
Article 100

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Text of Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Introductory note

1. Article 100 provides for the continuing responsibility of staff members as international officials to represent the United Nations independent of external influence or control, and the corollary obligation on the part of Member States to respect that independence.¹ As part of Chapter XV of the Charter of the United Nations, Article 100 establishes the principle of the exclusively international character of the Secretariat composed of officials responsible only to the Organization.² This study concerns decisions undertaken in the period under review to preserve that independence and internationality of character, as well as the consideration of the particular issues and questions, which have arisen in that connection.
2. The format of this Study largely follows the revised format introduced in the previous Study of Article 100. Certain subheadings have changed to reflect developments affecting the Secretariat following the end of the Cold War, and as a result of the expanded international responsibilities the United Nations, and the staff who represent it, have now assumed.
3. The general survey following this introductory material is concerned with the subject as a whole, providing a synoptic overview of the key issues arising in the application of Article 100 in the period, and indicating the trends in the definition of the responsibilities of the civil service and the corollary obligations of Member States. The analytical summary of practice will provide a more specific elaboration of actions or developments in the period under review.
4. Certain aspects of the discussion of Article 100, and the international character of the Secretariat, are interrelated with and interjected into discussion of Article 101, notably in respect to issues applicable to the recruitment and appointment of staff.³ Concern over the character and, hence, composition of the Secretariat may also relate to the study of Article 8.⁴ Finally, the principle of the independence of the international civil service under Article 100 is linked with Article 105, which concerns the privileges and immunities of the Organization.⁵

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*.

³ See discussion under the study of Article 101 in the present *Supplement*.

⁴ *Ibid.*, Article 8.

⁵ *Ibid.*, Article 105.

I. General survey

5. During the period under review, the Assembly invoked Article 100 in repeated resolutions on personnel questions, both in the context of the question of the appointment of staff,⁶ and, in the initial years, consideration of the improvement of the status of women.⁷ Article 100 was also invoked in resolutions on the question of respect for privileges and immunities.⁸ The Assembly gave specific consideration to the application of Article 100 to secondment; the practice by which nationals of a State are seconded from government service on a fixed-term basis.⁹ This action followed a decision of the United Nations Administrative Tribunal (UNAT), which called for changes to the practice.¹⁰

6. The period also witnessed a significant degree of attention to measures aimed at ensuring the independence of the staff of the Secretariat. Decisions of the Assembly emphasized the importance of ensuring the international character of the civil service,¹¹ affirming the maintenance of that condition as an aim in the efforts to reform and revitalize the United Nations undertaken in the period.¹² In this regard, the Organization continued to stress the application of principles of personnel management. Particular attention was given to the application of principles and practices in recruitment directed at ensuring the character of the international civil service.¹³

7. Decisions of the period continued to emphasize the professional responsibility of staff under Article 100 as international officials.¹⁴ In this context, a specific concern was the application of measures, such as performance evaluation, to assess staff performance and enhance accountability.¹⁵ Decisions of UNAT

affirmed the professional responsibility in respect to internal rules of subsidiary bodies.¹⁶ The Administration also highlighted the responsibility of staff to safeguard sensitive information, particularly in the use of communications technology.¹⁷ The Administration in this period also sought to underscore the obligations of staff in their personal conduct. The Administration stressed the value it placed on staff, as international civil servants, ensuring that their overall conduct does not involve United Nations interests or bring the Organization or the Secretariat into discredit. Particular reference was made in this context to the responsibility of staff for their private legal obligations, notably those concerning spouse and family support.¹⁸ The Organization also undertook measures in respect to the acceptance of gifts, honours or remuneration, incorporating specific provisions regulating the acceptance of such benefits into the Staff Rules.¹⁹

8. Growth in violations of privileges and immunities in the period following the end of the Cold War and the new consensus around expanding the role of the United Nations had a significant impact on the consideration of measures to support and protect the international civil service.²⁰ These developments prompted consideration of the need to expand the responsibilities of the Secretary-General and the administration for the staff of the Secretariat.²¹ In addition, the obligation of Member States to respect the exclusively international character of the civil service under Article 100 continued to be a primary focus of attention. The Secretary-General cited the question of respect for privileges and immunities as one of the utmost importance.²² As a responsibility undertaken by

⁶ See G A resolutions 44/185 A; 45/239 A, sect. I; 47/226 I, sect. A; and 49/222.

⁷ See G A resolutions 44/185 C and 45/239 C.

⁸ See G A resolutions 44/186, 45/240 and 47/28.

⁹ See G A resolution 45/239 A, sect. II and 47/226 I, sect. A.2.

¹⁰ See [AT/DEC/482](#).

¹¹ See, e.g., G A resolutions 46/232 and 47/226.

¹² See G A resolution 46/232, para. 3 (g).

¹³ See G A resolutions 45/239 A, sect. I; and 47/226, sect. I.A.1. See also G A resolution 49/222, para. 2, and the statement of the Secretary-General to the Fifth Committee, [A/C.5/47/SR.21](#), paras. 44-58.

¹⁴ See, e.g., G A resolutions 44/186 and 45/240.

¹⁵ See G A resolutions 45/239 and 47/226.

¹⁶ See [AT/DEC/687](#).

¹⁷ See [ST/SGB/272](#).

¹⁸ See [ST/AI/399](#).

¹⁹ See G A decision 44/439. See also [A/C.5/44/2](#). The amendments were incorporated as rule 101.9. See [ST/SGB/StaffRules/1/Rev.7](#).

²⁰ The Secretary-General highlighted the impact of the expanding role of the United Nations following the end of the Cold War in his report, "An Agenda for Peace" outlining a new role for the Organization and expressing renewed concern over the protection of officials in the light of the new consensus. See [A/47/277](#), paras. 15, 26 and 66.

²¹ See G A resolutions 44/186, para. 16; 45/240, para. 18; and 47/28, para. 5.

²² [A/C.5/47/14](#), para. 14.

