted that:

“... international civil servants ... should not seek nor should they accept instructions from any Government, person or entity external to the organization. It cannot be too strongly stressed that international civil servants are not, in any sense, representatives of Governments or other entities, nor are they proponents of their policies. This applies equally to those on secondment from Governments and to those whose services have been made available from elsewhere. International civil servants should be constantly aware that through their allegiance to the Charter and the corresponding instruments of each organization, member States and their representatives are committed to respect this independent status”¹⁵².

53. The ICSC 2001 standards of conduct also stated the following:

“In providing services to a legislative or representative body, it goes without saying that international civil servants should serve only the interests of the organization. It would not be appropriate for international civil servants to prepare for government or other international civil service representatives any speeches, arguments or proposals on questions under discussion. It could, however, be quite appropriate to

¹⁵⁰ “Staff members shall not seek to influence Member States, principal or subsidiary organs of the United Nations or expert groups in order to obtain a change from a position or decision taken by the Secretary-General, including decisions relating to the financing of Secretariat programmes or units, or in order to secure support for improving their personal situation or the personal situation of other staff members or for blocking or reversing unfavourable decisions regarding their status or their colleagues’ status.”

¹⁵¹ “Special leave shall not be authorized for governmental service in a political office, in a diplomatic or other representational post or for the purpose of performing any functions that are incompatible with the staff member’s continued status as an international civil servant. In exceptional circumstances, special leave without pay may be granted to a staff member who is requested by his or her Government to render temporary services involving functions of a technical nature”.

¹⁵² Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 8.

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provide factual information, technical advice or assistance with such tasks as the preparation of draft resolutions”¹⁵³.

54. Moreover, upon accepting employment with the United Nations, all staff members must agree to sign a declaration on how they will conduct their functions as an international civil servant. From the very earliest stage, staff members agree to

“...regulate... (their)...conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of...(their)...duties from any Government or other source external to the Organization”¹⁵⁴.

Thus, the interests of the Organization must prevail over all other interests and must be the only consideration for all staff members when discharging their functions.

d. Discretion in the performance of official duties

55. In the ICSC 2001 standards of conduct¹⁵⁵, it is noted that:

“The disclosure of confidential information may seriously jeopardize the efficiency and credibility of an organization. International civil servants are responsible for exercising discretion in all matters of official business. They must not divulge confidential information without authorization. Nor should international civil servants use information that has not been made public and is known to them by virtue of their official position to private advantage. These are obligations that do not cease upon separation from service. It is necessary for organizations to maintain guidelines for the use and protection of confidential information, and it is equally necessary for such guidelines to keep pace with developments in communications technology. It is understood that these provisions do not affect established practices governing the exchange of information between the secretariats and member States,

¹⁵³ Ibid., para. 24.

¹⁵⁴ Staff Regulation 1.1(b).

¹⁵⁵ A/RES/56/244.

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which ensure the fullest participation of member States in the life and work of the organizations”¹⁵⁶.

56. The discretion required of all international civil servants was laid out in full in the above standards with little leeway for any disclosure of information without prior authorisation.

57. In 2007, the Secretary-General promulgated a bulletin on “information sensitivity, classification and handling”¹⁵⁷. The bulletin provided that the work of the UN should be “open and transparent”¹⁵⁸ but also stipulated that in instances where “disclosure of the information may be detrimental to the proper functioning of the United Nations or the welfare and safety of its staff or third parties or violate the Organization’s legal obligations”¹⁵⁹ the classification of “confidential” or “strictly confidential” must be employed to ensure that such information is not compromised¹⁶⁰.

58. The bulletin also set out the minimum standards to be maintained when a staff member handles classified material¹⁶¹ and for when such material can be destroyed¹⁶². Furthermore, on the question of information technology, it was stipulated that heads of departments and offices must ensure that all automated information systems handling classified material must have “controls that both prevent access by unauthorized persons, and ensure the integrity of the information”¹⁶³.

¹⁵⁶ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 35.

¹⁵⁷ ST/SGB/2007/6.

¹⁵⁸ Ibid., sect. 1.1.

¹⁵⁹ Ibid., sect. 1.3.

¹⁶⁰ Ibid., sect. 2.

¹⁶¹ Ibid., sect. 5.1. The bulletin also noted that heads of departments or offices have the authority to put in place stricter controls over the handling of classified information in so long as such controls are consistent with ST/SGB/2007/6.

¹⁶² Ibid., sect. 5.5.

¹⁶³ Ibid., sect. 5.4.

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59. An administrative instruction promulgated in 2000 also explained how a staff member must exercise the “utmost discretion” when undertaking any agreed outside activity¹⁶⁴.

60. The requirement of discretion in the performance of official duties is codified in the Staff Regulations and Rules. Although the relevant provisions remained unchanged throughout the period under review, they are of direct importance to the present topic. In particular, Staff Regulation 1.2 (i) requires staff members to “exercise the utmost discretion with regard to all matters of official business”¹⁶⁵ and Staff Regulation 1.2 (g) prohibits staff members from using the information they have acquired from their official functions for private gain. Furthermore, the declaration signed upon becoming a staff member reiterates the necessity for all staff members to exercise discretion as an international civil servant¹⁶⁶.

e. Impartiality in the performance of official duties

61. Staff Regulation 1.1 (b) sets out the declaration which must be taken by all staff members when commencing employment with the United Nations. In this declaration, they promise not to “seek or accept instructions ... from any Government or other source external to the organization”. In 2009, Staff Rule 1.1(b) was added to allow staff members to liaise with Governments pursuant to an agreement between the United Nations and the concerned Government¹⁶⁷.

62. In a guide released in 2007¹⁶⁸, the Secretary-General noted that instances such as accepting honours, gifts and remuneration, favouritism, and outside employment can present potential conflicts of interest and emphasized the importance of preserving the independence and impartiality of official decision-making at all times. In a comprehensive

¹⁶⁴ ST/AI/2000/13.

¹⁶⁵ For further discussion, see Repertory 9, para. 45.

¹⁶⁶ Staff Regulation 1.1 (b).

¹⁶⁷ Staff Rule 1.1 (b): “The declaration administered under staff regulation 1.1 (b) shall not prevent the close collaboration of staff with a Government pursuant to an agreement between the Government and the United Nations”.

¹⁶⁸ “Working together, putting ethics to work” (2007).

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report on the United Nations procurement activities¹⁶⁹, the Secretary-General stated that a conflict of interest in procurement and contracting activities “undermines adherence to ethical behaviour and the staff member’s duties as an international civil servant”¹⁷⁰. In calling for the procurement system to be, *inter alia*, more impartial, the Assembly reiterated¹⁷¹ its requests for the Secretary-General to submit proposals on possible amendments to the Financial Regulations and Rules and the Staff Regulations and Rules of the United Nations to address issues of potential conflict of interest¹⁷². A Secretary-General’s Bulletin promulgated on 26 December 2006 on post-employment restrictions¹⁷³ restricted former staff members who have participated in the procurement process from, *inter alia*, seeking or accepting employment, compensation or financial benefit from any United Nations contractor or vendor within a specified time¹⁷⁴. It also provided, *inter alia*, that current staff members participating in the procurement process must refrain from soliciting or accepting any promise or offer of future employment from any contractor or vendor of goods or services, which conducts business with the Organization or seeks to do so¹⁷⁵.

63. In this regard, in a legal opinion issued by OLA on the possible revision of the Staff Regulations and Rules to address potential conflicts of interest¹⁷⁶, OLA reiterated that the only sanctions that can be imposed by the Organization on former staff members in breach of the obligation relating to confidentiality and ‘discretion with regard to all matters of official business’ appears to be an indication in their official status file. OLA also noted that it may be possible to ban any company employing such staff from any dealings with the UN for a specified period of time¹⁷⁷. As for the proposals of revisions to the staff regulations and rules, OLA noted that in principle the United Nations could introduce a requirement that a former staff member must undertake not to seek or accept employment with a United Nations contractor within a period of one year following separation from the Organization,

¹⁶⁹ A/62/525.

¹⁷⁰ *Ibid.*, para. 14.

¹⁷¹ See A/RES/52/226, A/RES/54/14, A/RES/60/266, A/RES/61/246 and A/RES/61/276.

¹⁷² A/RES/62/269, para. 12.

¹⁷³ ST/SGB/2006/15.

¹⁷⁴ *Ibid.*, sect. 2.

¹⁷⁵ *Ibid.*, sect. 2.3.

¹⁷⁶ United Nations Juridical Yearbook, 2000, p. 341.

¹⁷⁷ *Ibid.*, p. 343.

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but that in practice it is unclear whether the introduction of such requirement would be effective in avoiding issues relating to conflicts of interest¹⁷⁸. OLA also noted that the proposal to ban consideration of bids or proposals from suppliers that employ former staff members engaged in procurement-related activities would be more easily enforced in principle but ineffective in those instances where a former staff member is not dealing with his or her former colleagues, and thus, could not be identified. OLA concluded that, if the conflict of interest issue in respect of procurement officers is going to be addressed, it would be most appropriately addressed in an administrative instruction. OLA advised that these subsidiary rules, which would refer to the Staff Regulations and Rules, could be formulated to address the particular issues of conflict of interest which arise in relation to procurement officers.

64. In a 2001 opinion, OLA also advised that, in view of the increasing number of cooperation arrangements between the United Nations and the private sector involving, *inter alia*, voluntary contributions from private sector partners, issues relating to acceptance of voluntary contributions from the private sector may be raised more frequently, and in such cases concerned organizations may wish to establish more specific rules or guidelines on this issue¹⁷⁹. One of the general principles included in the guidelines issued by the Secretary-General in 2000¹⁸⁰ on “Cooperation between the United Nations and the business community” is “no unfair advantage”, stating, *inter alia*, that “cooperation should not imply endorsement or preference of a particular business entity or its products or services”¹⁸¹.

65. Staff Regulation 1.2 concerns basic rights and obligations of staff members, including the issue of conflict of interest. This regulation remained unchanged in the period under review. Sections 21 and 22 of the Standards of Conduct for the international civil service address avoidance of assisting private bodies or persons in their dealings with the United Nations where this might lead to actual or perceived conflict. Staff rule 1.2 (p) on disclosing any financial interest related to a profit-making business or other concern was

¹⁷⁸ Ibid., p. 344.

