

ARTICLE 100

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ARTICLE 100

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. Questions relating specifically to Article 100 did not lead to resolutions by principal organs of the United Nations during the period under review. The Staff Regulations relating to the duties, obligations and privileges of the staff (article I) were adopted by the General Assembly during the formative period of the Secretariat; neither those regulations nor the Staff Rules promulgated thereunder by the Secretary-General underwent any change during the period under review.

2. Although no decisions bearing directly on Article 100 were taken by the General Assembly during this period, extensive discussions took place in the Assembly on the proposal made at the fifteenth session in 1960 to replace the office of the Secretary-General by an organ consisting of three persons representing the three major political groupings of States. That proposal led to a wide debate on matters relating to Article 100, particularly on the concept of the Secretariat as an international civil service and the obligations of Member States and of members of the Secretariat resulting from that concept. Opinions expressed by representa-

tives on these questions are, in view of the importance of the proposal and of the debate, given in this study.

3. In addition, a decision of the Administrative Tribunal of the United Nations relating to the interpretation of Article 100 and the Staff Regulations and Rules issued thereunder is reported on.¹

4. The organization of this study follows the organization of the *Repertory* and its *Supplement No. 1*² with one exception: the title of subheading II.B.2.b. has been changed from "Outside employment" to "Outside activities", following a review of the question of permissible outside activities of staff members and the relevant administrative instructions by the Secretary-General.

¹ See paras. 21-24 below. For documentary material concerning legal opinions of the Secretariat on issues relating to Article 100 which arose during the period under review, see also paras. 18-20 and 28-30 below, and the references to United Nations Juridical Yearbooks, below.

² *Supplement No. 2* contains only a note under Article 100.

I. GENERAL SURVEY

5. During the general debate in the plenary of the fifteenth session of the General Assembly,³ the Chairman of the Union of Soviet Socialist Republics proposed to replace the office of the Secretary-General by an executive organ consisting of three persons representing, according to the proposal, the military bloc of the Western Powers, the socialist States and the neutralist

States. The proposal for equal representation of the three groups of States was subsequently expanded to apply to the Secretariat as a whole.⁴ The proposal was discussed during the fifteenth, sixteenth and seventeenth sessions of the General Assembly. Its proponents

³ G A (XV), Plen., 869th mtg., paras. 275 and 282-286. See also this *Supplement* under Article 97, para. 47, and Article 101, paras. 9 and 16.

⁴ It was suggested that it should apply to the entire United Nations, in particular also to the Security Council and the Economic and Social Council (G A (XV), Spec. Pol. Com., 189th mtg., para. 13; 193rd mtg., para. 14).

did not, however, insist on a formal decision.⁵ The adoption of the proposal would, as was stated by

⁵ In a draft resolution submitted during the 904th plenary meeting of the General Assembly at its fifteenth session, it was proposed, *inter alia*, that the Assembly should recognize "that it is necessary to change the structure of the United Nations Secretariat and of the Security Council so that all three groups of States — the socialist countries, the countries members of the Western Powers' blocs, and the neutralist countries — may be represented in those organs on a basis of equality". The proposal, which was discussed in the First Committee, was not voted upon (G A (XV), Plen., 904th mtg., para. 63). See also this *Supplement* under Article 23, para. 46.

several representatives and by the Secretary-General, have required an amendment of the Charter. The proposal and the debate which followed are outlined in the Analytical Summary of Practice under the headings "The concept of the Secretariat as an international civil service"⁶ and "The obligations of Member States".⁷

⁶ See paras. 6-17 below.

⁷ See paras. 25-27 below.

II. ANALYTICAL SUMMARY OF PRACTICE

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

6. The proposal for the establishment of a tripartite executive organ of the United Nations was discussed during the fifteenth session by the General Assembly in plenary, by the Special Political Committee, and by the First and Fifth Committees. It was further discussed at the sixteenth session by the General Assembly in plenary and by the Fifth Committee, and at the seventeenth session by the General Assembly again in plenary. The proposal was supported by a number of representatives, mainly on the ground that it would reflect the real political situation of the world and that it would ensure equal representation for the three main political groupings of Member States. It was opposed by many representatives, mainly on the grounds that it would weaken the authority of the United Nations and could even paralyse the implementation of decisions by the use of the veto by any member of the executive organ, that it would perpetuate the division of the world community into political groupings and that it was inconsistent with the international character and independence of the Secretariat.⁸