Member States, repeated resolutions of the Assembly, recalling Article 100, called upon States to scrupulously respect the privileges and immunities of United Nations officials, and refrain from any acts that would impede such officials in the performance of their functions, and thereby the functioning of the Organization.²³

9. Issues of State regulation of its own nationals on staff, and regulations applicable to other staff,

²³ See G A resolutions 44/186, para. 4; 45/240, para. 4; and 47/28, paras. 5 and 6. See also, e.g., Commission on Human Rights resolutions 1991/31, para. 2, and 1992/26, para. 2. Reference may be made to the advisory opinion of the International Court of Justice, which supported the extension of privileges and immunities to individuals entrusted with a United Nations mission but not possessing the status of staff. The ICJ took the view that under the Convention on Privileges and Immunities, States, including that of nationality or residence, must accord such privileges and immunities absent a valid reservation. See *I.C.J. Reports 1989*, p. 177. The Assembly welcomed this Opinion by resolution 45/240.

including those implemented by the host country, also continued to be a matter of consideration in the period. At the same time, a new feature of consideration in the period was the validity of secondment under Article 100 and revisions to the practice consistent with the maintenance of an international civil service independent from interference by Member States. An additional area of concern arising in the period was the practice of supplementary payments to staff.²⁴ The Administration also considered the question of recognition of change in a staff member's nationality.²⁵

²⁴ See consideration by the International Civil Service Commission, *A/44/30*, para. 87; and *A/45/30*, para. 219. See also G A resolutions 44/198, sect. III.C, and 45/241, para. 3.

²⁵ *United Nations Juridical Yearbook*, 1993, p. 392.

II. Analytical summary of practice

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

10. In the period under review, the Organization repeatedly cited the value of the international civil service and the importance placed on its continued independence.²⁶ In a statement before the Fifth Committee, the Secretary-General expressed his belief in the high value of the staff, trusting that Member States recognized the advantage of a genuinely independent and geographically balanced international civil service.²⁷ Delegations of a number of States in the

²⁶ See comments of the Secretary-General, *A/C.5/47/SR.21*, paras. 40-51. The Secretary-General indicated that he intended to leave the strengthening of the civil service as his legacy. *Ibid.*, para. 40. See also measures introduced by the Secretary-General to strengthen human resources management in the Secretariat, *A/C.5/47/6* and *A/C.5/49/5*. See further G A resolution 47/226. Further development of this issue may be found in the study of Article 101 in the present *Supplement*.

²⁷ *A/C.5/47/SR.21*, paras. 41-42. In resolution 47/226, the Assembly recognized that the staff of the Organization were an invaluable asset and commended their contribution to furthering the purposes and principles of the United Nations.

period expressed their support for the efforts of the Secretary-General in strengthening the independent character and functioning of staff.²⁸ For its part, the Assembly specifically identified ensuring the exclusively international character of staff as part of the goals set out in its initiative on reform and revitalization of the United Nations.²⁹

11. Consensus over the role of the United Nations following the end of the Cold War, and the expansion in the number of missions being undertaken, resulted in increasing concern over the independence of the international civil service, notably as a result of the increase in the number and severity of violations of privileges and immunities of United Nations personnel.³⁰ While these developments prompted the

²⁸ See, e.g., *A/C.5/44/SR.41*, para. 16; *A/C.5/45/SR.24*, paras. 34-35; and *A/C.5/49/SR.22*, para. 41.

²⁹ See G A resolution 46/232, para. 3 (g).

³⁰ The Secretary-General reported to the General Assembly on a very high number of arrests and detentions during the initial three years of the period, representing a substantial increase over the previous period. See *A/C.5/44/11*, para. 8; *A/C.5/46/4*, para. 6; *A/C.5/47/14*, paras. 6-8; and *A/C.5/48/5*, paras. 5-7. See also G A resolution 47/28, para. 9.

Organization to increase measures to support and protect the international character of the civil service,³¹ opinions of various judicial bodies recognized an expansion in both the categories of persons entitled to the Organization's support and protection,³² and the categories of staff entitled to a career appointment.³³ These developments prompted closer consideration of the definition of the international civil service, and the characteristics of its composition.³⁴

12. Addressing the Fifth Committee, the Secretary-General defined the international civil service under Article 100 as a professional body of women and men devoted to the service of the human community.³⁵ The Secretary-General went on to identify as one of the key components of his concept of an independent international civil service a clear differentiation between political appointments and career international civil servants; the former being positions of limited duration at higher levels, and the latter based on competitive recruitment and transparent career development.³⁶ The Secretary-General stressed as a second component of a strong international civil service the need for the highest standards of efficiency and competence.³⁷ Such standards would be characterized by training.³⁸ Throughout the period, the

Secretary-General also emphasized equality in the treatment of the international civil service; this included not only equality of opportunity between women and men,³⁹ but also impartiality both in the conduct of staff members and the conduct towards them.⁴⁰ Throughout the period, the Secretary-General consistently maintained a position against discrimination, whether positive or negative, in the treatment of staff based on nationality.⁴¹

13. At the same time, the preservation and strengthening of the international civil service in the period continued to be closely identified with the application of certain recruitment policies.⁴² In its resolutions on personnel questions, the Assembly, recalling, inter alia, Article 100, reiterated its advocacy of certain policies towards the recruitment of Secretariat staff. These included, for example, reaffirming the policy that no position should be considered the exclusive preserve of any State or group of States,⁴³ urging the recruitment of nationals from unrepresented and underrepresented States,⁴⁴ and ensuring the representation of the main legal systems in the Secretariat where appropriate.⁴⁵ Good personnel management practices, including, as indicated, training, as well as career development were identified as

³¹ See discussion *infra* and the study of Article 58 in the present *Supplement*.

³² An advisory opinion of the International Court of Justice hereinafter recognized the application of the Convention on Privileges and Immunities to persons who are not staff but entrusted with a United Nations mission. See *I.C.J. Reports 1989*, p. 177 and discussion *infra*.

³³ The United Nations Administrative Tribunal ruled that staff, including those on secondment, are entitled to every reasonable consideration for a career appointment. See [AT/DEC/482](#). See also discussion *infra* on the question of secondment.

³⁴ See, e.g., G A resolution 47/226 I. Several States raised the question of the scope and duration of appointment of staff as a matter of concern. See [A/C.5/44/SR.44](#), para. 33, and [A/C.5/46/SR.26](#), para. 21.

³⁵ [A/C.5/47/SR.21](#), para. 44.

³⁶ *Ibid.*, paras. 45 and 47. The Secretary-General stated his opposition to movement of staff between the two categories, advocating that career staff who chose to take a political appointment would forfeit their permanent status. He did indicate that consideration was being given to creating a career equivalent to Assistant Secretary-General. *Ibid.*, para. 48.

³⁷ *Ibid.*, para. 51. See further consideration of Article 101 in the present *Supplement*.

³⁸ *Ibid.*, para. 56.

³⁹ *Ibid.*, paras. 57 and 58. The Assembly continued to recall Article 100 in its decisions on improvement in the status of women. See G A resolutions 44/186 C, 45/239 III, sect. C and 47/226, para. 6. The Tribunal declared that all staff have the right to be free from invidious gender-based discrimination, and that officials engaging in such misconduct have failed in their moral and contractual obligations. This was especially so in the United Nations, which must serve as a model for harmony and cooperation. [AT/DEC/560](#), para. VII.