¹⁷⁹ United Nations Juridical Yearbook, 2001, p. 415.

¹⁸⁰ A/56/323, annex III.

¹⁸¹ Ibid., sect. IV, para. 14(d).

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amended slightly in 2009. Where it originally requested disclosure of the “measure” of that interest, it now sought disclosure in total.

66. Other administrative instructions and Secretary General’s bulletins addressed issues relating to staff members’ engagement in outside activities¹⁸², whistle-blower protection¹⁸³ and financial disclosure¹⁸⁴. Furthermore, the Assembly repeatedly stressed the need for impartiality and fairness in internal investigations¹⁸⁵ and recognized that a transparent, impartial, independent and effective system of administration of justice is important for the success of human resources reform¹⁸⁶.

67. In response to a request for advice on the legality of monitoring telephone conversations between procurement staff and vendors¹⁸⁷, OLA examined the United Nations legal regime as well as that of the International Labour Organization and of various jurisdictions around the world. OLA concluded that, under the current United Nations framework, the investigation and monitoring of staff members’ telephone conversations is permitted only under certain circumstances and may continue only so long as is reasonably necessary to ascertain whether such suspected misconduct has occurred¹⁸⁸. OLA noted that if it was decided, as a matter of policy, to institute such phone monitoring then it would be necessary to promulgate a Secretary-General’s Bulletin that clearly sets forth all policy parameters and detailed modalities of such monitoring. OLA opined that it would be imperative “to obtain employee and third-party consent ... in order to protect the organization from legal challenges and potential claims”¹⁸⁹.

68. Regarding the issue of participation by non-United Nations officials in evaluations for procurement exercises undertaken by the United Nations, OLA advised that “the cooperation with officials of donor or beneficiary Governments in carrying out procurement

¹⁸² ST/AI/2000/13.

¹⁸³ ST/SGB/2005/21.

¹⁸⁴ ST/SGB/2006/6.

¹⁸⁵ A/RES/59/287, para. 2, and A/RES/62/247, para. 9.

¹⁸⁶ A/RES/59/283, A/RES/61/261.

¹⁸⁷ United Nations Juridical Yearbook, 2007, p. 435.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid., p. 442.

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activities, including evaluations, is specifically permitted under the Financial Regulations and Rules. However, any such cooperation between United Nations staff members and officials of donor or beneficiary Governments must be authorized by the General Assembly and may be subject to an appropriate agreement with such Government”¹⁹⁰.

69. In a 2009 case, the Administrative Tribunal¹⁹¹ considered whether discussing a bid in a procurement process with a Member State after that information was in the public domain was to be deemed misconduct and inconsistent with the standards of conduct expected of international civil servants. It was the view of the Tribunal that “even if the information on the bidding process was already in the public domain ... this did not ... exonerate the Applicant from the charge that he had breached the procurement rules in respect of “absolute impartiality””¹⁹². The Tribunal found that:

“Providing information prior to the award to any person who is not an official of the United Nations is a breach of the rules”¹⁹³.

70. The Tribunal went on to take consideration of Article 100 of the UN Charter and of Staff Regulations 1.1 and 1.4 and said that the Applicant’s breach of the Procurement Rules was not simply “technical” but “substantial”¹⁹⁴. However, the Tribunal also noted that “[w]hile the tribunal cannot – and will not – condone impropriety in the procurement process, it is fully aware that termination for serious misconduct is invariably not imposed absent the presence of fraud or the motive of personal gain”¹⁹⁵.

¹⁹⁰ United Nations Juridical Yearbook, 2007, p. 447

¹⁹¹ AT/DEC/1414.

¹⁹² Ibid., sect. XXI.

¹⁹³ Ibid., sect. XXI.

¹⁹⁴ Ibid., sect. XXIII.

¹⁹⁵ AT/DEC/1414, sect. XXIV.

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f. Integrity in the performance of official duties

71. Integrity was named as a core value of the United Nations by the Secretary-General in a bulletin released in 1999¹⁹⁶. During the period under review, the Assembly reiterated several times that the Secretary-General has the duty to ensure that the highest standard of integrity must serve as one of the paramount considerations in the employment of staff¹⁹⁷, in accordance with Article 101, paragraph 3, of the Charter of the United Nations. The Assembly also stressed the importance of integrity in the system of administration of justice¹⁹⁸ and in procurement reform and outsourcing¹⁹⁹. The Assembly further affirmed that the United Nations Common System was the best instrument to secure staff members of the highest standards of integrity for the international civil service²⁰⁰.

72. The ICSC 2001 standards of conduct note that “international civil servants do not have the freedom of private persons to take sides or to express their convictions publicly on controversial matters, either individually or as members of a group”²⁰¹. The Assembly had stated previously that these standards would ensure that all staff members uphold the principle of integrity²⁰².

73. In a bulletin promulgated in 2005, the Secretary-General announced the introduction of a mandatory Integrity Awareness Initiative for all staff members. This was “designed to raise staff members’ level of awareness of the core values of integrity, professionalism and respect for diversity, and to provide them with guidance about appropriate actions to take, people to consult, and/or materials to access if they suspect threats to integrity in the work of the Organization”²⁰³.

¹⁹⁶ ST/SGB/1999/15.

¹⁹⁷ A/RES/57/305, A/RES/60/238, A/RES/63/250.

¹⁹⁸ A/RES/57/307.

¹⁹⁹ A/RES/55/232, A/RES/59/289, A/RES/61/246.

²⁰⁰ A/RES/55/223, A/RES/59/268.

²⁰¹ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 9.

²⁰² A/RES/55/223, sect. B.

²⁰³ ST/SGB/2005/17, sect. 2.1.

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74. One aspect of integrity is the requirement not to abuse the power or authority of one's position with the United Nations. In two cases brought before the former UN Administrative Tribunal, the issue of abuse of power or authority arose. In the first case²⁰⁴, a staff member had misused the United Nations Laissez-Passer for personal travel and to obtain a travel visa. The Tribunal ruled that it was the right of the Organisation "to take such alleged violation of the rules governing the use of the UNLP with the utmost seriousness and to impose the ultimate sanction on violators"²⁰⁵. The applicant lost his appeal against the decision to terminate his services, which had also been based on his poor performance. In an opinion released in 2003 OLA had underlined that UNLPs are used in connection with official travel only and may not be used for private purposes²⁰⁶. In another case in the Tribunal related to an abuse of power²⁰⁷, a staff member was accused of, *inter alia*, using United Nations letterhead to make a request for a personal travel visa. The Tribunal said that "even if intent to commit fraud would be difficult to establish, mere utilization of the Organization's letterhead for personal gain and the intention behind such conduct are in themselves sufficient to constitute abuse of office"²⁰⁸. However, on the basis of the facts of that case, the Tribunal was not convinced that the act amounted to serious misconduct warranting summary dismissal.

75. In 2003, the Assembly called on the Secretary-General to put in place "clear and consistent procedures" for the reporting and investigation of sexual exploitation and related offences in all United Nations peacekeeping missions and humanitarian operations²⁰⁹. In his subsequent bulletin²¹⁰, the Secretary-General described the term "sexual exploitation" as encompassing "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another"²¹¹. The bulletin applies to all staff members and United Nations forces conducting operations under United Nations

²⁰⁴ Judgement No. 1181, 30 September 2004.

²⁰⁵ *Ibid.*, sect. IX.

²⁰⁶ United Nations Judicial Yearbook, 2003, p. 524.

²⁰⁷ Judgement No. 1289.

²⁰⁸ *Ibid.*, sect. VIII.

²⁰⁹ A/RES/57/306.

²¹⁰ ST/SGB/2003/13.

²¹¹ *Ibid.*, sect. 1.

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command and control. Its rules were also made applicable to experts on mission, such as United Nations police and military observers, consultants, contractors, and United Nations Volunteers through the legal instruments governing their relationship with the United Nations²¹². Pursuant to section 6.1 of this bulletin, the United Nations General Conditions of Contract were subsequently amended to ensure that outside entities cooperating with the United Nations also adhere to the obligations set out in the Secretary-General's bulletin.

76. In 2005, the Secretary-General introduced a mandatory learning programme in his bulletin on the "Prevention of workplace harassment, sexual harassment and abuse of authority," which was designed to strengthen the accountability of staff members and to "rais[e] awareness among them of their roles and responsibilities for creating and maintaining a workplace free of harassment, sexual harassment and abuse of authority"²¹³. A more in-depth issuance on discrimination, harassment, including sexual harassment, and abuse of authority, including the necessary preventative and corrective measures, was promulgated in 2008²¹⁴.

77. In one case, the former UN Administrative Tribunal found that by viewing pornographic movies and other media and by engaging in "sexually lewd and explicit" conduct, the staff member's behaviour constituted a serious violation of the Organization's rules, which was not "befitting an international civil servant who is expected to act with the highest standards of integrity and dignity"²¹⁵. The Tribunal also said that managers are expected to be held to a higher standard of knowledge of these rules and policies in order to lead by example²¹⁶.

78. The UN Dispute Tribunal further emphasized the importance of staff members' integrity in at least three cases during the period under review. Firstly, the UN Dispute Tribunal upheld the decision to summarily dismiss a staff member who had admitted to

²¹² See A/60/19, para. 65, and A/61/645, para. 40.

²¹³ ST/SGB/2005/20.

²¹⁴ ST/SGB/2008/5.

²¹⁵ Judgement No. 1299, 29 September 2006, sect. VIII.

²¹⁶ *Ibid.*

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participating in a visa fraud scheme²¹⁷. Secondly, the UN Dispute Tribunal also confirmed the summary dismissal of a staff member for diverting fuel for his personal use, falsifying official records to conceal the diversion and ordering staff members to engage in the falsification of records²¹⁸. Thirdly, the UN Dispute Tribunal upheld the summary dismissal of a staff member on the basis that he had submitted false information and not alerted the Administration to this fact when offered the opportunity. The UN Dispute Tribunal opined that such misconduct constituted a breach of the staff member's duty to uphold the highest standards of integrity²¹⁹.

- g. Adherence to the principles of equality and non-discrimination in the performance of official duties

79. In the ISCS 2001 standards of conduct, the International Civil Service Commission makes frequent references to the necessity for all international civil servants to respect the equal rights of all. In particular, they note that:

“Tolerance and understanding are basic human values. They are essential for international civil servants, who must respect all persons equally, without any distinction whatsoever. This respect fosters a climate and a working environment sensitive to the needs of all. To achieve this in multicultural setting calls for a positive affirmation going well beyond passive acceptance”²²⁰.

