

ARTICLE 100

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Notes

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. During the period under review, no decisions bearing directly on Article 100 were taken by the United Nations organs on its interpretation or its application.
2. It should be noted that, in the introduction to his last report on the work of the Organization,¹ the Secretary-General, U Thant, stated that the Secretariat was staffed, by and large, by persons who had the interest of the United Nations alone in view and who were not influenced in their work by the policies of the States of which they happened to be nationals, either from within or from without. Such a Secretariat must not be eroded.

I. GENERAL SURVEY

3. Reflecting on the Secretariat in the introduction to his report on the work of the Organization,² the Secretary-General stated that erosion from within could result from a departure from the standards and restraints that were incumbent upon an international civil servant. It would be disastrous for the Secretariat, and thus for the United Nations system, if this were changed under the influence of labour developments outside the Organization. Erosion from without could arise from the failure of Member States to respect fully the responsibility of the Secretary-General as the chief administrator in the appointment of staff.

II. ANALYTICAL SUMMARY OF PRACTICE

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

4. In the introduction to his last report on the work of the Organization, the Secretary-General, U Thant, stated³ that much of the originality and spirit which characterized the United Nations came from the fact that its staff was representative of a wide variety of beliefs, cultures and national entities. The Organization could not yield on the principles of independence and integrity of the staff contained in Chapter XV of the Charter and in the Staff Rules, and on occasion it had been the Secretary-General's duty to remind Governments and staff members of those principles. On the other hand, the exclusively international character of the responsibilities of the staff need not conflict with their legitimate pride in their national origins. A sense of national loyalty was not incompatible with overriding allegiance to the United Nations.

5. In the debate of the Fifth Committee on personnel questions at the twenty-fifth session,⁴ in 1970, a representative of a Member State said that political bias must not be allowed to interfere with the recruitment policy of the Secretariat. Yet there were certain people in the Secretariat who had made speeches incompatible with the integrity and impartiality which their position required. That had affected the recruitment of qualified candidates of his country. His delegation had heard that a few

Secretariat officials, disappointed by the General Assembly's decision not to admit the nationals of another country, had decided to freeze posts held by the nationals of his country in the Secretariat until nationals of the other country could be appointed. That kind of political bias presaged the eventual destruction of the United Nations from within by supporters of militaristic communism.

6. Another representative, speaking on the principle of geographical distribution,⁵ pointed out the danger of trying to apply that principle too strictly. He stressed that the Secretariat should recruit only qualified candidates, resisting the pressure which some countries at times exerted on it to appoint or promote certain of their nationals. He added that, while under Article 101 of the Charter the considerations of efficiency, competence and integrity were paramount in recruitment, another major consideration which must be kept very much in mind was staff loyalty to the Organization.⁶ The same delegate also stated that staff members should be trained and that orientation courses would enable them to adjust better to the needs of the Organization and to free themselves more than would otherwise be the case from the political influence of their country of origin. In relation to permanent contracts as opposed to fixed-term ones, he said that officials taken on only for five years inevitably, if perhaps unconsciously, sought to please their Governments in order to protect their future careers. Officials who were to return home and take up their careers could

hardly be expected to manifest absolute loyalty to the United Nations. He regretted the fact that many officials were taken on mainly for political reasons and stated that, for the future of the Secretariat, it was important to secure the services of officials who met the requirements of efficiency, integrity, competence and, above all, loyalty.

7. At its twenty-fifth session the General Assembly included the following among guidelines for the recruitment of staff for the Secretariat:⁷

“In considering candidates for posts involving complex duties and responsibilities, preference should be given to those who are willing to accept a career appointment or a fixed-term appointment of not less than five years, inclusive of the probationary period;”

8. Nevertheless, during the period under review there was a tendency to decrease somewhat the proportion of staff on permanent contracts in order to facilitate the achievement of a balanced geographic distribution.⁸