⁴⁰ *Ibid.*, paras. 49 and 50. In this context, the Secretary-General underscored the need to prevent the highest standards of integrity from being compromised even by implication. *Ibid.*, para. 49.

⁴¹ See, e.g., [A/C.5/45/10](#), para. 18 and [A/C.5/45/SR.15](#), para. 2. See further [ST/89/10](#), annex II and discussion *infra* on the question of special rights of the host country.

⁴² See discussion in this section under the study of Article 100 in *Supplement No. 7*.

⁴³ See G A resolutions 45/239 A, sect. I, para. 8, and 47/226, sect. I.A.1, para. 1. See also Secretary-General report, [A/44/222](#), paras. 164 and 165, and G A resolution 35/210.

⁴⁴ G A resolution 45/239 A, sect. I, para. 4.

⁴⁵ *Ibid.*, para. 10. As noted, the Secretary-General identified equality between women and men as a component of the international civil service.

components of a strong civil service.⁴⁶ Recalling, inter alia, Article 100, the Assembly endorsed the Secretary-General's efforts to strengthen human resources.⁴⁷

14. A key question in the period concerned the implications for international civil service of the practice of secondment in recruiting staff on a fixed-term rotational basis from governments of States whose nationals primarily or exclusively serve in that capacity.⁴⁸ While not invalidating secondment per se, UNAT found some of the practices and procedures of the administration respecting such staff in contravention of Article 100 and the interests of the Organization.⁴⁹ Considering the implications of the UNAT decision, the Secretary-General concluded that secondment, practiced on a limited scale, could be beneficial, but it could also undermine efforts to enhance the independence and efficiency of the Secretariat.⁵⁰ For its part, the Assembly repeatedly affirmed that the practice of secondment was consistent with Article 100.⁵¹ Amendments to the Staff Regulations were adopted to give explicit recognition to the procedure and the basis by which it was practiced.⁵²

B. The obligations of members of the Secretariat

1. Responsibilities of the Secretary-General with regard to the exercise of functions of staff members

15. Concern over respect for privileges and immunities arising in the period resulted in renewed emphasis on the responsibility of the Secretary-General for ensuring the security and independence of staff.⁵³

⁴⁶ See Secretary-General reports, [A/C.5/47/6](#) and [A/C.5/49/5](#).

⁴⁷ See G A resolutions 47/226 I, sect. B, and 49/222, para. 2.

⁴⁸ See also discussion *infra*.

⁴⁹ See [AT/DEC/482](#).

⁵⁰ [A/C.5/45/12](#), para. 5. In subsequent discussion in the Fifth Committee, a number of delegations welcomed the report of the Secretary-General and his observations. See [A/C.5/45/SR.15](#), para. 29; [A/C.5/45/SR.24](#), para. 64; and [A/C.5/45/SR.25](#), para. 6.

⁵¹ A G A resolutions 45/239 II, paras. 1 and 2, and 47/239 I, sect. A.2, para. 1.

⁵² *Ibid.*, paras. 4 and 5.

⁵³ The Secretary-General reported annually to the Assembly on the very high number of cases of arrest and detention during the initial three years of the period,

Recalling inter alia Article 100, the Assembly repeatedly called upon the Secretary-General as chief administrative officer to act personally as focal point in promoting and ensuring observance of privileges and immunities by using all such means as are available.⁵⁴ In this context, the Secretary-General was repeatedly requested to review and appraise measures to enhance the proper functioning, safety and protection of international civil servants.⁵⁵ Particular attention was given to enhancing the role of the United Nations Security Coordinator in resolving security matters.⁵⁶ The Secretary-General also recommended that the Security Coordinator assume direct responsibility for dealing with Governments in issues involving the arrest and detention of officials.⁵⁷

16. Reporting on respect for privileges and immunities at the outset of the period, the Secretary-General recalled his earlier statement to the Fifth Committee that responsibility for staff included both legal and humanitarian considerations.⁵⁸ As the Secretary-General explained, the legal considerations, based on privileges and immunities, related primarily to the question of whether an official was arrested because of their official activities.⁵⁹ Humanitarian

representing a substantial increase over the previous period. See [A/C.5/44/11](#), para. 8, and [A/C.5/46/4](#), para. 6. The Secretary-General subsequently noted a decline in the number, but an increase in the incidence of fatalities of officials. See [A/C.5/478/14](#), paras. 6-8, [A/C.5/48/5](#), paras. 5-7. See also discussion *infra* on privileges and immunities.

⁵⁴ G A resolutions 44/186, para. 14, 45/240, para. 15, and 47/28, para. 5.

⁵⁵ *Ibid.*, paras. 16, 18 and 5. The President of the Security Council also made a similar request. See [S/25493](#), para. 8. See further G A resolution 49/37, paras. 40 and 42.

⁵⁶ See [A/C.5/44/11](#), para. 26, [A/C.5/46/4](#), para. 17. See also annual report of the Administrative Committee on Coordination, [E/1992/11/Add.1](#), para. 112 and G A resolution 49/37, para. 42.

⁵⁷ [A/C.5/44/11](#), para. 11. See also report of the ad hoc inter-agency meeting on security, [ACC/1991/19](#), para. 6. It was asserted that such action would remove responsibility from local United Nations officials who might otherwise be compromised should a strong position be taken. *Ibid.*

⁵⁸ See [A/C.5/44/11](#), paras. 6-7. See also [A/C.5/42/14](#) and discussion in the study of this Article in *Supplement No. 7*.

⁵⁹ [A/C.5/44/11](#), para. 6. If the Organization is satisfied that detention of the staff member was not related to his

considerations were broader, involving the responsibility of the Secretary-General to ensure that arrested and detained staff are fairly treated, properly charged and brought to trial and receiving appropriate medical care.⁶⁰ The Assembly recognized the growing involvement of the Secretary-General in measures related to the general well-being of staff.⁶¹

17. As a consequence, the Secretary-General undertook responsibility for the development of a range of measures. These included broader programmatic or policy responses,⁶² such as the integration of security matters in the planning of United Nations operations,⁶³ and maintaining a legal link between the Organization and the detained or arrested officials.⁶⁴ The Secretary-General also undertook the development of substantive measures addressing both technical matters such as equipment,⁶⁵ as well as the well-being of staff, including the development of a stress management

official functions, the Secretary-General indicated there was no legal basis for immunity. *Ibid.*

⁶⁰ *Ibid.*, para. 7.

⁶¹ See, e.g., G A resolutions 45/240, paras. 8-10, 47/226, paras. 3 and 4, and 49/238, paras. 2 and 3. This included for example the creation and use of independent United Nations medical teams to provide appropriate medical care for staff and their families. See G A resolution 47/28, para. 6.