⁸ For texts of relevant statements see G A (XV), Plen., 869th mtg.: USSR, paras. 275-286; 870th mtg.: United States para. 76 and 77; 871st mtg.: Canada, paras. 181 and 182; Czechoslovakia, paras. 111-123; 872nd mtg.: Albania, para. 19; 873rd mtg.: Romania, paras. 97-104; 874th mtg.: Guatemala, para. 217; Poland, paras. 43 and 44; 875th mtg.: Bulgaria, paras. 169-173; 876th mtg.: Italy, para. 44; 877th mtg.: Cambodia, para. 39; United Kingdom, para. 39; 878th mtg.: Ecuador, paras. 75 and 76; Liberia, paras. 273 and 278; Nepal, paras. 231-235; 880th mtg.: Belgium, paras. 297-308; 882nd mtg.: India, para. 111; Jordan, para. 75; USSR, paras. 2-42, 48-55; 883rd mtg.: Secretary-General, paras. 4-12; Hungary, paras. 67 and 68; Venezuela, para. 130; 885th mtg.: Greece, paras. 165-167; Ukrainian SSR, paras. 41-53; 886th mtg.: Morocco, para. 199; Netherlands, paras. 219, 220; New Zealand, paras. 71-81; Spain, paras. 43 and 44; 888th mtg.: Australia, paras. 53-55; Byelorussian SSR, paras. 176-183; 890th mtg.: Ireland, paras. 93 and 94; 892nd mtg.: China, para. 55; 896th mtg.: Guinea, paras. 80 and 81; 897th mtg.: Burma, para. 119; Israel, para. 144; 899th mtg.: Chile, paras. 64 and 65; Haiti, para. 49; 901st mtg.: Ceylon, paras. 92-97; 904th mtg.: Laos, para. 111; 905th mtg.: El Salvador, paras. 108 and 109; 906th mtg.: Cyprus, paras. 27 and 28; 965th mtg.: Czechoslovakia, paras. 126-128; USSR, paras. 75-83; 967th mtg.: Albania, para. 72; 970th mtg.: Byelorussian SSR, para. 207; Romania paras. 117-127; 972nd mtg.: Bulgaria, paras. 15-22; 975th mtg.: Colombia, paras. 72 and 73; 976th mtg.: Federation of Malaya, paras. 42-46; 978th mtg.: Tunisia, paras. 166 and 167; 979th mtg.: Nepal, paras. 80-84; 980th mtg.: USSR, paras. 57 and 58, 987th mtg.: USSR, para. 36; *Spec. Pol. Com.*, 186th mtg.: USSR, para. 29; 189th mtg.: Bulgaria, para. 13; France, para. 22; United Kingdom, para. 14;

190th mtg.: Byelorussian SSR, paras. 4-7; El Salvador, para 20; 191st mtg.: Albania, paras. 17 and 18; Czechoslovakia, paras. 23 and 24; 192nd mtg.: Italy, para. 8; 193rd mtg.: Canada, para. 32; Ukrainian SSR, para. 14; 194th mtg.: Poland, para. 15; 195th mtg.: Peru, paras. 22 and 23; Romania, para. 8; 214th mtg.: USSR, para. 10; 215th mtg.: Ceylon, para. 13; France, para. 23; 217th mtg.: Pakistan, para. 31; *1st Com.* 1088th mtg.: Italy, para. 13; 1090th mtg.: Albania, paras. 24 and 29; Brazil, para. 32; 1091st mtg.: Cambodia, para. 15; 1092nd mtg.: Australia, para. 26; Colombia, para. 8; 1097th mtg.: Bulgaria, para. 12; 1098th mtg.: New Zealand, para. 5; 1099th mtg.: Burma, para. 9; 1100th mtg.: Liberia, para. 23; 1101st mtg.: South Africa, para. 9; 1102nd mtg.: China, para. 24; Guatemala, para. 14; 1103rd mtg.: Denmark, para. 1; Saudi Arabia, para. 11; 1106th mtg.: Lebanon, para. 13; *5th Com.* 768th mtg.: USSR, paras. 5 and 22.