9. During the debate on personnel questions in the Fifth Committee during the thirty-first session of the General Assembly in 1976⁹ a delegate¹⁰ praised the idea expressed in a draft resolution¹¹ that no post, individual department, division or unit of the Secretariat should be considered as the exclusive preserve of any individual Member State or any region, particularly when few delegations¹² considered that the consent of the Member State should be sought before appointing one of its nationals to a post in the Secretariat. He added that this opinion was not only contrary to Article 101 (3) of the Charter¹³ but also to Article 100 which stipulated that the staff of the Secretariat were international civil servants who were responsible only to the Organization. That position was shared by few other delegations.¹⁴

B. The obligations of Members of the Secretariat

1. OBLIGATIONS REGARDING PERFORMANCE OF DUTIES

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

10. In an appeal to the Administrative Tribunal,¹⁵ the Applicant asserted that, in refusing to renew his fixed-term appointment solely because of the objection of his Government, Respondent had “put political expediency ahead of his obligation of independence under Article 100 of the Charter”. Respondent contended that the Applicant had been seconded to the United Nations by his Government, and consequently his appointment could not be renewed without the latter’s consent.

11. The Applicant, who served in the Institute of Economics of the Czechoslovak Academy of Sciences had, while in Geneva on leave of absence without pay, taken up employment on a short-term basis with the ILO. On 2 September 1968, he applied for a post with the Economic Commission for Europe (ECE). The Applicant accepted an 11-month appointment after the Permanent Representative of his country of origin agreed on behalf of the Government to recruitment on a temporary basis and a fixed-term appointment for two years under similar conditions. But it must be noted that no mention was made of secondment in the Government’s agreement, in the letter of appointment, or in the personnel action form relating to the appointment.

12. The breach came about when the Applicant was notified by the Academy of Sciences that “his leave of absence would end at the originally approved term i.e. on

31 December 1971”, and when the Applicant’s appointment should be extended for a further period “of not less than three years”.

13. The Government of Czechoslovakia did not approve the proposed extension and the Applicant was bound to return to his country of origin on 31 December 1971. The Applicant addressed a memorandum to the Secretary-General, in which he stated that he had not been seconded from his national Civil Service and that the attempts of the Czechoslovak authorities to prevent his employment with the United Nations had nothing to do with the Applicant’s rule of secondment but were simply an action of persecution to which the United Nations could not be a party.

14. The Office of Personnel Services replied that the Secretary-General was not in a position to contest the claim of the Government of Czechoslovakia. The Joint Appeals Board, to which the case was submitted, concluded that the Secretary-General was within his rights in not accepting to renew the Applicant’s fixed-term appointment.

15. The Applicant filed with the Tribunal which, in order to decide on the Respondent’s decision, recalled the legal principles applicable to the secondment of staff to the United Nations Secretariat. It observed that temporary secondment was formally recognized by Staff Rule 104.12 (b) and that the training and reference manual of procedure for personnel clerks and secretaries instructed them, in the case of candidates seconded to the United Nations, to include in the document which must be prepared at the time of appointment a formal mention of the situation of secondment. Any secondment, therefore, must be defined at the time of appointment and any subsequent change in its terms must be made in writing and accepted by the parties involved. Accordingly, if the Government which had seconded an official refused to extend the secondment, the Secretary-General must take this into account.

16. With reference to these points the Tribunal concluded:¹⁶

“Bearing in mind the provision in Article 100 of the Charter that ‘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’, the Tribunal considers that in the absence of a secondment agreed to by all parties concerned in conformity with the above-mentioned principles, the Respondent cannot legally invoke a decision of a Government to justify his own action with regard to the employment of a staff member.”

On the basis of the fact presented to it, the Tribunal further concluded that the Applicant had not actually been seconded by his Government and also that he had a legal expectancy of continued employment, for the loss of which he should receive compensation as determined by the Tribunal.