⁶² The Secretary-General proposed that the Security Council consider in advance collective measures should the purpose of a United Nations mission be systematically frustrated by attacks, including responses under Chapter VII where such actions were considered a threat to peace and security. *A/C.5/47/14*, para. 27. It should be recalled in this context that the President of the Security Council on behalf of the Council specifically requested that the Secretary-General make recommendations for enhancing the safety and security of personnel. *S/25493*, para 8.

⁶³ *A/48/349*, para. 28.

⁶⁴ *ACC/1991/19*, para 8. The legal link would be maintained through continued renewal of contract, if necessary until such time as the matter was legally resolved. The staff unions recommended that the post of a staff member, who is illegally detained, should be blocked until their return, their salary and other entitlements should continue to be paid and their families should be given all possible assistance including legal advice and protection from harassment. *A/C.5/48/17*, para 16.

⁶⁵ *ACC/1989/18*, paras. 9 and 10. See also *ACC/1991/19*, para. 25.

programme.⁶⁶ Additional measures included the development of standardized security training modules,⁶⁷ and life/accident insurance for staff at hazardous duty stations on a system-wide basis.⁶⁸

2. Obligations of staff members regarding the performance of their duties

(a) Overall professional responsibility of staff

18. During the period, resolutions of the Assembly continued to call upon staff to fully comply with the provisions of Article 100 of the Charter and the obligations resulting from Staff Regulations and Rules.⁶⁹ At its forty-seventh session, recalling Article 100, the Assembly adopted a number of measures pertaining to standards of conduct for the recruitment and career development of staff.⁷⁰ These measures included, for example, such actions as a review of the current performance evaluation system towards developing it into an effective system that accurately assesses staff performance and improves staff accountability.⁷¹

19. Delegations in the Fifth Committee raised the question of whether the Staff Rules should be interpreted as a common code of conduct applicable to all United Nations officials, including those elected or appointed.⁷² Citing the limitations on the scope and

⁶⁶ A number of bodies recommended the development of such a programme including the Secretary-General, the Commission on Human Rights and the General Assembly. See *A/C.5/47/14*, para. 31, *E/CN.4/Sub.2/1992/19*, para. 44, and G A resolution 49/238, para. 2.

⁶⁷ *ACC/1994/19*, para. 43. The need for security training for all levels of United Nations personnel was stressed. This recommendation was also made by the Special Rapporteur of the Commission on Human Rights, *E/CN.4/Sub.2/1982/19*, para. 45.

⁶⁸ The ad hoc inter-agency meeting on security took up the matter and approved a system-wide approach for insurance coverage. See *ACC/1989/18*, para 11-13. The 1991 ad hoc inter-agency meeting recommended the extension of the scheme to locally recruited staff, as well as internationally recruited general service and field service staff for service-incurred events. *ACC/1991/19*, paras. 16-18.

⁶⁹ G A resolutions 44/186, para. 8, and 45/240, para. 11. See also discussion in this section under the study of this Article in *Supplement No. 7*.

⁷⁰ G A resolution 47/226, sect. I.A and B. See also G A resolution 45/239, sect. I, para. 16.

⁷¹ G A resolution 47/226, sect. I.B, para. 3.

⁷² See *A/C.5/47/SR.57*, para. 4.

purpose of the Staff Regulations as defined in the Staff Rules as restricted to staff subject to the authority of the Secretary-General, the Director of Personnel concluded that Staff Rules could not apply to elected or appointed officials outside of the Secretariat, but only to those staff under the authority of the Secretary-General.⁷³ A number of States nevertheless supported consideration of the development of a common “code of conduct” applicable to all United Nations officials, not just the Secretariat.⁷⁴

20. UNAT Judgement No. 687 concerned in part the application of disciplinary measures based on internal rules of a subsidiary organ that were not a part of Staff Rules.⁷⁵ Observing that subsidiary organs frequently have their own rules and regulations, the Tribunal found that staff could not escape the obligations imposed by internal regulations by arguing that they were not approved directly by the Assembly.⁷⁶ The Tribunal did however reject in part the finding of the Administration that such a violation necessarily supported a determination that staff had therefore brought the Organization into disrepute with the host country.⁷⁷

21. In one judgement, UNAT held that once the Secretary-General established the deceptive behaviour, the burden falls on the staff member to adduce satisfactory exculpatory evidence.⁷⁸ The Tribunal similarly rejected arguments as to the significance of a staff member’s criminal or malicious intent in admitted misconduct, finding that illegal possession and intent to forge an official document was sufficient grounds for disciplinary action. The Tribunal affirmed that such an act itself was sufficient to reflect upon the status of staff as international civil servants and posed serious consequences for the Organization.⁷⁹

22. In Judgement 560, the Tribunal also considered the implications of allegations of sexual harassment. The Tribunal declared that officials engaging in such misconduct have failed in their moral and contractual obligations to the Organization, finding such conduct especially reprehensible at an organization such as the United Nations, which must serve as a model for harmony and cooperation.⁸⁰ The Tribunal further recognized the responsibility of the Secretary-General to investigate such allegations, and the responsibility of staff making such allegations to participate in such an investigation.⁸¹

***(b) Responsibility to the Secretary-General in the performance of duties*

(c) Acceptance of instructions from external authorities

23. A memorandum from the Office of Legal Counsel (OLC) responded to a request from the Government of a Member State requesting the services of a staff member, and national of the Member State, to assist the Government with legal matters.⁸² The Office stated that it was the policy of the United Nations not to second or loan staff members to Governments, citing as a rationale the fact that it would be problematic to reconcile such a secondment with the continuing obligation of the staff member, as a staff member, to comply with staff regulations, notably regulation 1.3, which enjoins staff from accepting instructions from any Government or authority external to the Organization.⁸³ OLC pointed out that United Nations assistance programmes employment contracts explicitly differentiated participants from staff members.⁸⁴

(d) Discretion in the performance of official duties

24. In 1994, the Secretary-General addressed a bulletin to staff members on the security of information with special reference to the obligation to protect sensitive information transmitted via telephone or computer.⁸⁵ While most United Nations information is openly available consistent with the Organization’s commitment to transparency, the bulletin reminded the

⁷³ [A/C.5/47/SR.57](#), para. 30. See also staff regulation 1.2, [ST/SGB/Staff Rules/1/Rev.7](#). The Director of Personnel indicated that the Secretariat had no mandate to prepare a code of conduct for officials reporting directly to the Assembly. [A/C.5/47/SR.57](#), para. 38.

