

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. The Article imposes a reciprocal obligation of non-interference on both the international civil servants that comprise the Secretariat and on Member States from which the employees have been selected. The purpose of the Article is sometimes interjected in the lengthy debates regarding geographical distribution in the context of Article 101.¹ The principle of Article 100 is also interrelated with Article 105, which discusses privileges and immunities.²

¹See this *Supplement*, under article 101.

²*Ibid.*, article 105.

I. GENERAL SURVEY

2. During the period under review, no decisions bearing directly on the interpretation or application of Article 100 were taken by United Nations organs. However, the Article was occasionally referred to by delegates in the Fifth Committee in their lengthy discussions under the agenda item entitled "personnel questions". In one such debate, at the thirty-fifth session of the General Assembly, in 1980, the representative of Egypt stated that the essential elements of an independent international civil service, as set forth in Articles 100 and 101 of the Charter, could be summarized in the following terms: first, the staff should not seek or receive instructions from any Government or any authority external to the Organization; secondly, in return, each Member State should respect the exclusive international and impartial character of the re-

sponsibilities of the staff and not seek to influence staff members in the discharge of their responsibilities; thirdly, staff members should refrain from any action reflecting adversely on their position as international officials responsible to the Organization; and fourthly, the Secretary-General should have the final power of making staff appointments within guidelines approved by the General Assembly. It was thus in the interest of both Member States and the staff that the international civil service should be truly independent and not merely multinational or intergovernmental.³

³G A (35), 5th Comm., 57th mtg., Egypt, para. 66.

II. ANALYTICAL SUMMARY OF PRACTICE

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

3. During the period under review, the Fifth Committee of the General Assembly paid considerable attention to the question of the geographical distribution of the Secretariat. Those discussions were held pursuant to specific requests outlined by the General Assembly to address the need for a coherent personnel policy that secured improved representation of unrepresented and underrepresented

countries, and improved the proportion of women in the Secretariat within the context of equitable geographical distribution.⁴ Although it was requested that emphasis should be placed on the recruitment and hiring of nationals to achieve desirable ranges for their respective countries, the General Assembly reaffirmed that no post should be considered the exclusive preserve of any Member State, or

⁴G A resolutions 33/143, 34/219, 35/210, 37/235 and 38/231.

group of States, and the Secretary-General was requested to ensure that "this principle is applied faithfully in accordance with the principle of equitable geographical distribution".⁵

4. At the thirty-fourth session of the General Assembly, in 1979, the Assistant Secretary-General for Personnel Services stated at a meeting of the Fifth Committee that the Secretariat had to work in an essentially political atmosphere, but in order to maintain the exclusively international character of its responsibilities it must hold fast to a key element in the Charter: the need to maintain the highest standard of integrity. No matter what the cost, he was resolved not to deviate from that cardinal principle.⁶ With regard to appointments and the improvements made towards geographical distribution, he reiterated that, whenever the Secretary-General made an appointment decision he must insist on being able to exercise discretionary powers.⁷ At a subsequent meeting, a Member State commented that, despite efforts made by the Committee, the personnel question had still not been resolved. In its view, it was necessary to go to the root of the problem, which was political rather than administrative.⁸

5. At the thirty-fifth session of the General Assembly, in 1980, a Member State argued that the formula that determined a country's desirable range based on the country's scale of assessment introduced a conflict which was both alien and inimical to the Charter, namely that posts were paid for and therefore became national property. In its view, nothing could be further removed from the original idea of the international civil service: the divided loyalties of staff on short-term appointments, the sad flouting of Article 100 of the Charter and the working groups on desirable ranges were all an undesirable outcome of that original sin.⁹

6. At the thirty-sixth session of the General Assembly, a Member State noted that it was hard to determine what course the Office of Personnel Services should follow in order to comply with Article 100.¹⁰ Another Member stated that the United Nations Secretariat was going through a crisis of identity and purpose because of the increasingly rapid politicization of its Administration. It called for forthright action to be taken to end the situation by urging Governments to desist from their political interference.¹¹

7. At the thirty-seventh session of the General Assembly, a Member State reiterated that the effectiveness, dynamism and independence of a truly international Secretariat depended upon the dedication, competence and integrity of those working in it and, above all, on strict respect on the part of Member States for Article 100, paragraph 2, of the Charter.¹²

⁵G A resolution 35/210, sect. I, para. 3. See also this *Supplement*, under article 101, paras. 13-30.