80. The explicit call for gender equality was also referred to as one of the main tenets of the Charter by the ICSC 2001 standards of conduct²²¹. For a more detailed overview of the evolution of gender balance priorities, one can look at the calls from the Assembly during

²¹⁷ UNDT Judgment No. 2009/006 (Manokhin).

²¹⁸ UNDT Judgment No. 2009/009 (Kouka).

²¹⁹ UNDT Judgment No. 2009/091 (Coulibaly).

²²⁰ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 6. See also paras. 3, 13 and 36.

²²¹ *Ibid.*, para. 14.

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the period under review²²². In particular, in 2001, the Assembly urged the Secretary-General to achieve the goal of 50/50 gender distribution²²³. In 2005, the Assembly reaffirmed this goal²²⁴, and expressed concern with the low proportion of women in the Secretariat²²⁵ whilst requesting that the Secretary-General increase efforts to develop and implement recruitment targets and make the best use of departmental focal points²²⁶. Similar concerns were expressed in 2007 and 2009²²⁷.

81. In its resolution 55/258 of 14 June 2001, the General Assembly reiterated that “the recruitment, appointment and promotion of staff shall be made without distinction as to race, sex or religion, in accordance with principles of the Charter and the provisions of the Staff Regulations and Rules of the United Nations”²²⁸. The Assembly requested that the Secretary-General conduct an inspection through the Office of Internal Oversight Services on the issue of possible discrimination due to nationality, race, sex, religion and language in recruitment, promotion and placement²²⁹. In the report requested by the Assembly, OIOS concluded that its new analysis did “not reveal a systematic and consistent pattern of preference or exclusion that impaired equal opportunity in recruitment, placement or promotion for any given region over the past six years”²³⁰. In terms of gender equality, the inspection revealed how “disparities continue to exist at the higher grades”²³¹. Finally, OIOS welcomed the overhaul of the staff selection system²³².

82. Indeed, the new staff selection system, introduced in May 2002²³³, required all heads of department and office to certify that they have taken into account the Organization’s

²²² A/RES/55/258, sect. IV, para. 7, and sect. XIV, A/RES/57/305, sect. II, paras. 11, 40 and 41, A/RES/59/266, sect. I, para. 9, sect. IV, A/RES/61/244, sect. II, paras. 2, 5, 8 and 10, and sect. XI, A/RES/63/250, sect. III, para. 2, sect. V, paras. 1 and 2.

²²³ A/RES/55/258, sect. XIV, para. 2.

²²⁴ A/RES/59/266, sect. VI, para. 1.

²²⁵ *Ibid.*, para. 2.

²²⁶ *Ibid.*, para. 5.

²²⁷ A/RES/61/244, sect. X, and A/RES/63/250, sect. X.

²²⁸ A/RES/55/258, sect. IV, para. 21.

²²⁹ A/RES/55/258, sect. IV, para. 23.

²³⁰ A/56/956.

²³¹ *Ibid.*

²³² A/56/956, summary, paras. 5 and 93.

²³³ ST/AI/2002/4.

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human resources objectives and targets, especially with regard to geography and gender²³⁴. Furthermore, in the Galaxy e-staffing system, in place at the time, the IT tool was enhanced to include a special feature to highlight a candidate from unrepresented and underrepresented Member States.

83. The Assembly continued to request that the Secretary-General take due regard of the principle of equitable geographical distribution in the recruitment and placement of all staff²³⁵. In particular, in 2005, the Assembly called for greater measures to “improve the situation of unrepresented and underrepresented Member States and of those in danger of becoming underrepresented under the system of desirable ranges”²³⁶. In that regard, the Secretary-General was authorised, during a trial period, to establish a special roster of candidates from unrepresented and underrepresented Member States for a number of posts at the P-4 and P-5 levels only, until such Member States reached the desirable ranges²³⁷. The Secretary-General had proposed this recruitment procedure as a “fast-track” approach in line with the overall principles and procedures of the staff selection system²³⁸. The Assembly welcomed the continuing efforts being made in meeting the desirable ranges²³⁹ but requested that heightened efforts be made by setting new targets to be achieved, to the extent possible²⁴⁰.

84. In 2003, the Secretary-General offered more flexible working arrangements with the objective to achieve a better balance between the professional and personal lives of the staff members of the Secretariat. Four options were created for staff members, at the discretion of their heads of department or office²⁴¹, as it had been acknowledged that more flexibility in working arrangements was an essential tool for attracting and retaining quality staff, in

²³⁴ *Ibid.*, Annex 1.

²³⁵ A/RES/55/258, sect. IV (8), A/RES/57/305, sect. II (8), A/RES/59/266, sect. I (9) and sect. IV, A/RES/61/244, sect. I (2), II (1, 3, 5, 6) and X, A/RES/63/250, sect. III (1, 2), V (2) and IX.

²³⁶ A/RES/59/266, sect. IV, para. 3.

²³⁷ *Ibid.*, sect. IV, para. 9.

²³⁸ A/59/264, paras. 21 and 22.

²³⁹ A/RES/61/244, sect. X, para. 3.

²⁴⁰ *Ibid.*, sect. X, para. 12, “reduce the number of unrepresented and underrepresented Member States in the Secretariat by 20 per cent by 2008 and by 30 per cent by 2010, compared to the level in 2006”.

²⁴¹ ST/SGB/2003/4.

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particular women²⁴². Another work-life policy introduced was the Secretary-General's bulletin on breastfeeding in 2003²⁴³.

85. In 2008, the Secretary-General promulgated a new bulletin prohibiting any form of discrimination, harassment, including sexual harassment, and abuse of authority. This bulletin superseded and abolished the much shorter issuances from 1992 on the "promotion of equal treatment of men and women in the Secretariat and prevention of sexual harassment"²⁴⁴ and from 1992 on "procedures for dealing with sexual harassment"²⁴⁵. The new bulletin centered on the fact that international civil servants must adhere to the principles of equality and non-discrimination in performance of their official duties:

"In their interactions with others, all staff members are expected to act with tolerance, sensitivity and respect for differences. Any form of prohibited conduct in the workplace or in connection with work is a violation of these principles and may lead to disciplinary action, whether the prohibited conduct takes place in the workplace, in the course of official travel or an official mission, or in other settings in which it may have an impact on the workplace."²⁴⁶

86. The bulletin goes on to set out the duties of staff members and the specific duties of managers, supervisors and heads of department/office/mission in ensuring that staff members do not engage in or condone the prohibited behaviour and that appropriate preventative measures are taken. The new bulletin also explains the extensive informal and formal procedures, which can be initiated when individuals believe that they are victims of the prohibited conduct²⁴⁷. Similar procedures had already been put in place by the 1992 bulletin on "procedures for dealing with sexual harassment"²⁴⁸. However, under the new bulletin, the procedures can also be used to address allegations of any form of

²⁴² A/57/387, para. 182.

²⁴³ ST/SGB/2003/14.

²⁴⁴ ST/SGB/253.

²⁴⁵ ST/AI/379.

²⁴⁶ ST/SGB/2008/5, sect. 2.3.

²⁴⁷ *Ibid.*, sect. 5.

²⁴⁸ ST/AI/379.

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discrimination, harassment, including sexual harassment, and abuse of authority within the meaning of Section 1 of the bulletin. The new bulletin also incorporated a more advanced system for both informal and formal resolution of the matter. It also established a new monitoring obligation, which is to be implemented through a number of measures, including the establishment of a joint harassment prevention board²⁴⁹ and the inclusion of information on the Secretary-General's practice in cases "where discrimination, harassment, including sexual harassment, and abuse of authority have been found"²⁵⁰ in the annual circular informing staff members of the Secretary-General's practice in disciplinary matters.

3. OBLIGATIONS REGARDING PERSONAL CONDUCT

a. Conduct in the interests of the United Nations

87. As expressed in Staff Regulation 1.1 (f), the privileges and immunities of the United Nations are conferred in the interests of the Organization and do not furnish any excuse regarding the non-performance of the private obligations of staff. The Secretary-General has the authority to decide on a case-by-case basis whether such immunities exist and whether they are to be waived.

88. An administrative instruction promulgated in 2000 expanded upon the rules regarding the private legal obligations of staff members²⁵¹. This issuance was drafted following the change in the Staff Rules and Regulations in 1999, as requested by the General Assembly in Resolution 52/252 (see the previous study), and to expand upon the provisions contained within the 1999 Secretary-General's bulletin on "family and child support obligations of staff members"²⁵². The issuance covered the procedure for staff members on special missions²⁵³ and provided for the procedure to be taken in the event of non-

²⁴⁹ ST/SGB/2008/14 established these boards to ensure "that all staff members of the Secretariat are treated with dignity and respect; and that a workplace free of any form of discrimination, harassment, including sexual harassment, and abuse of authority is maintained", as noted in Section 2.

²⁵⁰ ST/SGB/2008/5, sect. 6.6.

²⁵¹ ST/AI/2000/12.

²⁵² ST/SGB/1999/4.

²⁵³ ST/AI/2000/12, sect. 3.

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compliance with family support court orders²⁵⁴. In relation to other private legal obligations, the administrative instruction states that “the Organization’s immunity is not intended to derogate from the rights of legitimate claimants”²⁵⁵, and that the Organization shall make claimants aware that it requires its staff members to meet their private legal obligations. If a staff member fails to do so, disciplinary action may be initiated. Finally, the administrative instruction set out the order of precedence from which deductions from all final entitlements will be made, including in respect of payment of the staff member’s legally established obligations²⁵⁶.

89. In a judgement delivered in 2001, the United Nations Administrative Tribunal ruled upon a case where two staff members had entered into arrangements regarding their personal financial affairs, which had resulted in one staff member making allegations of fraud against the other, which the Tribunal found to be unsupported²⁵⁷. The Tribunal stated that a personal matter reflecting adversely on the Organization may be the subject of disciplinary proceedings but that the Staff Regulations and Rules principally address conduct related to employment²⁵⁸. The personal financial activity in this case was not found to be incompatible with the proper discharge of the staff member’s duties, nor did it adversely reflect on her independence or impartiality. In another case, the United Nations Administrative Tribunal found that the Administration had improperly interfered with the staff member’s financial obligations to this former spouse, the Tribunal held that “only a court order should get the Administration involved in securing alimony and/or other financial entitlements for an ex-spouse”²⁵⁹.