G A (XVI), Plen. 1011th mtg.: Cambodia, paras. 74-77; Iran, paras. 131-133; Japan, para. 172; 1012th mtg.: Senegal, paras. 69-72; 1013th mtg.: United States, paras. 46-49; Venezuela, paras. 6, 7; 1016th mtg.: USSR, paras. 178-181; 1017th mtg.: Ceylon paras. 148-161; Liberia, paras. 10-22; 1018th mtg.: Italy, paras. 53-60; 1019th mtg.: Chile, paras. 75-79; Denmark, paras. 116-123; Guatemala, paras. 4-6; 1021st mtg.: Czechoslovakia, paras. 109-111; Turkey, paras. 125-128; 1022nd mtg.: Canada, paras. 4-13; 1023rd mtg.: Albania, para. 32; Pakistan, paras. 82-84; Paraguay, para. 61; 1024th mtg.: China, para. 73; Libya, paras. 8-10; 1025th mtg.: India, paras. 205-223; New Zealand, paras. 12-14; 1026th mtg.: Colombia, para. 34; Greece, paras. 77 and 78; 1027th mtg.: Bulgaria, para. 103; Somalia, para. 164; 1029th mtg.: Bolivia, paras. 31-34; Gabon, para. 135; Poland, paras. 109-111; 1030th mtg.: Israel, paras. 198-206; 1031st mtg.: Nepal, paras. 83-86; Nigeria, paras. 57-62; 1032nd mtg.: Federation of Malaya, paras. 79-86; Madagascar, para. 179; Niger, paras. 61-64; 1033rd mtg.: Haiti, paras. 6-11; 1034th mtg.: Costa Rica, para. 94; 1035th mtg.: Australia, paras. 94-99; Congo (Leopoldville), paras. 187-193; Spain, paras. 11-15; Yemen, para. 70; 1036th mtg.: Sudan, para. 44; 1037th mtg.: Central African Republic, paras. 37-39; Laos, para. 47; 1038th mtg.: Cameroun, para. 3; Philippines, paras. 67-69; *5th Com.* 851st mtg.: USSR, paras. 13-19; 861st mtg.: Ukrainian SSR, para. 7; 862nd mtg.: South Africa, paras. 3-12; 864th mtg.: Federation of Malaya, para. 6; Venezuela, paras. 16-21; 869th mtg.: Netherlands, paras. 37 and 38; Ukrainian SSR, para. 50; 870th mtg.: Australia, paras. 13 and 14; Turkey, para. 37; 871st mtg.: Greece, para. 35; 872nd mtg.: Hungary, para. 2; Sudan, para. 54; 873rd mtg.: Romania, para. 39; United Kingdom, paras. 25 and 26; 874th mtg.: Belgium, paras. 5 and 6; 879th mtg.: Bulgaria, para. 28; 889th mtg.: USSR, para. 58,

G A (XVII), Plen. 1127th mtg.: USSR, para. 160; 1129th mtg.: Czechoslovakia, para. 237; 1131st mtg.: Ecuador, para. 141; 1132nd mtg.: Denmark, para. 64; Liberia, paras. 11-14; 1133rd mtg.: New Zealand, paras. 63-65; Ukrainian SSR, paras. 143 and 144; 1134th mtg.: Philippines, para. 16; United Kingdom, paras. 42/43; 1135th mtg.: Turkey, para. 77; 1136th mtg.: Albania, para. 179; 1137th mtg.: Mongolia, para. 71; 1138th mtg.: Hungary para. 129; 1139th mtg.: Bulgaria, paras. 94 and 95; 1140th mtg.: Libya, para. 106; 1141st mtg.: Romania, para. 118; 1142nd mtg.: China, paras. 53-56; 1143rd mtg.: Spain, paras. 132 and 133; 1144th mtg.: Byelorussian SSR, para. 123, Togo, para. 25; 1145th mtg.: Jamaica, para. 114; 1148th mtg.: Israel, para. 182; Niger, para. 253; 1149th mtg.: Argentina, para. 85; 1150th mtg.: Madagascar, para. 91; 1151st mtg.: Central African Republic, para. 166.