⁷⁴ See [A/C.5/47/SR.57](#), paras. 33-36, 39 and 46. It was however suggested that all officials be bound by the spirit, if not the letter, of the Staff Rules. *Ibid.*, para. 47.

⁷⁵ [AT/DEC/687](#).

⁷⁶ *Ibid.*, para. III.

⁷⁷ *Ibid.*, para. IV.

⁷⁸ [AT/DEC/445](#), para. XII. This case concerned similar issues to the claim for reimbursement on tax payments as identified in the previous Supplement. See [AT/DEC/424](#).

⁷⁹ [AT/DEC/529](#), paras. XII-XV and XVIII.

⁸⁰ [AT/DEC/560](#), para. VII.

⁸¹ *Ibid.*, para. VIII.

⁸² *United Nations Juridical Yearbook*, 1990, p. 284.

⁸³ *Ibid.*, p. 285. See also [ST/SGB/Staff Regulations/Rev.20](#).

⁸⁴ *United Nations Juridical Yearbook*, 1990, p. 285.

⁸⁵ See Secretary-General’s bulletin [ST/SGB/272](#).

staff that the United Nations functions in a number of areas that require absolute confidentiality and discretion.⁸⁶ While the Secretary-General appreciated that most staff were aware of their obligations, he reminded staff of their obligation to exercise the utmost discretion in matters of official business and not to communicate information not already made public outside their duties or absent Secretary-General authorization.⁸⁷ The bulletin reminded staff that such obligations do not cease upon separation from service.⁸⁸ In reminding staff of their personal responsibility for the proper protection of information, the bulletin cited the particular responsibility of heads of departments or missions for ensuring the safe custody of sensitive information, and their duty to apply appropriate security measures for communication links, such as telephone or computer systems.⁸⁹

**(e) Impartiality in the performance of official duties*

3. Obligations regarding personal conduct

(a) Conduct in the interests of the United Nations

25. In an administrative instruction,⁹⁰ the Administration addressed the question of staff responsibility for their private legal obligations. Reminding staff of their obligations under staff regulations 1.1, 1.4 and 1.8, respectively, to regulate their conduct in a manner befitting their status as international civil servants, the instruction stated that staff members are expected, as a matter of such conduct, to meet their private legal and financial obligations without involving the United Nations.⁹¹ It

further recalled that, pursuant to the Convention on Privileges and Immunities, the United Nations has an obligation to cooperate with appropriate authorities of the Member States to facilitate the administration of justice.⁹² Consequently, while immune from legal process — United Nations salaries are not subject to garnishment or attachment — the Organization may take disciplinary action against staff who fail to take appropriate and effective action to the Organization's satisfaction.⁹³ The instruction indicated that, as a matter of procedure, staff would be provided with a copy of correspondence, including any judgements related to claims. Pursuant to this obligation, staff would be required to initiate steps to settle the matter, advising their personnel officer of action taken. Appropriate and effective action would be expected within three months of receipt of the request.⁹⁴

26. Specific consideration was given in this context to child and spouse support. The instruction noted that, while private family matters are not in and of themselves the business of the Organization, staff are expected to support their dependants and to comply fully with legally established maintenance obligations.⁹⁵ Failure to do so would violate the standards of conduct required of international civil service. Where non-support has been judicially established, the Secretary-General may authorize deductions from staff emoluments.⁹⁶ The Organization will also cooperate with appropriate authorities in communicating personal information — even absent consent — when, and in a manner it deemed appropriate, in spouse and child support cases to better facilitate legal resolution.⁹⁷

⁸⁶ Ibid., para. 1.

⁸⁷ Ibid., para. 2. The bulletin also recalled the responsibility of staff not to use information for private advantage. Ibid. See also [ST/SGB/Staff Regulations/Rev.20](#), reg. 1.5.

⁸⁸ [ST/SGB/272](#), para. 2.

⁸⁹ Ibid., para. 3. The Secretary-General indicated his intention to issue guidelines for the transmission and protection of sensitive information. Ibid., para. 4.

⁹⁰ [ST/AI/399](#).

⁹¹ Ibid., paras. 1-2. The Assistant Secretary-General recalled the admonition provided in the International Civil Service Advisory Board's 1954 *Standards of Conduct of International Civil Servants*, which require that staff conduct, whether or not connected with official duties be such as not to infringe on any demonstrable interest of the Organization or bring it or their colleagues into discredit. See [COORD/CIVL SERVICE/5](#), 1986 ed.

⁹² [ST/AI/399](#), para. 4.

⁹³ Ibid., para. 6. The instruction pointed out that final or separation payments are not immune from attachment or garnishment. Accordingly, deductions may be authorized to pay the legally established third party indebtedness of staff members. Ibid., para. 11.

⁹⁴ Ibid., paras. 5-6.

⁹⁵ Ibid., para. 7.

⁹⁶ Ibid., para. 8.

⁹⁷ Ibid., para. 9. The official will be notified that the information has been provided and the nature of the information.

*** (b) Outside professional or financial activities*

(c) Acceptance of honours, gifts or favours

27. In 1990, the Secretary-General amended the Staff Rules to include provisions on the non-acceptance of any honour, decoration, gift or remuneration from external sources.⁹⁸ New staff rule 101.9 provided that:

“(a) No staff member shall accept any honour, decoration, favour, gift or remuneration from an external source without first obtaining the approval of the Secretary-General.

(b) Approval shall not be granted if the honour, decoration, favour, gift, or remuneration is from a Government, excepting for decorations for war service earned before appointment.

(c) If the honour, decoration, favour, gift, or remuneration is from a non-governmental source, approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of staff regulation 1.2 or with the individual’s status as an international civil servant.

(d) The provision of paragraphs (b) and (c) above do not preclude approval of the acceptance of:

- (i) Academic awards;
- (ii) Reimbursement of travel and subsistence expenses for activities otherwise authorized;
- (iii) Tokens of a commemorative or honorary character, such as scrolls and trophies.”⁹⁹

28. Reproducing in its first three paragraphs the provisions of regulation 1.6, the new rule also clarified the difference in treatment according to the source of the honour, decoration, favour, gift, or remuneration, that is, whether the source is governmental or otherwise.¹⁰⁰ The fourth paragraph drew from the practice indicated in an earlier administrative instruction concerning outside activities of members of

⁹⁸ See [A/C.5/44/2](#), p. 5. Similar provisions were indicated with respect to project personnel governed under the 200 series. *Ibid.*, annex II.

⁹⁹ [ST/SGB/Staff Rules/1/Rev.7](#).