90. In a legal opinion from 2003 OLA commented upon the responsibility of staff members to comply with local laws and to honour their private legal obligations²⁶⁰. That opinion stated that the “United Nations has an interest in ensuring that staff members

²⁵⁴ Ibid., sect. 4.

²⁵⁵ Ibid., sect. 5.1.

²⁵⁶ Ibid., sect. 6.

²⁵⁷ Judgement No. 1004, 26 July 2001.

²⁵⁸ Ibid., sect. VI.

²⁵⁹ Judgement No. 1157, 30 January 2004.

²⁶⁰ United Nations Juridical Yearbook, 2003, p. 536.

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respect local laws and honour their private legal obligations”²⁶¹, as is reflected in ST/AI/2000/12.

b. Outside professional or financial activities

91. An amendment to Staff Regulation 1.2 that widened the scope of financial disclosure obligations was adopted by the General Assembly in order “to enhance the accountability of United Nations staff with respect to ... (the) ... financial accountability of staff involved in the management of the Organization’s resources”²⁶². The obligations relating to financial disclosure had previously only been applicable to staff members at the Assistant Secretary-General level and above. However, the amendment approved the extension of the financial disclosure requirement to all staff members at the D-1 or L-6 level and above, as well as their spouses and dependant children²⁶³. Furthermore, the same General Assembly resolution permitted the Secretary-General to require financial disclosure statements from such additional staff as were deemed necessary.

92. There were several other new issuances with a direct bearing on the outside professional and financial activities of staff members. Following the decision of the General Assembly, in resolution 52/252, to amend Article 1 of the Staff Regulations and Chapter 1 of the Staff Rules on the Code of Conduct, there was a need for a new administrative instruction on “Outside Activities” which reflected the changes brought on by those revisions²⁶⁴.

93. A related development was the promulgation of the Secretary-General’s bulletin on “Financial disclosure and declaration of interest statements”²⁶⁵, which was revised to reflect the changes in the Staff Regulations, as mentioned above.

²⁶¹ Ibid., p. 537.

²⁶² A/60/365, para. 1.

²⁶³ A/RES/60/238.

²⁶⁴ ST/AI/2000/13. For a detailed look at the revisions, see the Supplement No. 9 of the Repertory of Practice for Article 100, paras. 69-74.

²⁶⁵ ST/SGB/2006/6.

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94. The Secretary-General, as a part of the effort to streamline and improve the decision-making processes at the executive level in the Secretariat, established a Management Committee in 2005²⁶⁶. The Management Committee was established to consider internal reform and management-related issues requiring strategic direction from the Secretary-General and to ensure that any findings and recommendations of the Board of Auditors, the Joint Inspection Unit and the Office of Internal Oversight Services would be effectively fed into the executive management processes, and that accepted recommendations would be followed up and implemented in a timely manner. The Management Committee recommended the re-issuance of the 1999 Secretary-General's bulletin on "Financial disclosure statements"²⁶⁷ to reflect the changes to the financial disclosure regime and the extension of the financial disclosure requirement (as discussed above).

95. Finally, in a case brought before the United Nations Administrative Tribunal²⁶⁸ the Tribunal noted the failure of a staff member to disclose certain assets in his financial disclosure forms. Noting that the staff member in question had been involved in the review of the system of financial disclosure, the Tribunal rejected the staff member's plea of ignorance regarding the requirements to make financial disclosures. The Tribunal found that the failure to disclose both information on bank accounts and real estate constituted misconduct. Furthermore, the Tribunal did not accept the argument that staff members are not obliged to produce financial records during periods of special leave or when not employed by the Secretariat. The Tribunal stated that the staff member remained bound by the Staff Regulations and Rules during this time. Finally, the Tribunal did not agree that the sanctions proposed by the Joint Disciplinary Committee²⁶⁹ were disproportionate, as the Applicant had wilfully refused to disclose all information.

²⁶⁶ ST/SGB/2005/16 and ST/SGB/2006/14.

²⁶⁷ ST/SGB/1999/3.

²⁶⁸ Judgement No. 1490, 25 November 2009.

²⁶⁹ The report recommended a supervisory reprimand and a written censure.

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c. Acceptance of gifts, honours or favours

96. A Secretary-General's bulletin promulgated in March 2006²⁷⁰ provided guidelines for the Organization's acceptance of pro bono goods and services from the private sector and non-governmental organizations²⁷¹. The requirements did not apply to pro bono contributions of which the Organization will not be the ultimate user²⁷² or to offers of pro bono personnel or so-called gratis personnel²⁷³. The guidelines provided particulars for a detailed process to be followed in the event of any acceptance of pro-bono contributions, in order to ensure the transparency of procedures²⁷⁴. In particular, the bulletin provided:

“The substantive decision on the acceptance of a pro bono contribution shall be taken by the head of the operational department or office, in consultation with the offices typically involved in the process regarding the acceptance of a pro bono contribution, such as the Office of Programme Planning, Budget and Accounts, the Office of Legal Affairs and the Department of Management, or the relevant offices of the separately administered organs and programmes of the United Nations concerned, as appropriate”²⁷⁵.

97. The guidelines also provided direction for how to adhere to Article 100 of the UN Charter. Specifically:

“The acceptance of a pro bono contribution should not allow the donor a role in the internal decision-making process, or in any way compromise the integrity or independence of the recipient”²⁷⁶.

²⁷⁰ ST/SGB/2006/5.

²⁷¹ *Ibid.*, para. 2.

²⁷² *Ibid.*, para. 3.

²⁷³ *Ibid.*, para. 5 (also outlining what criteria are indicative that the offer is not of gratis personnel).

²⁷⁴ *Ibid.*, paras. 8-10.

²⁷⁵ *Ibid.*, para. 10.

²⁷⁶ *Ibid.*, para. 16. “Recipient” means the department or office of the United Nations or the separately administered organs or programmes of the United Nations receiving or using the pro bono contribution. *Ibid.*, para. 1.

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In that regard, the bulletin specified that the donor should normally cover all of the recipient's costs and liabilities resulting from the acceptance of the pro bono contribution²⁷⁷ and the contribution should only be accepted pursuant to a formal agreement, as drafted in consultation with OLA²⁷⁸.

98. An information circular was released in 2006 to "inform staff members of the Organization's policy on the acceptance of honours, gifts or remuneration from outside sources"²⁷⁹. This circular was issued in order to assist staff members to remain "independent and impartial" by not accepting "any honour, decoration, favour, gift or remuneration from any Government". Staff Regulation 1.2 (k) had been included in the Staff Regulations in 1998 to avoid "a needlessly unpleasant incident" whereby refusal of a gift in public would cause embarrassment²⁸⁰. The information circular also sets out the procedures to be followed for acceptance of items from a non-governmental source, minor gifts of essentially nominal value, academic awards, distinctions and tokens of a commemorative or honorary character, Government or other functions such as meals and diplomatic receptions and accommodation, travel and subsistence allowance.

99. In the changes made to the Staff Rules in 2009, there was some redrafting of the section on the acceptance of gifts or honours. Former Staff Rule 101.2 (n) was deleted²⁸¹ as its requirements were covered by Staff Regulations 1.2 (j), (k) and (l). Furthermore, Staff Rule 1.2 (k) was added to reflect what is stated under the Staff Regulations, namely:

"If refusal of an unanticipated honour, decoration, favour or gift from a Government would cause embarrassment to the Organization, the staff member may receive it on behalf of the Organization and then report and entrust it to the Secretary-General, who will either retain it for the Organization or arrange for its disposal for the benefit of the Organization or for a charitable purpose".

²⁷⁷ Ibid., para. 17.

²⁷⁸ Ibid., para. 18.

²⁷⁹ ST/IC/2006/31, para. 1.

²⁸⁰ ST/SGB/2002/13, p. 21.

²⁸¹ The Secretary-General may, in exceptional cases, provided that this is in the interest of the United Nations and not incompatible with the staff member's status, authorize a staff member to receive from a non-governmental source an honour, decoration, favour, gift or remuneration other than those referred to in staff rules 101.2 (k) to (m) above.

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d. Activities connected with the information media

100. In 2000 an administrative instruction was issued to implement Staff Regulation 1.2 and Staff Rules 101.2 (p) to (r), 201.2 (p) to (r), and 301.3 (p) to (r). This instruction, entitled “Outside Activities”²⁸², clarified the procedures for any dealings with the information media. It expanded upon the Staff Rules to encourage outside activities within the media which would benefit the UN or the achievement of its goals, or develop the professional skills of a staff member²⁸³. However, permission to engage in outside activities was subject to the requirements that the staff member must avoid any public statement which could “adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status” and that the staff member must use a disclaimer when working with an outside publisher²⁸⁴. The administrative instruction allowed for royalties or related payments for the published material to be paid to the staff member, if allowed under local law, but not for any other fee, remuneration or honorarium²⁸⁵.

101. In 2006, in order to better inform staff members about the Organization’s policy with regard to outside activities (as set forth in Staff Regulations 1.2 (o) and (p), then Staff Rules 101.2 (p) to (s), and ST/AI/2000/13) a new information circular was promulgated on “Outside Activities”²⁸⁶. Although nothing new in substance was added in relation to the obligations of staff members relating to their involvement in outside activities, including interactions with the information media, the new circular displayed the strong emphasis placed by the administration on adherence to rules relating to outside activities.

102. The guiding provision for all international civil servants when dealing with the media was set out in the ICSC 2001 standards of conduct, which states that:

²⁸² ST/AI/2000/13.

²⁸³ *Ibid.*, sect. 4.2.

²⁸⁴ *Ibid.*, sect. 4.3.

²⁸⁵ *Ibid.*, sect. 4.5.

²⁸⁶ ST/IC/2006/30.