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

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

**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*

17. Judgement No. 174 of the Administrative Tribunal¹⁷ related to the Applicant contesting a decision for abandonment of post. The Applicant, an employee of the UNDP office at Yaoundé with a permanent contract, was granted an authorization of leave without pay by the Acting Resident Representative. The following day, the Acting Resident Representative reconsidered his decision and informed the Applicant that, if she refused to reconsider her request for leave, he would be compelled to terminate her contract with the Organization. The Applicant left for France and was sent a letter by the Chief of the Personnel Branch, informing her that she was suspended from duty without pay and inviting her to submit a written explanation of the reasons for her action. Upon her return, the Applicant responded to the Resident Representative, proposing that she should be permitted to resume her functions with pay, since the Deputy Resident Representative (who was Acting Resident Representative) had been reassigned. She accepted a temporary appointment with the area office of the International Labour Organisation since her proposal was not granted. Subsequently, having been informed that the Resident Representative was agreeable to her transfer to ILO, even on a temporary basis, the Applicant wrote to the Director of ILO stating that the transfer had not been raised officially and, in order to facilitate her case, she would not do any more work for the ILO. Then the Resident Representative informed her that he had decided to terminate her contract and that her emoluments would be paid, less the period during which she worked for the ILO.

18. The Applicant referred the matter to the Joint Appeals Board. After various administrative developments, the Applicant rejected the arrangements proposed by the UNDP with a view to an agreed termination agreement. In the mean time, she accepted work in the French Embassy. Soon thereafter, she was informed by the Resident Representative that Headquarters had decided to reinstate her immediately to her post.

19. After resuming her work in her post, she sent a letter to the Chief of the Personnel Division, indicating that she would be unable to perform her duties in Yaoundé for three months. She then acted accordingly, without any response from the Administration. A second termination decision for abandonment of post was issued.

20. In referring the matter to the Administrative Tribunal, the Applicant requested rescission of this termination decision for abandonment of post. Her argument was that she had not been reinstated and consequently could not have abandoned her post. Noting that, in the official correspondence, the Applicant had acknowledged that she had accepted "an immediate reinstatement" and that she had resumed her duties on 26 September 1969, the Tribunal reached the conclusion that the Applicant had in fact been reinstated on 26 September 1969.

21. The Applicant also contended that termination for "abandonment of post" was neither authorized nor provided for in the Staff Rules and that, for a grievance of that nature, disciplinary proceedings ought to have been initiated. However, the Tribunal noted that annex III, paragraph (d), to the Staff Regulations provided that no termination indemnity should be paid to a staff member who abandoned his post; that confirmed, in the opinion of the Tribunal, the long-standing Administration practice of regarding unauthorized absence, in certain circumstances, as abandonment of post and cause for separation

since the prohibition against paying termination indemnity to a staff member who abandons his post would be meaningless if abandonment of post was not a distinct and independent reason for termination.

22. Rejecting the Applicant's allegation of prejudice, the Tribunal considered that her reinstatement, which had put an end to her suspension without pay, meant in effect that she should not have been suspended and that in principle she should be paid her full salary for that period less appropriate deductions. In the circumstances, the Administration had wrongly credited her with no salary or leave accruals for the period during which the Applicant had worked at the ILO and the French Embassy. The Tribunal therefore decided that the Respondent should (1) pay the Applicant the difference between the salary she would have received at UNDP for the period during which she had worked at the ILO and the French Embassy and the salary she had received from the ILO and the French Embassy during that period and (2) calculate the Applicant's leave entitlement for that period and pay the cash equivalent thereof to her.

b. *Outside activities*

23. Judgement No. 220 of the Administrative Tribunal¹⁸ related to an applicant contesting a decision to terminate an appointment for abandonment of post. The Applicant, who was on sick leave, had taken a job with a private company in New York. The United Nations, informed of this activity, sent him a telegram stressing that a failure to report would lead to his separation from the service. Having failed to report, he was subsequently informed that he had been separated from the service of the United Nations.

24. The Applicant applied to the Administrative Tribunal, requesting that he should be reinstated as from the date of the end of the sick leave authorization. After the review of the facts, the Tribunal concluded that the unauthorized acceptance of alternative employment was inconsistent with an intention to continue employment at the United Nations and constituted abandonment of post. The Tribunal accordingly rejected the application.