¹⁰⁰ *Ibid.*, para. 8.

the Secretariat.¹⁰¹ By decision 44/439, the Assembly took note of the amendments to the Staff Rules.¹⁰²

(d) Activities connected with the information media

29. Several memorandums provided by OLC concerned question of the role and rights of staff connected with information media. In a 1990 memorandum, OLC reiterated that the copyright of books published by the United Nations rest with the United Nations, and not the staff member involved in authorship.¹⁰³ OLC indicated that the matter was usually settled as a matter of law by the prerequisite copyright symbol printed on the inside cover, vesting such rights in the United Nations.¹⁰⁴ However, OLC indicated that, even in the absence of such a symbol, publications prepared by staff in the course of their official duties would vest with the United Nations pursuant to staff rule 112.7.¹⁰⁵

30. A subsequent memorandum concerned officials contributing to external technical and academic journals outside their official functions.¹⁰⁶ Where staff duties involved networking and information-gathering, OLC asserted that articles written for outside journals were likely to be of a similar nature to those prepared by the Organization, potentially giving rise to a serious conflict of interest that may compromise confidential

¹⁰¹ See [ST/AI/190](#). This Instruction was subsequently revised to delete the relevant provision. See [ST/AI/190/Rev.1](#). One proposal would have eliminated the restriction on the acceptance of decorations for military service “earned before appointment” so as to allow for the acceptance of decorations earned in military service while on special leave. See [A/C.5/44/SR.42](#), para. 12. See also discussion *infra* on national service obligations in respect to State regulation of its own nationals on staff.

¹⁰² A subsequent amendment to the Staff Rules introduced similar provisions for staff members in short term service under the 300 series of staff rules. See rule 301.3, [A/C.5/48/37](#), p. 12.

¹⁰³ See *United Nations Juridical Yearbook, 1990*, p. 285. A particular instance concerned a former staff member who authored books while a staff member published by agreement with a local publisher.

¹⁰⁴ *Ibid.*

¹⁰⁵ Staff rule 112.7 states: “All rights, including title, copyright and patent rights, in any works performed by a staff member as part of his or her official duties shall be vested in the United Nations.” [ST/SGB/Staff Rules/1/Rev.7](#).

¹⁰⁶ *United Nations Juridical Yearbook, 1992*, p. 451.

United Nations information to outside firms.¹⁰⁷ OLC stated that, unless the external articles were totally unrelated to the United Nations and its agencies, such articles should not be published without the Secretary-General's prior authorization, pursuant to staff rule 101.6.¹⁰⁸

(e) Political activities

31. In 1990 OLC also addressed a memorandum concerning the participation of staff in outside non-profit organizations.¹⁰⁹ Citing Article 100 (1), as well as regulations 1.2 and 1.4,¹¹⁰ OLC noted that staff cannot engage in any continuing or recurring activity of a substantive nature unless they have been authorized to do so by the Secretary-General.¹¹¹ Further, citing prior administrative instructions, the Secretary-General may authorize such an activity only if the activity is compatible with the proper discharge of a staff member's duties with the United Nations; it does not interfere with the staff member's work or ability to accept new assignments; and if proper account has been taken of the relationship between the outside activity and official duties as well as between emoluments from the United Nations and remuneration from outside activities.¹¹²

32. OLC also considered the specific question of the public participation of staff on advisory boards of non-governmental organizations (NGOs) and observed that the inclusion of a staff name and United Nations affiliation (in this instance UNICEF) would imply participation of the official in an "official capacity". This might associate the Organization with an activity not a part of a programme of cooperation.¹¹³

¹⁰⁷ Ibid. In the particular issue being addressed, OLC cited its concern that the staff member in question were in a position to provide substantial information to the benefit of outside firms, citing an example of such an issue involving the staff member. Ibid.

¹⁰⁸ Another part of the OLC memorandum concerned the involvement of staff in positions in outside companies dealing with the United Nations, which, in the view of OLC, constituted a misuse of the United Nations name in violation of the United Nations standard conditions included in contracts between the Organization and contractors. Ibid.

¹⁰⁹ *United Nations Juridical Yearbook, 1990*, p. 282.

¹¹⁰ *ST/SGB/Staff Regulations/Rev.7*.

¹¹¹ Ibid., p. 283.

¹¹² See *ST/AI/190/Rev.1*, paras. 4 (a) and (b), and 5.

¹¹³ *United Nations Juridical Yearbook, 1990*, p. 284.

Consequently, OLC concluded that it would be inappropriate for the Organization to lend its name or be involved, including through the representation of one of its officials in the work of the NGO.¹¹⁴ Similarly, a 1992 memorandum identified legal objections to the participation of officials as honorary board members of an institute.¹¹⁵ OLC cited as factors mitigating against participation that being in the process of formation, such an organization was not clearly in operation or established in accordance with national legislation; the prospect of proposed association with government sectors; and thirdly, its essentially national character.¹¹⁶ OLC further cited the possibility that the activities might involve reports or activities that are at variance with or critical of United Nations operations.¹¹⁷ As a consequence, OLC concluded that acceptance of such a position might be perceived as a departure from the impartiality required of the United Nations.¹¹⁸

*** (f) Criminal activities*

C. The obligations of Member States

33. The period under review saw an expansion in the range of issues concerning the obligation of Member States to respect the international character of the Secretariat. Reports of the Secretary-General cited mounting violations of the privileges and immunities of officials in which he identified such violations in a diversity of areas, including not only arrest and detention, but also State regulation of staff.¹¹⁹ The Organization further devoted particular attention to such issues as secondment of staff, the question of supplementary payments to staff. Delegations of a number of States expressed concern over the number and range of issues arising in relation to the protection of the international status of the Secretariat in statements before the Fifth Committee.¹²⁰ Taking note of the Secretary-General reports with grave concern, decisions of the Assembly repeatedly recalling, inter

¹¹⁴ Ibid.

¹¹⁵ *United Nations Juridical Yearbook, 1992*, p. 447.

¹¹⁶ Ibid., p. 449.

¹¹⁷ Ibid.

¹¹⁸ See also memorandum to the Legal Liaison Office of the United Nations Office at Geneva. *United Nations Juridical Yearbook, 1993*, p. 392.

¹¹⁹ See, e.g., *A/C.5/44/11*, *A/C.5/45/10* and *A/C.5/47/14*.