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“Openness and transparency in relations with the media are effective means of communicating the organizations’ messages, and the organizations should have guidelines and procedures for this purpose. Within that context, the following principles should apply: international civil servants should regard themselves as speaking in the name of their organizations and avoid personal references and views; in no circumstances should they use the media to further their own interests, to air their own grievances, to reveal unauthorized information or to attempt to influence policy decisions facing their organizations.”²⁸⁷

103. Furthermore:

“The disclosure of confidential information may seriously jeopardize the efficiency and credibility of an organization. International civil servants are responsible for exercising discretion in all matters of official business. They must not divulge confidential information without authorization. Nor should international civil servants use information that has not been made public and is known to them by virtue of their official position to private advantage. These are obligations that do not cease upon separation from service. It is necessary for organizations to maintain guidelines for the use and protection of confidential information, and it is equally necessary for such guidelines to keep pace with developments in communications technology. It is understood that these provisions do not affect established practices governing the exchange of information between the secretariats and member States, which ensure the fullest participation of member States in the life and work of the organizations”²⁸⁸.

104. Other reforms were undertaken in the period under review touching upon the use of information media. An administrative instruction was issued for the purpose of establishing guidelines for Internet publishing, which, amongst other things, discussed the confidentiality

²⁸⁷ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 34.

²⁸⁸ *Ibid.*, para. 35.

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of designated United Nations materials and the privacy of United Nations staff²⁸⁹, as well as the issue of copyright for UN materials published on the internet²⁹⁰. The issuance explained the need for taglines with the proper attribution to the UN²⁹¹ and for requests for reproduction of materials to be considered “on a case-by case basis in accordance with the best interests of the Organization and with specific considerations based on the current guidelines”²⁹². Finally, any references to external websites were required to be referenced correctly with, if needed, a disclaimer of United Nations responsibility for or endorsement of any such site or commercial product²⁹³.

105. A Secretary-General’s bulletin was promulgated in 2007 on “Information sensitivity, classification and handling”, which sought to ensure the correct classification and secure handling of confidential information entrusted to or originating from the United Nations²⁹⁴. The bulletin provided that classified documents are to be handled correctly in accordance with prescribed procedures, especially when their disclosure is likely to “endanger the safety or security of any individual, violate his or her rights or invade his or her privacy”²⁹⁵, or “prejudice the security or proper conduct of any operation or activity of the United Nations, including any of its peacekeeping operations”²⁹⁶.

106. In the 2009 revision of the Staff Rules, Staff Rule 1.2 (r) was added and required all staff members to:

“Exercise the utmost discretion in all matters of official business of the Organization. They shall not communicate at any time to any other person, Government or authority external to the United Nations any information known to them by reason of their association with the United Nations which has not been made public, nor engage in any of the following acts, if such act relates to the

²⁸⁹ ST/AI/2001/5, sect. 2.5.

²⁹⁰ Ibid., sect. 5.

²⁹¹ Ibid., sect. 5.3.

²⁹² Ibid., sect. 5.4.

²⁹³ Ibid., sect. 5.5.

²⁹⁴ ST/SGB/2007/6.

²⁹⁵ Ibid., sect. 1.2 (b).

²⁹⁶ Ibid., sect. 1.2 (c).

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purpose, activities or interests of the United Nations, except in the course of their duties or by authorization of the Secretary-General or his designate; nor shall they at any time use such information to private advantage. These obligations do not lapse upon cessation of their services with the United Nations”²⁹⁷.

107. This was a significant addition to the rules which underpinned the necessity for discretion in all matters related to the Organization, including in respect of relations with information media.

e. Political activities

108. The ICSC 2001 standards of conduct were explicit in setting out the rules regarding the political or religious convictions of staff:

“Impartiality implies tolerance and restraint, particularly in dealing with political or religious convictions. While their personal views remain inviolate, international civil servants do not have the freedom of private persons to take sides or to express their convictions publicly on controversial matters, either individually or as members of a group. This can mean that, in certain situations, personal views should only be expressed with tact and discretion”²⁹⁸.

109. The political activities of staff members, regulated in part by Staff Regulation 1.2, were also addressed directly in the administrative instruction on “Outside activities”, released in 2000²⁹⁹. According to that instruction, staff members may exercise the right to vote as long as their participation in any political activity is consistent with, and does not reflect adversely upon, the independence and impartiality required by their status as international civil servants³⁰⁰. The instruction also set the rules by which staff members could become

²⁹⁷ ST/SGB/2009/7, Staff Rule 1.2(r).

²⁹⁸ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 9.

²⁹⁹ ST/AI/2000/13.

³⁰⁰ *Ibid.*, sect. 5.3.

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members of a political party or pay a financial contribution to that party³⁰¹. Finally, it noted explicitly that running for or being appointed to political office is not permitted for staff members³⁰².

f. Criminal activities

110. The ICSC 2001 standards of conduct provided that:

“Violations of law can range from serious criminal activities to trivial offences, and organizations may be called upon to exercise judgement in the light of the nature and circumstances of individual cases. A conviction by a national court will usually, although not always, be persuasive evidence of the act for which an international civil servant was prosecuted, and acts that are generally recognized as offences by national criminal laws will normally also be violations of the standards of conduct for the international civil service”³⁰³.

111. In 2005, the Special Committee on Peacekeeping Operations and its Working Group produced a report whereby it reaffirmed that all United Nations employees in peacekeeping operations must act in a manner that “preserves the image, credibility, impartiality and integrity of the United Nations”.. Particular mention was made of the increasing number of allegations of sexual misconduct and the Special Committee requested the Secretary-General to present a comprehensive report with recommendations on the issue of sexual exploitation and abuse by military, civilian police and civilian personnel in United Nations peacekeeping missions³⁰⁴. On 24 March 2005, the Secretary-General transmitted to the General Assembly the report of his Adviser on a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations³⁰⁵.

³⁰¹ Ibid., sect. 5.4.

³⁰² Ibid., sect. 5.5.

³⁰³ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30 (A/56/30), annex II, para. 40.

³⁰⁴ Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19 (A/59/19), paras. 48 and 56.

³⁰⁵ See A/59/710.

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112. Later that same year the Assembly affirmed the need for the Organization to adopt a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations and endorsed the recommendation of the Special Committee to establish a group of legal experts to provide advice, in line with the UN Charter, on how to ensure that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized³⁰⁶.

113. By the subsequent resolution 61/29, the General Assembly established an Ad Hoc Committee for the purpose of considering the report of the group of legal experts³⁰⁷.

114. In a note by the Secretariat in 2007, it was recalled that there exists a jurisdictional gap when a crime is committed in a host State but that host State is unable to prosecute an alleged offender or make an offender accountable, in which case there is a need to rely on other States to do so³⁰⁸. The Secretariat noted that it cannot hold a person criminally accountable and so “the exercise of criminal jurisdiction remains the responsibility of Member States”³⁰⁹, which must ensure that “all United Nations personnel are never effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process”³¹⁰. In considering a case where amnesty from a criminal sentence was sought, the Legal Counsel recommended that a general amnesty not be given to a former staff member, despite it being requested by the government of a Member State where he was incarcerated. The Legal Counsel stated that:

³⁰⁶ A/RES/59/300, General Assembly Official Records, Fifty-ninth Session, Supplement No. 19, part 2, para. 40 (A/59/19/Rev.1).

³⁰⁷ A/RES/61/29, referring to A/RES/59/300. See also “Report of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission”: Official Records of the General Assembly, Sixty-second Session, Supplement No. 54 (A/62/54).

³⁰⁸ A/62/329, para. 17.

³⁰⁹ *Ibid.*, para. 16.

³¹⁰ *Ibid.*, para. 19.

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“Any approval of amnesty in this particular case would be inconsistent with the Organization’s policy of promoting the rule of law as well as the principles of accountability and responsibility for serious crimes”³¹¹.

115. The issue had been discussed in the General Assembly during the 62nd session where Member States confirmed that they were “convinced of the need for the United Nations and its Member States to urgently take strong and effective steps to ensure criminal accountability of United Nations officials and experts on mission”³¹². This resolution, resolution 62/63, also requested the Secretary-General “to bring credible allegations that reveal that a crime may have been committed by United Nations officials and experts on mission to the attention of States against whose nationals such allegations are made”³¹³ and strongly urged States “to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice”³¹⁴. The resolution also encouraged States to cooperate in the exchange of information and the facilitation of the investigation and potential prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with the States’ domestic laws and applicable United Nations rules and regulations³¹⁵.

116. In the discussions held by the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission³¹⁶, there was support among delegations for States to cooperate more on “the exchange of information, extradition, the serving of sentences and on other measures to facilitate the effective exercise of criminal jurisdiction”³¹⁷. In 2008 the General Assembly went a step further than its resolution 62/63 and agreed on a more comprehensive resolution on the criminal accountability of United

³¹¹ United Nations Juridical Yearbook, 2006, p. 540.

³¹² A/RES/62/63.

³¹³ *Ibid.*, para. 9

³¹⁴ *Ibid.*, para. 2.

³¹⁵ *Ibid.*, para. 4.

³¹⁶ General Assembly Official Records, Sixty-third Session, Supplement No. 54 (A/63/54).

³¹⁷ *Ibid.*, para. 16.

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Nations officials and experts on mission³¹⁸. It was concerned with issues of jurisdiction over crimes, committed by United Nations officials and experts on mission, as described above and in A/62/329. As with resolution 62/63, the resolution strongly urged Member States to, *inter alia*, consider establishing jurisdiction, if they had not yet done so, and encouraged them to cooperate with each other and with the United Nations to conduct investigations and prosecute United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature. In addition, the resolution set forth in a more comprehensive manner different mechanisms which Member States could utilize to facilitate such accountability³¹⁹.

117. On the basis of the Secretary-General's zero-tolerance policy on sexual exploitation and abuse³²⁰, and from the work of the Ad Hoc committee established in 2006³²¹, the General Assembly adopted a "United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel" in 2007³²². This strategy was, amongst other things, designed to determine how assistance and support should be provided to those who are complainants, victims and children born as a result of sexual exploitation and abuse by United Nations staff and related personnel. In the letter accompanying the draft strategy, the Secretary-General said that:

"The strategy breaks new ground. It has been widely discussed and draws on a broad variety of experience, research and expertise. Some of its elements were hotly debated among various United Nations entities before consensus was achieved"³²³.

118. In the final, shortened strategy the Assembly agreed that:

"The Strategy should be implemented to assist and support complainants, victims and children born as a result of sexual exploitation and abuse by United Nations staff

³¹⁸ A/RES/63/119.

³¹⁹ *Ibid.*, para. 5.

³²⁰ See ST/SGB/2003/13.

³²¹ A/RES/61/29.