7. In making the proposal, the Chairman of the Council of Ministers of the USSR stated that the executive machinery of the United Nations was constructed in a one-sided manner. The proposal was designed to provide a definite guarantee that the work of the United Nations executive organ would not be carried out to the detriment of any one group of States.⁹

8. He further declared that the proposal was dictated by a sincere concern to ensure the proper functioning of the United Nations so that the interests of the peoples of all countries were taken into account. In the circumstances, the Secretary-General had to interpret and execute the decisions of the General Assembly and the Security Council, bearing in mind the interests of the "capitalist" countries as well as those of the "socialist" countries and of the "neutral" countries. It could not be expected of any Secretary-General to be the impartial representative of three different groups of States.¹⁰

9. The question of the command of any future United Nations armed forces, after agreement on disarmament had been reached, was mentioned as an example. If those forces were to be commanded by the Secretary-General, the making of decisions affecting the fate of millions would depend on the moral convictions and the conscience of one man. But every man had his own idea of conscience, his own understanding of ethics.¹¹

10. Hence, it was maintained, the proposals were designed to strengthen the United Nations and to ensure that the interests of all three groups of States belonging to it would really be taken into account and protected on a footing of equality.¹²

11. Several representatives who opposed the proposal at subsequent meetings expressed their views on the concept of the Secretariat as an international and independent civil service. During the course of the debate one representative stated:

"It is true, of course, that dissension amongst the great Powers has hindered the United Nations; but this dissension has not been allowed to invade the Secretariat. On the contrary, the Charter and the practice of the United Nations have placed great emphasis on the exclusive duty owed to the Organization by all members of its staff."¹³

In a succeeding passage in his speech, the same representative declared:

"The principle of objective international allegiance should guide the Secretary-General and the Secretariat."¹⁴

12. During the discussion of the activities and organization of the Secretariat at the General Assembly's sixteenth session, the point was made that there was no reason why Member States should try to keep control of their nationals in the Secretariat. The

appropriate political control of Secretariat activities was exercised by the Security Council, the General Assembly and the other organs of the United Nations. Those organs could give full instructions to the Secretary-General.¹⁵

13. It was further stated that Article 100 clearly provided for the protection and maintenance of the international character of the Secretariat and expressly prohibited Governments from seeking to influence staff members. The high principles set forth in that Article, which had been observed so faithfully by members of the Secretariat, must not be sacrificed to the untenable proposition that there was no such thing as a neutral man.¹⁶

14. It was also stated that under Article 100 and under the Staff Rules and Regulations the Secretariat was international and independent of Governments; it was not an intergovernmental organization composed of national officials delegated by Governments, but an international civil service under the authority of the Secretary-General and independent of the State Members. The thesis of a tripartite executive organ was, in that view unacceptable and contrary to Articles 100 and 101, since it would result in the transformation of a single body of international officials into three equal branches — corresponding to three arbitrarily designated groups of States.¹⁷

15. Several representatives referred to the relevant passages in the Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1960 to 15 June 1961, in which the Secretary-General had stated:

"In order to avoid possible misunderstandings, it should be pointed out here that there is no contradiction at all between a demand for a truly international Secretariat and a demand, found in the Charter itself, for as wide a 'geographical' distribution of posts within the Secretariat as possible. It is, indeed, necessary precisely in order to maintain the exclusively international character of the Secretariat, that it be so composed as to achieve a balanced distribution of posts on all levels among all regions. This, however, is clearly something entirely different from a balanced representation of trends or ideologies. In fact if a realistic representation of such trends is considered desirable, it can and should be achieved without any assumption of political representation within the ranks of the Secretariat, by a satisfactory distribution of posts based on geographical criteria.

"The exclusively international character of the Secretariat is not tied to its composition, but to the spirit in which it works and to its insulation from outside influences as stated in Article 100. While it may be said that no man is neutral in the sense that he is without opinions or ideals, it is just as true that, in spite of this, a neutral Secretariat is possible. Anyone of integrity, not subjected to undue pressures, can, regardless of his own views, readily act in an 'exclusively international' spirit and can be guided

⁹ G A (XV), Plen., 869th mtg., paras. 275 and 285.

¹⁰ *Ibid.*, 882nd mtg., paras. 21, 23, 31 and 38.

¹¹ *Ibid.*, para. 48.

¹² *Ibid.*, para. 51.

¹³ *Ibid.*, 886th mtg., para. 73.

¹⁴ *Ibid.*, para. 77.

¹⁵ G A (XVI), Plen., 1022nd mtg., para. 12.

¹⁶ *Ibid.*, 1025th mtg., para. 14.