¹²⁰ See *A/C.5/44/SR.42*, paras. 72 and 73.

alia, Article 100, called upon States to scrupulously respect the privileges and immunities of officials, and also more generally requested that they refrain from any acts impeding officials in the performance of their duties.¹²¹ The Assembly further called upon States to undertake the resolution of any other cases impeding officials with all due speed in coordination with the Secretary-General.¹²²

1. Privileges and immunities of the Secretariat

34. In the period under review, the Secretary-General stressed that questions of respect for privileges and immunities had assumed even greater importance.¹²³ While initial reports of the Secretary-General cited the continuing and substantial growth particularly in the number of arrests and detentions of staff,¹²⁴ the Secretary-General subsequently drew attention to the “unconscionable increase” in the number of fatalities among United Nations personnel.¹²⁵ Commenting on the situation, the Secretary-General observed that the end of the Cold War had resulted in the emergence of a consensus around the role of the Organization as a central instrument for the preservation of peace, leading to increased demands that it undertake missions where the security situation was tenuous at best.¹²⁶ At the same time, where working under the United Nations banner had previously provided personnel with safe passage, this was no longer the

case, and staff were now often at risk by virtue of their affiliation with the United Nations.¹²⁷

35. In this context, the physical safety and protection of officials came to be seen as a principal challenge to the independence of the Secretariat. Decisions of the Assembly recognized that violations of privileges and immunities constituted one of the main obstacles to United Nations missions and programmes.¹²⁸ Consideration of the question of respect for privileges and immunities featured at every session of the Assembly.¹²⁹ At the same time, the United Nations Security Coordinator convened regular inter-agency meetings on security to consider measures for the protection of staff.¹³⁰

36. Citing its grave concern over violations of privileges and immunities, the Assembly repeatedly called upon the Secretary-General to act personally as focal point in ensuring observation of privileges and immunities by using all means available.¹³¹ In the light of the growing threat to officials of the Secretariat, the Secretary-General affirmed the need for new measures to deal with the threats confronting United Nations personnel,¹³² and the United Nations system undertook a number of actions to support observance of privileges and immunities.¹³³ Particular attention was given to expanding the role of the United Nations Security

¹²¹ G A resolutions 44/186, para. 4 and 45/240, para. 4.

¹²² G A resolution 45/240, para. 14. For further discussion on the responsibilities of the Secretary-General in this respect, see discussion *supra*.

¹²³ [A/C.5/47/14](#), para. 4.

¹²⁴ See [A/C.5/45/10](#), para. 3. See also Secretary-General statement to the Fifth Committee, [A/C.5/47/SR.21](#), paras. 62 and 63. The Secretary-General reported to the General Assembly on the very high number of arrests and detentions during the initial three years of the period as representing a substantial increase over the previous period. See [A/C.5/44/11](#), para. 8, and [A/C.5/46/4](#), para. 6.

¹²⁵ This point was highlighted in the report of the Secretary-General entitled “An Agenda for Peace”, [A/47/277](#), para. 66. See also [A/C.5/47/14](#), paras. 6-8 and [A/C.5/48/5](#), paras. 5-7.

¹²⁶ [A/C.5/47/14](#), para. 4. This development was also highlighted in the report of the Secretary-General, entitled “An Agenda for Peace”, in which he outlined a new role for the Organization, highlighting renewed concern over the protection of officials in the light of the new consensus. See [A/47/277](#), paras. 15, 26 and 66.

¹²⁷ See [A/C.5/48/5](#), para. 5, see also [A/AC.242/1](#), para. 4.

¹²⁸ See G A resolution 47/28, para. 9.

¹²⁹ At its forty-sixth session, the Assembly, by resolution 46/220, decided on a biennial approach to the consideration of personnel questions. The Assembly nevertheless called for annual reporting and consideration of the question of respect for privileges and immunities. See decision 46/477 and 47/457 C.

¹³⁰ These meetings occurred at least every other year during the period under review, being convened in 1989, 1991, 1992 and 1994. See, e.g., [ACC/1989/18](#), [ACC/1991/19](#) and [ACC/1994/19](#). Only two meetings had been convened in the six years prior to the period under review.

¹³¹ See G A resolutions 44/186, para. 16, 45/240, para. 15 and 47/28, para. 7. See also discussion *supra* on the responsibility of the Secretary-General with regard to members of the Secretariat.

¹³² See [A/47/277](#), para. 22. See also [A/C.5/46/4](#), para. 17.

¹³³ These included, for example, a policy of maintaining a legal link with the arrested staff through contract renewal until the case was legally resolved. See [ACC/191/19](#), para. 8. See also consideration under the studies of Articles 58 and 105 in the present *Supplement*.

Coordinator in resolving security matters,¹³⁴ including potentially assuming direct responsibility for dealing with Governments in issues of arrest or detention.¹³⁵

37. As a responsibility undertaken by Member States, repeated resolutions of the Assembly, recalling Article 100, called upon States to scrupulously respect the privileges and immunities of United Nations officials, and refrain from any acts that would impede such officials in the performance of their functions, and thereby the functioning of the Organization.¹³⁶ However, the increasing violations of privileges and immunities, as well as the problems identified in providing protection to staff were seen to necessitate that Member States assume responsibility for undertaking further action in meeting their obligations under the Charter.¹³⁷ Many, if not most, Member States accepted the conclusion that States were violating their obligation to respect the privileges and immunities of officials.¹³⁸ The Assembly called for specific procedures to ensure respect for privileges and immunities of staff.¹³⁹ These procedures included not only that States arresting or detaining officials enable the Secretary-General to exercise fully the right of functional protection, particularly immediate access to

detained staff,¹⁴⁰ but also the provision of medical care and treatment,¹⁴¹ reiterating the importance of access by independent United Nations medical teams.¹⁴² Additional measures included the obligation to disseminate information on the inviolability of personnel in United Nations missions.¹⁴³ Further specific procedures were called for in resolutions of the Commission on Human Rights, such as allowing representatives of organizations to attend hearings on arrested staff and their families.¹⁴⁴

38. At the same time, there was recognition of the need for more comprehensive action. In this regard, the elaboration of the Convention on the Protection of United Nations and Associated Personnel stands as a key development. With the “unconscionable increase” in fatalities among United Nations personnel and the increasingly multidimensional role of United Nations missions, the Secretary-General stressed the need for further action beyond the administrative measures being undertaken.¹⁴⁵ He consequently proposed the elaboration of a comprehensive new international instrument to codify and develop international law relating to the security and safety of United Nations forces and personnel arising from more recent practice.¹⁴⁶ Under the Convention, State Parties

¹³⁴ See [A/C.5/44/11](#), para. 26. See also [E/1992/11/Add.1](#), para. 112 and [A/C.5/47/14](#), para. 28.

¹³⁵ [A/C.5/44/11](#), para. 6. See also [ACC/1991/19](#), para. 6. In this regard, the Secretary-General suggested that removing responsibility for such matters from local officials to avoid compromising them in the event that a strong position is taken in respect to the arresting government.