³²² A/RES/62/214.

³²³ A/60/877, p. 2.

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and related personnel in a manner appropriate to the relevant circumstances of each location with due respect to host country legislation”³²⁴.

119. The strategy called for basic assistance and support for all complainants as well as additional assistance in accordance with their individual needs which arise from sexual exploitation and abuse. The strategy called for a United Nations focal point to monitor its implementation.

C. The obligations of Member States

1. PRIVILEGES AND IMMUNITIES OF THE SECRETARIAT

120. In his 2004 report “Strengthened and unified security management system for the United Nations,” the Secretary-General stated:

“...a failure to improve security would leave the Organization facing equally unpalatable alternatives: suspending United Nations activities or continuing them amid unacceptable levels of risk. At the same time, the Organization cannot succumb to a ‘bunker mentality’ and shrink from the work the world’s people expect it to do. A degree of risk cannot be avoided; the challenge is to mitigate it”³²⁵.

121. In the period reviewed in this report, the security of humanitarian and United Nations personnel continued to deteriorate. Staff members increasingly became targets of deliberate attacks with the disturbing trend expanding indiscriminately to all locations. In his reports, the Secretary-General said the threats against United Nations personnel took the form of murder, physical assault and verbal abuse; abductions and hostage-taking; illegal arrests and detentions; storming and occupation of UN premises; and destruction and

³²⁴ A/RES/62/214, annex, para. 4.

³²⁵ A/59/365 and Corr.1, para. 69.

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seizure or looting of UN vehicles and property³²⁶. Threats to life and of bodily injury were also posed by mines and unexploded ordnances. In addition, staff members were subjected to routine denial of visas and the imposition of travel restrictions based on nationality³²⁷.

122. The Secretary-General outlined the reasons for such developments³²⁸ and stated that it was his intention to enhance the capacity and the capability of the Organisation to operate in increasingly difficult circumstances to fulfil its mandate.

123. In the face of such increasing threats and attacks, the Security Council and the General Assembly stressed that the primary responsibility for the security and safety of United Nations personnel lay with the host Governments³²⁹. Member States were therefore strongly urged to take protective measures and to prosecute the perpetrators of such acts³³⁰. The Security-Council also urged States to fulfil their responsibility to act promptly and effectively in their domestic legal systems by bringing to justice all those responsible for attacks and other acts of violence against United Nations personnel, and to enact effective national legislation as required for that purpose³³¹. The Administrative Committee on Coordination also expressed appreciation for the renewed attention being given to staff security issues by the General Assembly, the Security Council and the Economic and Social Council. It also called on all Member States that have not yet done so to ratify the Convention on the Safety of United Nations and Associated Personnel and the statute of the International Criminal Court³³².

124. In 2000, when reporting on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, the Secretary-General recalled that,

³²⁶ See, e.g., A/59/365, A/60/223, A/61/463, A/62/324, A/63/305, A/64/336.

³²⁷ A/55/494, Yearbook 2000, p. 1346.

³²⁸ *Ibid.*, para. 5.

³²⁹ It must be noted that the Report of the Independent Panel on Safety and Security of UN Personnel and Premises Worldwide (9 June 2008) entitled "Towards a Culture of Security and Accountability" agreed that the responsibility lay with the member States but that the "The central element of the cooperation and trust between the two sides is information sharing about security conditions".

³³⁰ S/PRST/2000/4, see also, A/RES/56/217, A/RES/57/155, CEB/2004/6, A/RES/59/211, A/RES/60/123, A/RES/54/192, A/RES/55/175, A/RES/64/77, A/RES/56/84, and Repertory of Practice, Article 105.

³³¹ *Ibid.*

³³² ACC/2000/4.

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in his 1999 report to the Council, he had pointed to the emerging consensus among Member States on the Convention's inadequacies and limitations. He thus recommended the development of a protocol to the Convention extending the scope of its legal protection to cover all United Nations and associated personnel who were not covered in the Convention³³³. Pending the conclusion of such a protocol, the Secretary-General suggested three measures for the Assembly's consideration, which, within the limitations of the Convention, would strengthen its protective regime and give it full effect as follows: (i) a procedure to initiate a "declaration" by the Security Council or the General Assembly, (ii) designating the Secretary-General as the "certifying authority" for purposes of attesting to the fact of a "declaration" or "agreement, and to the status of any United Nations and associated personnel and (ii) to incorporating the key provisions of the 1994 Convention in the status-of-forces or status of mission agreements concluded between the United Nations and States in whose territories peacekeeping operations are deployed³³⁴. The report also went into some depth on the scope of the Convention and the personnel covered by the Convention by virtue of the definition of "United Nations personnel" and "Associated personnel" contained in the Convention³³⁵.

125. In response, the Assembly established an Ad Hoc Committee to consider the recommendations made by the Secretary-General³³⁶. In that same session, the Assembly emphasized the need to give further consideration to the safety and security of locally recruited humanitarian personnel, who account for the majority of casualties³³⁷.

126. After the attack on the Headquarters of the United Nations Assistance Mission in Iraq (UNAMI) in Baghdad on 19 August 2003, the Security Council adopted resolution 1502 (2003) condemning all forms of violence against those participating in humanitarian operations³³⁸. The Assembly also condemned the attack and called for intensified

³³³ A/55/637. For further background, see also A/54/619-S/1999/957.

³³⁴ Ibid.

³³⁵ Ibid., p. 4.

³³⁶ A/RES/56/89, para. 7.

³³⁷ A/RES/56/217.

³³⁸ See also S/PRST/2003/13.

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international cooperation to prevent and eradicate such acts of terrorism and to hold accountable all those who participate in such acts³³⁹.

127. The Assembly has continued to request the Secretary-General to include when negotiating host country agreements the key provisions of the Convention such as those regarding the prevention of attacks against members of the operation, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders³⁴⁰.

128. Overall, the legal protection offered under the 1994 Convention on the Safety of United Nations and Associated Personnel was discussed on numerous occasions in the Assembly during the period under review³⁴¹. The core provisions of the Convention were introduced in a growing number of status-of-forces and status-of-mission agreements which had the effect of extending the scope of application of the Convention to United Nations operations in countries which were not parties to the Convention³⁴². The Secretary-General has advocated for a legal instrument to expand its scope to all United Nations operations by means of a legal instrument, dispensing entirely of the need for a “declaration of exceptional risk” as there were difficulties in the issuance of such a “declaration”³⁴³. After discussions in the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel³⁴⁴ and the Working Group of the Sixth Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel³⁴⁵, the Sixth Committee recommended that the Assembly adopt the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel³⁴⁶. The protocol extended the application of the provisions of the Convention on the Safety of United Nations and Associated Personnel to United Nations

³³⁹ A/RES/57/338.

³⁴⁰ See, e.g., A/RES/55/175, A/RES/56/217, A/RES/58/122, A/RES/64/77.

³⁴¹ See A/RES/56/89, A/RES/57/28, A/RES/58/82, A/RES/59/47.

³⁴² See, e.g., A/59/226 for the background to its inclusion in status-of-forces and status-of-mission agreements.

³⁴³ *Ibid.*

³⁴⁴ Official Records of the General Assembly, Sixtieth Session, Supplement No. 52 (A/60/52).

³⁴⁵ A/C.6/60/L.4.

³⁴⁶ A/60/518. See also A/RES/60/42.

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operations which have the purpose of delivering humanitarian, political or development assistance in peacebuilding, or delivering emergency humanitarian assistance³⁴⁷.

129. In the period under review, the Assembly stressed the essential role of telecommunication resources in ensuring the security of humanitarian personnel and called upon States to consider acceding to or ratifying the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operation³⁴⁸. The Secretary-General had, in 2002, observed that terrorist-related threats had increased and appealed to Member States that do not permit the United Nations to equip itself with any form of communications equipment to lift such restrictions in the interest of the safety and security of staff members.³⁴⁹

130. In 2005 the Secretary-General noted that some host Governments continued to be unwilling to provide timely information in the event of the arrest or detention of United Nations personnel, particularly locally recruited personnel, or to investigate attacks or other threats against them or indeed to hold the perpetrators accountable under international and national law³⁵⁰. This was a common thread amongst the Assembly resolutions of the period and continues to be a serious issue in improving the safety and security of all personnel³⁵¹.

131. The Secretariat has continued move towards a more strengthened and enhanced system-wide security management³⁵². In his report, “Strengthened and unified security management system for the United Nations,” the Secretary-General enumerated some of the steps taken to enable the United Nations to meet new demands, as authorized by the General Assembly, which began in 1999 with an increase in the staff in the Office of the United Nations Security Coordinator. Such measures also included the appointment of a full-time United Nations Security Coordinator in 2001 at the level of an Assistant Secretary-General, more than doubling the size of its headquarters staff and quadrupling the number

³⁴⁷ A/RES/60/42, Annex, Article II.

³⁴⁸ See, e.g., A/RES/56/217, A/RES/57/155, A/RES/58/122, A/RES/59/211, A/RES/64/77.

³⁴⁹ A/57/300.

³⁵⁰ A/60/223 & Corr.1.

³⁵¹ See, e.g., A/RES/54/192, A/RES/56/217, A/RES/60/123, A/RES/62/95, A/RES/64/77.

³⁵² A/RES/63/138, para. 18.

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of staff in the field in 2002, improved recruitment and training for the Organization's security staff and the institutionalization of security coordination among United Nations agencies and programmes through the establishment of the Inter-Agency Security Management Network³⁵³. The Department of Safety and Security (DSS) was established by the General Assembly in part XI of its resolution 59/276 in response to the report of the Secretary-General entitled "Strengthened and unified security management system for the United Nations"³⁵⁴. The Secretary-General said that this Department will provide common security policies and standards leading to improvements in the quality and scope of the Organization's security arrangements. This would "enhance the Organization's ability to conduct its activities in an effective and efficient manner while ensuring the security and safety of its staff posted in different parts of the world"³⁵⁵. The new Department consolidated the security management component of the Office of the United Nations Security Coordinator³⁵⁶, the Security and Safety Services (SSS) at Headquarters and at Offices away from Headquarters, (including the regional commissions), and the civilian security component of the Department of Peacekeeping Operations (DPKO) into a single security management framework.