¹⁷ G A (XVI), 5th Com., 874th mtg., paras. 5 and 6.

in his actions on behalf of the Organization solely by its interests and principles, and by the instructions of its organs.”¹⁸

16. In his comments on the report of the Committee of Experts on the Review of the Activities and Organization of the Secretariat the Secretary-General elaborated upon the constitutional aspects of the Secretariat’s exclusively international status:

“7. These comments are made on the basis of the present Charter provisions governing the Secretariat. It may be recalled that Article 100 of the Charter provides for an international civil service with one chief administrative officer (Article 97). Thus, the Secretary-General does not take up for consideration proposals which would either, directly or indirectly, infringe upon the responsibilities of the Secretary-General, as established in the Charter, or, contrary to the Charter, introduce the notion that members of the Secretariat are representatives, in the work of the Organization, of the Governments of their home countries or of the ideologies or policies to which these countries may be considered to adhere. Such proposals would assume a fundamental change in the character of the Organization, requiring a Charter revision.”¹⁹

17. The above-mentioned Committee of Experts which was established under General Assembly resolution 1446 (XIV) stressed its report that “The Charter, the Report of the Preparatory Commission [of the United Nations] and the Staff Rules and Regulations emphasize the principle that for the duration of their appointments, the Secretary-General and his staff are not the servants of the States of which they are nationals, but servants only of the United Nations.”²⁰

B. The obligations of members of the Secretariat

I. OBLIGATIONS REGARDING PERFORMANCE OF DUTIES

**a. *Discharge of functions in the interests of the United Nations*

**b. *Responsibility to the Secretary-General with regard to the exercise of functions of staff members*

c. *Non-acceptance of instructions from external authorities*

18. When the Secretary-General was informed that the Government of a Member State was contemplating a request to all technical assistance personnel in its territory whose duties involved access to classified material to subscribe to an oath of secrecy, he addressed a *note verbale*²¹ to the Permanent Representative of

¹⁸ G A (XVI), Suppl. No. 1A, p. 6.

¹⁹ G A (XVI), Annexes a.i. 61, A/4794, para. 7.

²⁰ *Ibid.*, A/4776, para. 15.

²¹ *United Nations Juridical Yearbook, 1964*, “Oath of secrecy required from United Nations Technical Assistance Experts by the Government of a Member State”. *Note verbale* to the Permanent Representative of a Member State, 30 December 1964, pp. 260 and 261.

the Member State concerned in which it was stated, *inter alia*:

“After careful study, the Secretary-General has come to the conclusion that, in view of their international status under Article 100 of the Charter of the United Nations and similar provisions in the constitutional instruments of the specialized agencies, the oath is unsuitable for officials, including technical assistance experts, of the United Nations or of the specialized agencies. The oath would intrude on the relationship between the expert and the organization which must direct and supervise his work as an international official.”

19. The Secretary-General, however, assured the Permanent Representative that the technical assistance experts, as staff members of the Organization, were already under an obligation not to divulge information known to them by reason of their official position, except in the course of their duties or by authorization of the Secretary-General. He quoted Staff Regulation 1.5 which reads:

“Regulation 1.5: Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Secretary-General. Nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Secretariat.”

20. The Secretary-General stated in conclusion: “In the light of the foregoing, the Secretary-General feels bound to maintain the position that the technical assistance experts of the United Nations and of the specialized agencies working in the Permanent Representative’s country be not required to sign an oath of secrecy such as that under reference. The Secretary-General trusts that the Government will find that the existing obligations of officials under the Charter and the Staff Regulations satisfactorily meet the situation with which the Government is concerned.”

**d. *Discretion in the performance of official duties*

**e. *Impartiality in the performance of official duties*

2. OBLIGATIONS REGARDING PERSONAL CONDUCT

**a. *Regulation of conduct in the interests of the United Nations*

b. *Outside activities*

21. Judgement No. 71²² of the Administrative Tribunal of the United Nations related to an appeal against a decision of the Secretary-General not to offer to the Applicant a permanent contract and, consequently, to terminate his temporary appointment.

22. The Applicant had engaged in an outside business enterprise without prior authorization of the

²² *Judgements of the United Nations Administrative Tribunal*, numbers 71 to 86, 1958-1962 (United Nations publication, Sales No. 63.X.1).