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. During the period under review, no outstanding speeches, decisions or resolutions were made or taken by the General Assembly or its organs. It should be noted, however, that, at its twenty-ninth session, the General Assembly approved a decision of the Fifth Committee regarding the recruitment policies of the United Nations, including that "the principle of equitable geographical distribution should be applied to the Secretariat as a whole, and to this end, no post, individual department, division or unit in the Secretariat should be considered

as the exclusive preserve of any individual Member State or any region".¹⁹ In its decision the Committee had also stated that "Member States, bearing in mind relevant Articles of the Charter, should co-operate fully with the Secretary-General in carrying out" those policies.²⁰

****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

26. In its advisory opinion on *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, the International Court of Justice addressed the question whether Article 11 of the Statute of the Administrative Tribunal, which authorizes a Member State to initiate proceedings for the review of the Tribunal's judgements, could be construed as impinging upon the rights of the Secretary-General as chief administrative officer and conflicting with Article 100 of the Charter. The Court refrained from solving the issue and merely stated:²¹

"These arguments introduce additional considerations which would call for close examination by the Court if it should receive a request for an opinion resulting from an application to the Committee by a member State."

****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 REPLACE OFFICIALS**

6. REFUSAL TO GRANT PASSPORTS TO NATIONALS ON THE STAFF

27. On 27 April 1972 the Secretary-General addressed a letter²² to the Permanent Representative of a Member State concerning the adoption by the authorities of that State of an act providing for various limitations over the renewal and issue of passports and imposing a requirement that holders agree to remit to a domestic bank a

proportion of their foreign income, including that from international organizations. In pointing out that the act might hinder the Organization in the execution of its functions and place certain staff members or candidates for Secretariat posts at a disadvantage, the letter stated:

"From the standpoint of principle, the exclusively international responsibilities of United Nations officials (and, similarly, of officials of other organizations forming part of the United Nations family) and the position of the Secretary-General are, at least potentially, considerably affected by the nature and extent of the controls which the act seeks to introduce."

****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**

NOTES

¹G A (26), Suppl. No. 1A, para. 108.

²*Ibid.*, paras. 109-110.

³*Ibid.*, para. 111.

⁴G A (25), 5th Com., 1355th-1388th mtgs.; also 1042nd mtg., para. 7.

⁵See the text of Article 101 of the Charter.

⁶See note 4 above.

⁷G A resolution 2736 (XXV), para. 2 (b).

⁸See the text of Article 101 of the Charter.

⁹G A (31), 5th Com., 32nd mtg., para. 82.

¹⁰*Ibid.*, para. 83.

¹¹*Ibid.*, A/C.5/31/L.11/Rev.2, adopted by the Committee and later by the General Assembly as resolution 31/26 of 29 November 1976.

¹²G A (31), 5th Com., 4th mtg.: Algeria, para. 12; 9th mtg.: USSR, para. 60; 11th mtg.: Cameroon, paras. 37-38; G A (34), 5th Com., 8th mtg.: Jordan, para. 67.

¹³See under Article 101 of the present *Supplement*.

¹⁴G A (31), 5th Com., 5th mtg.: United Kingdom, paras. 53-55; 8th mtg.: Australia, para. 20; Sweden, para. 50; 11th mtg.: New Zealand, para. 10; and 15th mtg.: Colombia, para. 17.

¹⁵*United Nations Juridical Yearbook*, 1974, p. 119: *Levcik v. Secretary-General of the United Nations*, Judgement No. 192.

¹⁶*Ibid.*, p. 120.

¹⁷*Ibid.*, 1973, p. 103: *Dupuy v. Secretary-General of the United Nations*, Judgement No. 174.

¹⁸*Ibid.*, 1977, p. 146: *Hilaire v. Secretary-General of the United Nations*, Judgement No. 220.

¹⁹G A (29), 5th Com., 2324th mtg.

²⁰*Ibid.*, Annexes, a.i. 81, A/9980, paras. 45-46.

²¹*I.C.J. Reports 1973*, p. 178, para. 31.

²²*United Nations Juridical Yearbook*, 1972, chap. VI, sect. 18, pp. 188-190.