132. In the aftermath of an the attack on United Nations offices in Algiers on 11 December 2007, the Secretary-General established an Independent Panel on Safety and Security of United Nations personnel and premises around the world³⁵⁷ which had a broad mandate, with a focus on "strategic issues vital to delivery and enhancement of the security of United Nations personnel and premises and the changing threats and risks faced by it"³⁵⁸. The Panel was to "examine the inherent vulnerabilities of United Nations operations around

³⁵³ A/59/365, para. 4.

³⁵⁴ A/59/365 and Corr. 1.

³⁵⁵ *Ibid.*, para. 37.

³⁵⁶ General Assembly resolution 57/155 had welcomed the appointment of a full-time United Nations Security Coordinator at the level of Assistant Secretary-General "to further strengthen security coordination and management and to sustain the initiatives aimed at increasing the efficacy of the security management system".

³⁵⁷ The Panel was established on 5 February 2008.

³⁵⁸ "Towards a Culture of Security and Accountability" - The Report of the Independent Panel on Safety and Security of UN Personnel and Premises Worldwide 9 June 2008, para. 1.

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the world in order to build confidence among the staff within the system and enhance credibility among the Member States, civil society and other relevant stakeholders”³⁵⁹.

133. The panel found that since the creation of DSS, the United Nations security management system had “improved significantly”³⁶⁰, but certain areas need strengthening, namely; accountability, leadership, and internal management and oversight. The panel also stated that DSS was also inadequate in its response to warnings and security-related information, and that it had insufficient technical and financial resources to design and set up preventive and protective measures³⁶¹. The Panel gave many recommendations in this regard³⁶². The Secretary-General used the panel’s report to request that the General Assembly support a “new strategic vision in recognition that the unified security structure must implement sound, well-designed and valuable security programmes and policies throughout a decentralized security management system”³⁶³. The Secretary-General in his report to the General Assembly summarised the measures taken to ensure a more effective United Nations security management system through mainstreaming of a security management system³⁶⁴ and various other initiatives³⁶⁵. The measures were designed to create a fundamental shift in culture from that of a “when to leave” mindset to a “how to stay” mindset through a new approach to security risk management³⁶⁶. This would reflect the call of the Chief Executives Board in their statement on safety and security of United Nations system staff³⁶⁷.

³⁵⁹ Press Release SG/SM/11403.

³⁶⁰ *Ibid.*, para. 8.

³⁶¹ *Ibid.*, para. 9.

³⁶² *Ibid.*, p. 77.

³⁶³ A/64/336, para. 63.

³⁶⁴ *Ibid.*, para. 32.

³⁶⁵ *Ibid.*, para. 41. One initiative already in place was promulgated in ST/SGB/2003/19 “Basic security in the field: staff safety, health and welfare (Interactive online learning)”. This training was designed to provide basic training on various aspects of personal safety, health and welfare.

³⁶⁶ *Ibid.*, para. 37.

³⁶⁷ CEB/2009/1.

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134. In resolution 64/77 the Assembly welcomed the ongoing efforts of the Secretary-General³⁶⁸ to address the recommendations of the Independent Panel on Safety and Security of United Nations Personnel and Premises Worldwide³⁶⁹.

2. THE QUESTION OF GOVERNMENTS PROVIDING THE SECRETARY-GENERAL WITH INFORMATION RELATING TO STAFF MEMBERS

135. As with the previous studies on Article 100, it can be stated that there has been little development on the issue of information provided by governments regarding staff members. In the period in question, there were calls for governments to cooperate with each other in exchanging information to facilitate the conduct of investigations into the criminal behaviour of staff members³⁷⁰. In response to this, the Secretary-General prepared a report for the 63rd session entitled “Criminal accountability of United Nations officials and experts on mission”³⁷¹. This report contained information received from Governments about the extent to which their national laws establish jurisdiction, particularly over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, as well as information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. The report was considered by the General Assembly in 2009³⁷² and in the same session and resolution the Assembly took note of the information provided by Member States in facilitating the conduct of investigations³⁷³.

136. Another development relating to information being required from the Member States was the new instruction on personal status for purposes of United Nations entitlements³⁷⁴. As per this issuance, promulgated by the Secretary-General, “requests

³⁶⁸ A/RES/64/77, paras. 20 and 21.

³⁶⁹ *Ibid.*, para. 25.

³⁷⁰ A/RES/62/63.

³⁷¹ A/63/260.

³⁷² A/RES/63/119.

³⁷³ *Ibid.*, para. 14.

³⁷⁴ ST/SGB/2004/13.

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relating to the determination of the personal status of staff members in connection with their entitlements will be submitted by the Secretariat for verification by the Permanent Mission to the United Nations of the country of nationality of the staff member concerned. Once the Mission has verified that the status in question is legally recognized under the law of that country for the purposes of granting benefits and entitlements, the Secretariat will take action in accordance with that verification³⁷⁵.

3. THE QUESTION OF REGULATION BY A STATE OF ITS OWN
NATIONALS ON STAFF

137. The issue of military service comes under the regulation of nationals by a Member State. In fact, in the overhaul of the Staff Rules and Regulations in 2009, there were some changes made to the granting of special leave without pay for military service. Though largely resembling the original, Rule 5.3 (b) was rewritten to reflect what was detailed in Appendix C. Thus, where before it stated that the rule would not apply to anyone recruited specifically for a mission, the new rule removed this precondition and said that the requirement was now for a staff member to have “successfully completed the competitive examination and completed one year of service under a fixed-term appointment or who holds a continuing appointment³⁷⁶. The one year of service was also a reflection of the terms of Appendix C.

138. The Legal Counsel also clarified the policy of immunity from national service³⁷⁷. The Legal Counsel said that it had been reported that some instances of arrests and detention might have occurred in order to compel locally-recruited officials to perform national service obligations³⁷⁸. The Legal Counsel stressed that in accordance with the 1946 Convention on

³⁷⁵ Ibid., para. 2.

³⁷⁶ ST/SGB/2009/7, Staff Rule 5.3 (b).

³⁷⁷ United Nations Judicial Yearbook, 2006, p. 502.

³⁷⁸ Ibid.

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the Privileges and Immunities of the United Nations, officials shall be immune from national service obligations irrespective of nationality or place of recruitment³⁷⁹.

139. As is known, immunity from taxation for United Nations officials, granted by section 18(b) of the Convention on the Privileges and Immunities of the United Nations³⁸⁰, is not applicable to United States citizens and permanent residents as the United States made a reservation when acceding to the Convention³⁸¹. Staff Regulation 3.3 (f) governs the payment and reimbursement of income taxes, such as those paid in the United States. An Information Circular released in 2004 reminded staff members who hold the status of United States legal permanent residents, or whose application for such status is pending, that they are to complete and sign the “Waiver of rights, privileges, exemptions and immunities”³⁸².

140. In a case brought before the Administrative Tribunal from a United States citizen regarding the payment of taxes, the Tribunal found that “in complex matters such as those concerning social security, pensions, taxes or other issues of a similar nature, the Administration has to be especially careful”³⁸³. The Tribunal accepts that staff members need to be informed of their taxation obligations but that this information must come from the Administration and that the Administration “promulgate issuances on these issues, ensuring that they are informative and comprehensive, yet simple and easy to understand”³⁸⁴. Nonetheless, in that case, it found that ignorance of the law as an excuse was not acceptable and the staff member’s plea for reimbursement of taxes was rejected. However, the Administration had to accept responsibility for providing erroneous information in regards to the United Nations system of tax reimbursement and the United States tax system and compensation was rewarded to the staff member as a result.

³⁷⁹ Ibid.

³⁸⁰ 13 February 1946.

³⁸¹ The United States acceded to the Convention on 29 April 1970 but with some reservations. In particular, it asked that “Paragraph (b) of section 18 regarding immunity from taxation ... shall not apply with respect to United States nationals and aliens admitted for permanent residence”.

³⁸² ST/IC/2004/31.

³⁸³ Judgement No. 1185, *Van Leeuwen* (2004), para. III.

³⁸⁴ Ibid.

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141. In another related case where the Secretary-General demoted a staff member with no possibility of promotion after finding that the staff member had the intent to commit fraud in the filing of his tax reimbursement claims³⁸⁵, the Tribunal rescinded the decision of the Secretary-General having found that the staff member “acted out of ignorance, not fraudulent intent”³⁸⁶. The Tribunal was ‘perplexed’ by the fact that the Secretary-General had gone against the recommendation of the *ad hoc* Joint Disciplinary Committee on Tax Cases (JDC) having found the JDC to be “an appointed fact-finding body made up of individuals carefully chosen for their skills and expertise in matters of tax and finance, whose sole purpose was to adjudicate tax cases; a fact-finding body established presumably because of the complex nature of tax and the impracticality of having staff members untrained and uneducated in matters of tax and finance attempting to adjudicate such complicated matters”³⁸⁷. Again, the Tribunal cautioned the Administration and raised a point noted in a previous case:

“Consideration should be given to the special skills which are necessary for understanding rules of such a technical nature, skills which not everyone possesses”³⁸⁸.

142. It was after this case that the form used for staff members to request tax reimbursement was changed to include a new line on the wrongfulness of filing different versions of tax returns with the Organisation and the tax authorities. Any difference is now to be deemed as constituting “misconduct leading to appropriate disciplinary sanctions under the Staff Regulations and Rules”³⁸⁹.

143. There have been many legal opinions given by OLA on the issues connected to the taxation of officials. Though a thorough review of all these opinions is beyond the scope of this study, they outline comprehensively the rationale behind the need for United Nations

³⁸⁵ Judgement No. 1244 (AT/DEC/1244).

³⁸⁶ *Ibid.*, para. IV.

³⁸⁷ *Ibid.*, para. V.

³⁸⁸ Van Leeuwen, para. III.

³⁸⁹ Form F.65.

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officials to enjoy immunity from taxation. This includes the rationale that “immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment of all officials of the Organization, independent of nationality”³⁹⁰ which is achieved through the payment of staff assessments in lieu of national taxation. If officials were subject to national taxation, they would be paying different percentages of their income as taxation depending on their nationality.