⁶G A (34), 5th Comm., 23rd mtg., para. 3.

⁷*Ibid.*, para. 7.

⁸G A (34), 5th Comm., 29th mtg., Morocco, para. 2.

⁹G A (35), 5th Comm., 59th mtg., India, para. 20.

¹⁰G A (36), 5th Comm., 52nd mtg., Suriname, para. 48.

¹¹G A (36), 5th Comm., 54th mtg., Zaire, para. 1.

¹²G A (37), 5th Comm., 33rd mtg., Mauritania, para. 1.

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*

** (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*

8. In 1979, a question was raised regarding the refusal of several operational assistance (OPAS) experts to follow instructions of the Secretary-General concerning their evacuation from a State owing to a security situation. In a legal opinion prepared by the Office of Legal Affairs, it was concluded that "[i]n time of crisis or security situation the Secretary-General has the full discretion whether in the United Nations interest directly or the interests of the personnel to determine that all United Nations personnel including OPAS experts must evacuate a certain State or area. The refusal of these experts to follow such instructions is incompatible with their international status and constitutes a breach of contract."¹³

** (b) *Outside activities*

** (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*

9. In 1982, the Office of Legal Affairs was required to consider the question of whether staff members of the United Nations could accept any honour, decoration, favour, gift or remuneration accorded by a Government. The resulting memorandum addressed to the Executive Assistant to the Secretary-General affirmed that "it is well-established that staff members, as international servants, are called upon to work not in their own name but anonymously. As a consequence, any honours or decorations should be conferred upon the Organization and not upon the individual members of the staff."¹⁴ The Legal Counsel pointed out in the commentaries on regulation 1.6 of the United Nations Staff

¹³*United Nations Juridical Yearbook*, 1979, p. 184.

¹⁴*United Nations Juridical Yearbook*, 1982, p. 202.

Regulations (non-acceptance of gifts, etc.) that the regulation did not preclude a staff member from accepting: (a) academic awards; (b) reimbursement of travel and subsistence for activities otherwise authorized; (c) tokens of commemorative or honorary character, such as scrolls, trophies or other like articles; or (d) courtesies which constituted part of normal social functions.¹⁵

**** (g) Political activities**

**** (h) The question of alleged subversive activities**

**** (i) Criminal activities**

C. The obligations of Member States

1. PRIVILEGES AND IMMUNITIES OF THE SECRETARIAT

10. During the period under review, five resolutions were adopted by the General Assembly pertaining to the need to respect the privileges and immunities of officials of the United Nations and the specialized agencies.¹⁶ Reference to Article 100 was, on occasion, included in the Fifth Committee's discussions pertaining to privileges and immunities.¹⁷ Member States did not always agree that their behaviour was at fault in the violation of privileges and immunities. For example, one Member State noted that over the years international civil servants had with increasingly frequency violated the standards of conduct expected of them by becoming involved in substantive activities, illegal trade practices, currency speculation, and so on. In order to maintain the prestige of the international organizations, the usual practice had been to resolve those problems amicably in consultations between the organizations and the Governments concerned. However, there had been a tendency to criticize Governments publicly and to accuse them of violating the privileges and immunities of international officials.¹⁸

11. In its resolution 35/212 of 17 December 1980, the General Assembly specifically referred to Article 100 of the Charter in support of its request that all Member States respect the privileges and immunities accorded to officials of the United Nations and the specialized agencies. In its resolution 36/232 of 18 December 1981, the Assembly appealed to any Member State which had:

"placed under arrest or detention a staff member of the United Nations or of a specialized agency or related organization to enable the Secretary-General or the executive head of the organization concerned, in accordance with the rights inherent under the relevant multilateral conventions and bilateral agreements, to visit and converse with the staff member, to apprise himself of the grounds for the arrest or detention, including the main facts and formal charges, to enable him also

¹⁵Ibid., pp. 203 and 204; see also *United Nations Juridical Yearbook, 1984*, p. 179, for a discussion regarding the non-acceptance of a gift from a Member State to the Secretary-General

¹⁶G A resolutions 35/212, 36/232, 37/236, 38/230 and 39/244.