Secretary-General; he had been reprimanded in writing concerning outside activities which were in violation of staff rule 101.6 and had been warned that repetition of the offence would lead to serious consequences. Staff rule 101.6 requires staff members not to engage "in any continuous or recurring outside activities or employment without prior approval of the Secretary-General". Subsequent to the reprimand, the Office of Personnel received a letter from counsel for Applicant's former business associate alleging that Applicant was engaged in a new business venture. The Applicant assured the Office of Personnel in a memorandum that he had no financial interest in the new business firm, of a similar name, but admitted that he gave advice and assistance to the owner of the business. The Review Board established under staff rule 104.13 in order to advise the Secretary-General, *inter alia*, on the suitability for permanent appointments of staff members serving on probationary appointments, had reported that "in the conduct of his affairs, both in the community outside the United Nations and also in connexion with his position as a member of the Secretariat *vis-à-vis* the Staff Regulations and Rules, [the Applicant] has not approached a reasonable standard of good order and responsibility" and had recommended his termination.

23. The Applicant declared that his outside activities had been "his hobby"; the fact that his hobby had involved him in becoming a partner in any business, in order to secure cover for the finance he had advanced, did not mean that he was engaged in outside occupation or employment, since a partnership for purposes of investment did not necessarily create a partnership which is an outside occupation or employment. He contended that the Review Board had acted hastily and without affording him the opportunity to explain his situation fully.

24. The Tribunal held that in examining the Applicant's conduct in addition to his performance, the Review Board had acted in accordance with the Staff Rules. The Review Board had stated that the Applicant, after having been officially reprimanded for an outside activity, again engaged in an activity of a similar nature, without having discussed his undertaking with the Administration. The Review Board had observed that the whole history of the Applicant's business activities was "marked by claims, debts and litigation. Both the legal and financial complications have led to embarrassment of the United Nations, and may continue to do so for some time". The Tribunal stated: "It is possible for an international civil servant, however honest his intentions, to be placed in a position either by poor judgement or bad luck, where his usefulness may be sufficiently impaired to justify termination of his service. The Applicant's situation is a case in point." The Applicant's claim was dismissed.

c.** *Financial interests*

**d. *Activities connected with information media*

**e. *Use of unpublished information to private advantage*

**f. *Non-acceptance of honours, favours or gifts*

**g. *Political activities*

**h. *The question of alleged subversive activities*

**i. *Criminal activities*

C. The obligations of Member States

25. In the discussion of the proposal to replace the office of the Secretary-General by a tripartite executive organ,²³ several representatives referred to the obligations of Member States to respect the international character of the Secretariat.

26. One representative stated that each Member State was pledged to support the international character of the responsibilities of the Secretary-General and of the Secretariat. Article 100, which dealt with the impartiality of the Secretary-General and his staff and their international obligations and responsibilities, was as much part of the Charter as Article 27 which embodied the veto.²⁴

27. Another representative said that under Article 100 the Secretary-General and the staff are to refrain from any action which might reflect on their international status and, that all Members had agreed to respect the international character of their responsibilities and not to seek to influence them in the discharge of their responsibilities.²⁵

**1. PRIVILEGES AND IMMUNITIES OF THE SECRETARIAT

2. THE QUESTION OF GOVERNMENTS PROVIDING THE SECRETARY-GENERAL WITH INFORMATION RELATING TO STAFF MEMBERS: COMPATIBILITY WITH THE OBLIGATION OF MEMBER STATES NOT TO INSTRUCT THE SECRETARY-GENERAL

28. The Legal Counsel in a legal opinion addressed to the Director of Personnel concerning interpretation of Articles 100 and 101 (1) in relation to the recruitment to the Secretariat of the United Nations, after a review of the relevant proceedings in the Preparatory Commission of the United Nations, and at the seventh, eighth, twelfth and sixteenth sessions of the General Assembly concluded that:

"... it clearly emerges that the right of appointment to the Secretariat rests exclusively in the Secretary-General and that governments may not exercise a veto over employment by the Organization of candidates of their nationality. This, however, does not preclude governments from submitting information on candidates of their nationality to the Secretary-General, provided that it is clearly understood that it is left to the Secretary-General to assess the weight to be attached to such information and to arrive at an independent decision on whether or not to appoint the candidate concerned. Furthermore, the Secretary-General is under no legal obligation to seek information from governments on candidates, and it is a matter purely for his discretion to determine when such information should be requested as a matter of policy".²⁶

²³ See paras. 6-17 above.

²⁴ G A (XV), Plen., 886th mtg., para. 80.

²⁵ G A (XVI), Plen., 1017th mtg., para. 13.