4. THE QUESTION OF STATE REGULATIONS APPLICABLE TO OTHER
STAFF MEMBERS

144. The longstanding policy whereby international staff members (other than United States citizens and permanent residents), whose duty station is in the United States are required to obtain G-4 visa status and relinquish any other visa status in the United States was updated on 18 September 2000, though slightly, with an issuance of Administrative Instruction ST/AI/2000/19³⁹¹. This instruction contained, most notably, stricter provisions outlining the application procedure for G5 visas for household staff³⁹². This reflected the change in policy from the United States Government whereby G5 holders were to be governed, more and more, by applicable labour laws including, *inter alia*, social security and taxation obligations. Staff members holding a G4 visa are now required to make an application for the G5 visa which includes an employment contract³⁹³, as well as maintain certain records as required by United States authorities³⁹⁴. Having these more stringent provisions set out in the instruction was reflective of how the United States government wanted to ensure that G5 visa-holders were to be treated fairly by their employers. There was also a new bulletin released on the composition and function of the Visa Committee,

³⁹⁰ United Nations Judicial Yearbook, 2005, p. 440. See also, e.g., United Nations Judicial Yearbook, 2003, p. 558, United Nations Judicial Yearbook, 2005, p. 446, United Nations Judicial Yearbook, 2007, p. 398, United Nations Judicial Yearbook, 2008, p. 401.

³⁹¹ ST/AI/2000/19, Additional information was provided in ST/IC/2001/27.

³⁹² *Ibid.*, sect. 6.

³⁹³ *Ibid.*, sect. 7.1.

³⁹⁴ *Ibid.*, sect. 6.3.

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which considers all visa requests³⁹⁵. The new instruction also reflected the new requirements for G5 visas and the reconstitution of the committee on 31 July 1999.

145. In 2005 OLA gave a legal opinion regarding mandatory contributions for health insurance under national legislation³⁹⁶. The opinion was referring to a Member State requesting that staff members working in their country join a mandatory national health insurance scheme. OLA said that the mandatory requirement to join the scheme was tantamount to “direct taxation”³⁹⁷ and that the Organization’s exemption from national health insurance schemes stems from the fact that the Organization has its own comprehensive social security scheme for its staff members³⁹⁸. In conclusion, the opinion asked that the Ministry of Foreign Affairs of the State in question recognise the privileges and immunities of the United Nations and its officials and ensure that officials are not subject to compulsory membership in national health insurance schemes³⁹⁹.

5. REQUESTS TO APPOINT OR REPLACE OFFICIALS

146. As stipulated in the previous report, Member States have increasingly recalled Article 100⁴⁰⁰ of the UN Charter and the need for an internationally independent civil service and for the authority of the Secretary-General to be respected. On a few occasions, the Member States reiterated their position in the General Assembly on the necessity for no post to be considered the exclusive preserve of any Member State or group of States⁴⁰¹.

³⁹⁵ ST/SGB/2000/11.

³⁹⁶ United Nations Judicial Yearbook, 2005, p. 439.

³⁹⁷ Ibid.

³⁹⁸ Ibid., p. 440.

³⁹⁹ Ibid., p. 440.

⁴⁰⁰ A/RES/59/266, A/RES/60/238, A/RES/61/244, A/RES/63/250.

⁴⁰¹ A/RES/57/305, para. 37, A/RES/59/266, sect. IV, para. 13, A/RES/61/244, sect. X, para. 15.

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6. THE QUESTION OF SPECIAL RIGHTS AND OBLIGATIONS OF THE
HOST COUNTRY

147. In the period under review, the discussions on the right of the host country to restrict travel of certain nationalities continued, albeit such considerations were in the context of restrictions placed on delegations to the United Nations. In 2000, the Assistant Secretary-General in charge of OLA delivered a legal opinion on the obligations of a host country regarding the requirement to issue visas to participants invited to a United Nations-related meeting i.e. a meeting not being convened by the United Nations but taking place at UN Headquarters⁴⁰². The opinion said that “while the host country could not be called upon to issue the visas concerned as a matter of legal obligation, the nexus between the Conference and the United Nations is such that the host country could be expected to issue the visas as a matter of courtesy”. In that regard, the opinion recommended that the Committee on Relations with the Host Country consider recommending such a request to the General Assembly. The committee did make such recommendation and the Assembly approved this for the host country to consider.

148. There were discussions on the special rights of the host country on the issue of travel controls, with repeated calls made from the General Assembly to the host country for their removal⁴⁰³. The host country repeatedly stressed that no country should be called upon to sacrifice its national security⁴⁰⁴. The host country stressed that the restrictions did not relate to official United Nations business within the meaning of section 11 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. The host country would repeatedly reiterate this position during the meetings of the Committee on Relations with the Host Country⁴⁰⁵ and in other

⁴⁰² Official Record General Assembly, Fifty-Fifth Session, Supplement No. 26 (A/55/26), para. 51.

⁴⁰³ See, *inter alia*, A/RES/55/154, para. 5, A/RES/56/84, para. 4, A/RES/57/22, para. 5, A/RES/58/78, para. 5.

⁴⁰⁴ See Official Record General Assembly, Fifty-Sixth Session, Supplement No. 26 (A/56/26), para. 16, Official Record General Assembly, Fifty-Seventh Session, Supplement No. 26 (A/57/26), para. 10, Official Record General Assembly, Sixtieth Session, Supplement No. 26 (A/60/26), para. 66.

⁴⁰⁵ See, *inter alia*, Official Record General Assembly, Fifty-Sixth Session, Supplement No. 26 (A/56/26), para. 16, Official Record General Assembly, Fifty-Seventh Session, Supplement No. 26 (A/57/26), para. 10, Official Record General Assembly, Fifty-Eighth Session, Supplement No. 26 (A/58/26), para. 50, Official

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correspondence⁴⁰⁶. During the reporting period, the host country made some changes to the travel restrictions which had been imposed on staff members of certain nationalities such as on personal travel and recreation⁴⁰⁷, of notification of travel⁴⁰⁸ and for designated border entry and exit points⁴⁰⁹. The General Assembly noted these issuances and asked for any and all remaining travel restrictions to be removed⁴¹⁰.

7. THE QUESTION OF SECONDMENT

149. In the period under review, the General Assembly reaffirmed that secondment from government service is consistent with Article 100 of the Charter and is beneficial to both the Organization and Member States⁴¹¹. The Assembly also urged the Secretary-General to pursue the practice on a wider scale⁴¹².

150. The issue of secondment and the right to renewal of a staff member's contract when under a fixed term appointment was revisited in a case brought before the UN Administrative Tribunal. In a judgment issued in 2009 the Tribunal held that with each letter of appointment in that case the condition of secondment was specifically mentioned (in accordance with Annex II of the Staff Rules) and thus a "valid secondment did exist"⁴¹³. In that regard:

"As the Applicant had been employed solely on a secondment basis, the ... government did not agree to extend the secondment, and the contract was made conditional upon that secondment, it was reasonable and not improper for the

Record General Assembly, Fifty-ninth Session, Supplement No. 26 (A/59/26), para. 25, Official Record General Assembly, Sixty-Second Session, Supplement No. 26 (A/62/26), para. 46.

⁴⁰⁶ The position was also made clear in a letter from the dated 21 February 2001 from the Minister-Counsellor for Host Country Affairs of the United States Mission to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country.

⁴⁰⁷ ST/IC/2004/38, ST/IC/2005/15.

⁴⁰⁸ ST/IC/2006/10.

⁴⁰⁹ ST/IC/2005/59.

⁴¹⁰ A/RES/60/24, para. 5. See also A/RES/61/41, para. 4, A/RES/62/72, para. 5, A/RES/63/130, para. 4.

⁴¹¹ A/RES/55/258, sect. IV, para. 19.

⁴¹² *Ibid.*

⁴¹³ Judgement No. 1474, paras. 33 and XVIII. See also Judgement Nos. 1048, 1057 and 1084.

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Organization to consider the views of the ... government and to make a decision not to renew the Applicant's fixed term contract"⁴¹⁴.

8. SUPPLEMENTARY PAYMENTS TO STAFF

151. Following the decision to prohibit all supplementary payment to staff members⁴¹⁵, it was necessary to reflect the change within the Staff Rules and Regulations. A change was made to Staff Regulation 1.2 (j), the amended text of which stated:

“No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government.”

152. This reaffirmed the prohibition on acceptance of benefits from Governments⁴¹⁶. The change was also reflected in the revisions of the Staff Rules in 2009. Staff Rule 1.2 (k) was adopted, stating that:

“No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government. However, if refusal of an unanticipated honour, decoration, favour or gift from a Government would cause embarrassment to the Organization, the staff member may receive it on behalf of the Organization provided that it is reported and entrusted to the Secretary-General through established procedures”.

As has been noted, the ICSC had previously deemed the word ‘remuneration’ to include supplementary payments by Member States to their nationals on staff⁴¹⁷.

D. Questions arising from the relationship of staff members to the State of which they are a national

⁴¹⁴ Ibid., para. XVIII.

⁴¹⁵ See discussions under the study of this Article in Supplement 8 and Supplement 9.

⁴¹⁶ See ST/SGB/1998/19.

⁴¹⁷ See discussions under the study of this Article in Supplement 9.

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153. In a case brought before the UN Administrative Tribunal in 2006, a staff member appealed a decision on the Administration's recognition of her nationality. The Tribunal held that it "will not substitute its judgement for the discretion of the Administration in determining applicable nationality, unless the latter's powers are exercised in an arbitrary or abusive manner"⁴¹⁸. It also held that "a further change of the Applicant's nationality will be possible only if the Administration made a mistake in its determination ... or if [there is] fresh evidence showing that the Applicant now has closer ties with another State"⁴¹⁹. The Tribunal found that it was "clearly apparent that the Applicant only really decided she wanted to revert to her former nationality when she lost the additional benefits and her internationally recruited status"⁴²⁰. In conclusion, the Tribunal stated that it "is not acceptable to seek to profit by successive changes in nationality and status within the Organization in order to obtain maximum benefits from the entitlements and other advantages accorded by the Administration to internationally recruited staff"⁴²¹.

154. A legal opinion from 2004 by OLA reiterated the authority of the Secretary-General to determine with which State a staff member has the closest ties in cases of dual nationality, and therefore which nationality such staff member will be considered for the Organization's purposes under the Staff Rules⁴²².

⁴¹⁸ Judgement No. 1300, para. II.

⁴¹⁹ Ibid., para. II.

⁴²⁰ Ibid., para. VI.

⁴²¹ Ibid., para. VII.

⁴²² United Nations Juridical Yearbook, 2004, p. 370-371.