¹⁷See G A (36), 5th Comm., 5th mtg., Zaire, para. 1; 72nd mtg., Bahamas, para. 29; Ghana, para. 34; G A (37), 5th Comm., 30th mtg., Egypt, para. 65, 33rd mtg., Mauritania, para. 1; G A (38), 5th Comm., 53rd mtg., Hungary, para. 11; G A (39), 5th Comm., 23rd mtg., Venezuela, para. 57.

¹⁸G A (36), 5th Comm., 52nd mtg., Ethiopia, para. 58.

to assist the staff member in arranging for legal counsel and to recognize the functional immunity of a staff member asserted by the Secretary-General or by the appropriate executive head, in conformity with international law and in accordance with the provisions of the applicable bilateral agreements between the host country and the United Nations or the specialized agency or related organization concerned".

In its resolution 37/236 A of 21 December 1982, the Assembly noted with concern that "a marked deterioration in the observance of the principles related to privileges and immunities" had been reported.

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

12. Judgement No. 237 of the Administrative Tribunal related to an applicant requesting tax reimbursement on a partial lump sum commutation of pension benefits.¹⁹ The applicant, a United States national, retired from the Secretariat on 30 June 1978 and opted for one-third lump sum payment of his pension. The practice had been to reimburse retiring staff the national taxes of one-third payment from the Tax Equalization Fund. An information circular in 1974 and 1977 described the expected tax reimbursements on commuted retired benefits.

13. On 13 June 1978, the United States Mission to the United Nations questioned the propriety of tax reimbursements on one-third lump sum pension payments. The Legal Counsel confirmed to the Secretary-General their agreement that there was no legal basis for reimbursing national taxes on lump sum pension payments and that the practice should stop immediately. A subsequent bulletin on 16 July 1978 explained that the one-third practice was to be discontinued. It was argued that compliance with the bulletin resulted in a negative financial impact on the applicant.

14. The applicant questioned the propriety, under Article 100, of the Secretary-General having accepted instructions from a Government external to the Organization. The Tribunal decided that it only had to consider the legality of reimbursement under the information circular of 16 December 1974, not what may have been the effect of the representations of the United States Government on the decision taken by the Secretary-General.

****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**

¹⁹*Powell v. Secretary-General of the United Nations*, Judgement No. 237 (13 February 1979).

D. The question of the relationship between the international loyalty of staff members and their loyalty to the State of which they are nationals

15. Judgement No. 333 of the Administrative Tribunal concerned the decision taken by the Secretary-General not to renew the Applicant's contract of employment.²⁰ The Applicant, a USSR national, was originally employed on the basis of a fixed-term appointment, pursuant to a secondment from the USSR Government. The first renewal of the appointment did not mention the secondment. However, the third extension of the contract specified "on secondment from the Government of the Union of the Soviet Republics". The letter of appointment was signed on behalf of the Secretary General and by the Applicant 8 and 9 December 1982, respectively. On 9 February 1983, the Applicant applied for asylum in the United States and on 10 February 1983 he resigned from all positions with the Government of the USSR and informed that Government

²⁰*Yakimetz v. Secretary-General of the United Nations*, Judgement No. 333 (8 June 1984).

of his application for asylum. On 28 February 1983, the Applicant was placed on special leave with full pay. The Applicant's fixed-term contract was not renewed upon its expiration on 26 December 1983.

16. The Applicant argued that to deny him the right to reasonable consideration for a career appointment for any reason unrelated to merit—efficiency, competence, integrity—would be a violation of Article 100 of the Charter.

17. While the Tribunal agreed that the legal issues involved were interspersed with political considerations, it held that it could only address the legal issues. The Tribunal held further that "there has been no allegation, and far less any evidence, that the Respondent sought instructions from any Member States, or that he had in any manner let the wishes of a Member State prevail over the interests of the United Nations and thus disregarded his duties under article 100, paragraph 1, of the Charter." It also concluded that "[i]f his fixed-term appointment were not based on secondment he could, in the jurisprudence of the Tribunal, have in certain circumstances expectation of one kind or another for an extension, but such a situation did not arise."