²⁶ *United Nations Juridical Yearbook 1964*, "Principles governing Recruitment to the Secretariat of the United Nations. Interpretation of Article 100 and Article 101, paragraph 1, of the Charter. Note to the Director of Personnel, 13 January 1964", p. 260.

29. In a Legal Opinion concerning the request by the Government of a Member State that locally recruited United Nations employees be given employment contracts in accordance with a "form of agreement" prescribed by the Government, it was stated:

"2. It is our view that the adoption of such a form of employment contract to govern the conditions of employment of United Nations staff would run counter to Articles 100 and 101 of the Charter and to the Staff Regulations adopted by the General Assembly.

"3. Locally recruited personnel no less than internationally recruited personnel are staff within Article 101, paragraph 1, of the Charter which provides that:

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

"4. Staff Regulation 4.1 indicates that each United Nations staff member should receive a letter of appointment stating that the appointment is subject to Staff Regulations and Rules. This does not mean that local conditions are irrelevant to the terms of appointment of locally recruited General Service personnel. Local conditions of employment are, in accordance with Annex I (paragraph 7) of the Staff Regulations, taken into account when wage rates for locally recruited staff are established by the Secretary-General. The legal régime, however, including the nature and duration of the employment contract itself, the obligations and duties of the staff member, the authority of the Secretary-General, the appeals procedure, etc., must be that established pursuant to the Charter by the General Assembly and the Secretary-General. Each Member State has, pursuant to Article 100, paragraph 2 of the Charter, undertaken to respect the exclusively international character of the responsibilities of the Secretary-General and the staff."²⁷

****3. THE QUESTION OF THE INVESTIGATION BY A MEMBER GOVERNMENT OF ITS NATIONALS ON THE STAFF**

****4. THE QUESTION OF SPECIAL RIGHTS OF A HOST COUNTRY IN DETERMINING THE EMPLOYMENT OF ITS NATIONALS**

5. REQUESTS TO APPOINT OR TO REPLACE OFFICIALS

30. The principles resulting from the concept of the Secretariat as an international civil service apply also to military personnel seconded by their Governments for service with the United Nations, for the period of such secondment.

²⁷ *United Nations Juridical Yearbook 1965*, "Request by the Government of a Member State that locally recruited United Nations employees be given employment contracts in accordance with a form of agreement presented by the Government — incompatibility with the Charter and with the Staff Regulations approved by the General Assembly". — Memorandum to the Administrative Division, United Nations Children's Fund, 7 October 1965, pp. 236 and 237.

31. This was stated in the following terms by the Secretary-General in an *aide-mémoire*²⁸ to the Permanent Representatives of various Member States in connexion with the question whether military observers could be declared *personae non gratae* by the Government of the host country, in these terms:

"2. The principle of *persona non grata* which applies with respect to diplomats accredited to a government has no application with respect to United Nations staff or military observers who are not accredited to a government but must serve as independent and impartial international officials responsible to the United Nations. The United Nations military observers are recruited by the Secretary-General from member countries of the United Nations. They are officers who are seconded by their governments for service with the United Nations. They are responsible directly to the Head of the United Nations mission and through him to the Secretary-General, who is in turn responsible to their governments for them.

"3. These observers are carefully selected. At times their work is hazardous; indeed, some have given their lives in this service. As military men they would expect to be held strictly to account for any disobedience, disloyalty or dereliction of duty, and the Secretary-General would certainly insist that any observer guilty of such action should be severely dealt with. However, if some States were in a position to bring about the automatic recall of a military observer, the other governments concerned would be placed in an invidious position and the functioning of the mission would be rendered ineffectual. Therefore, in order to fulfil the obligations and responsibilities of the Secretary-General in such matters, and particularly to ensure the independence of action of United Nations military observers, the Head of the mission and the Secretary-General must have the right of decision in these cases following careful investigation of all relevant facts. Since they must themselves make the decision, any information which is supplied to them by governments must be in sufficient detail to enable them to make their own judgement in the matter. Any other course would be contrary to the principles of the Charter of the United Nations and would seriously interfere with the performance of the functions of the Organization . . ."

****6. REFUSAL TO GRANT PASSPORTS TO NATIONALS ON THE STAFF**

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

²⁸ *United Nations Juridical Yearbook 1964*, "Status of military observers serving with a United Nations mission. *Aide-mémoire* to the Permanent Representatives of various Member States 23 January 1964", pp. 261 and 262.