¹³⁶ See G A resolutions 44/186, para. 4, 45/240, para. 4 and 47/28, paras. 5 and 6. See also, e.g., Commission on Human Rights resolutions 1991/31, para. 2 and 1992/26, para. 2. Reference may be made to the Advisory Opinion of the International Court of Justice, which supported the extension of privileges and immunities to individuals entrusted with a United Nations mission but not possessing the status of staff. The Court took the view that under the Convention on Privileges and Immunities, States, including that of nationality or residence, must accord such privileges and immunities absent a valid reservation. See *I.C.J. Reports 1989*. The Assembly welcomed this Opinion by resolution 45/240.

¹³⁷ See, e.g., Secretary-General’s statement to the Fifth Committee, [A/C.5/47/SR.21](#), para. 63.

¹³⁸ See, e.g., [A/C.5/44/SR.40](#), para. 38, and [A/C.5/45/SR.22](#), para. 61. See also G A resolution 47/28, para. 9.

¹³⁹ See G A resolutions 44/186, 45/240, and 47/28. See also discussion under the study of this Article in *Supplement No. 7*.

¹⁴⁰ See G A resolutions 44/186, para. 5, and 45/240, para. 8. A United Nations Development Programme proposal prior to the period had called for access within 24 hours of arrest. See [A/C.5/43/18](#), para. 34.

¹⁴¹ *Ibid.*

¹⁴² See G A resolutions 45/240, para. 10, and 47/28, para. 6. In this context, the Assembly requested that States facilitate the medical care deemed necessary by such teams.

¹⁴³ See G A resolution 48/42, paras. 70 and 71. See also [A/48/173](#), para. 117.

¹⁴⁴ Commission on Human Rights resolutions 1991/31, para. 6, 1992/26, para. 6, and 1993/39, para. 8. See also the report of the Special Rapporteur on the Protection of Human Rights of Staff, [E/CN.4/Sub.2/1992/19](#).

¹⁴⁵ See [A/47/277](#), para. 66, and [A/48/349](#), para. 20.

¹⁴⁶ See [A/48/349](#). The Secretary-General’s proposal was pursuant to Security Council request. See [S/25493](#). This request was informed in part by a proposal suggesting a convention aimed at the protection of United Nations peacekeeping missions. See [S/25667](#), annex. The Secretary-General in his report however had emphasized the risk confronting categories of civilian personnel. [A/48/349](#), paras. 3 and 34. See also [A/AC.242/1](#), para. 12.

accepted a duty to promptly release detained personnel.¹⁴⁷

39. However, it should be noted that the scope of the Convention extended only to missions approved for the purpose of maintaining international peace and security, or where the Security Council or the Assembly has declared that there exists an exceptional risk to safety.¹⁴⁸ In proposing the elaboration of the Convention, the Secretary-General emphasized that the risk confronting categories of civilian personnel, suggesting the further extension of privileges and immunities under such an agreement to contractors and employees of NGOs,¹⁴⁹ stressing it was "... not practical nor desirable to make a categorical distinction between personnel acting under a mandate of the Security Council and other acting under other mandates".¹⁵⁰ The Secretary-General asserted that measures for the protection of staff should apply mutatis mutandis to all categories of personnel associated with the work of the United Nations.¹⁵¹ While some States accepted the justification for such an approach,¹⁵² problems were identified, in subsequent consideration, in reconciling the desire to protect all persons, and the potential difficulty of extending the scope of measures to situations unrelated to the United Nations.¹⁵³

40. In the light of the growing number of attacks, the Organization devoted further attention to the obligation of States to prosecute those responsible for attacks on staff. The Convention on the Safety of United Nations and Associated Personnel, adopted in the period, gave specific recognition to the obligation of States to protect staff and prosecute those responsible for attacks.¹⁵⁴ Pursuant to a Security Council request,¹⁵⁵

the Secretary-General recommended in the short term that in establishing an operation, the Security Council include in its terms specific reference to the obligation of the host State to take measures to protect staff.¹⁵⁶ The Secretary-General further proposed that the Security Council declare that attacks against United Nations personnel will be considered an interference with the exercise of Security Council responsibilities, and that if the host State fails to meet its responsibilities, the Security Council may consider measures to ensure the safety of staff.¹⁵⁷ By resolution 48/42, the Assembly urged prompt action to deter and prosecute those responsible for attacks.

****2. The question of governments providing the Secretary-General with information relating to staff members**

3. The question of regulation by a State of its own nationals on staff

41. The regulation by the Government of Member States of its own nationals on staff remained a significant issue in the period under review.¹⁵⁸ Particular concern remained over the practice by Member States of applying deductions or taxes on the income of its nationals on staff.

42. Regarding deductions, the International Civil Service Commission (ICSC) undertook consideration of the matter during the forty-fourth session of the Assembly.¹⁵⁹ Describing the practice of deductions as in flagrant contravention of the Charter as well as Staff Rules and Regulations,¹⁶⁰ ICSC noted that the practice was a "thorny problem that had to date eluded solution", and observed that the problem was likely to persist unless more aggressive and imaginative action was undertaken.¹⁶¹ The Assembly requested that the

¹⁴⁷ See G A resolution 49/59, annex, article 8. Personnel were also not to be subject to interrogation. A caveat was entered in which the provisions would be superseded by appropriate status-of-forces agreements. Ibid.

¹⁴⁸ Ibid., Arts. 1 and 2.

¹⁴⁹ A/48/349, paras. 3 and 34. See also A/AC.242/1, para. 12.

¹⁵⁰ A/48/349, para. 3.

¹⁵¹ Ibid. See also A/C.5/49/6, para. 6.

¹⁵² See A/C.6/48/L.2, para. 7.

¹⁵³ See comments of the Chair of the Working Group on the Question of Responsibility for Attacks on United Nations and Associated Personnel, A/C.6/48/SR.29, para. 9.

¹⁵⁴ See G A resolution 49/59, annex and articles 9-20 in particular.

¹⁵⁵ See S/25493.

¹⁵⁶ A/48/349, para. 35.

¹⁵⁷ Ibid. The Special Committee on Peacekeeping Operations similarly agreed that the Security Council should consider measures to ensure those responsible for attacks against United Nations personnel are held to account. A/48/173, paras. 115 and 123. In this context, the Special Committee noted that there were occasions when a State had neither the ability nor the will to protect personnel. Ibid., para. 49.

¹⁵⁸ See discussion under the study of this Article in *Supplement No. 7*.

¹⁵⁹ A/44/30, paras. 80-90. Consideration was undertaken in tandem with the practice of supplementary payments to nationals on staff. See discussion infra.

¹⁶⁰ Ibid., para. 86.

¹⁶¹ Ibid., para. 87 and 90 (d).

Secretary-General, as well as the executive heads of the specialized agencies, take appropriate steps to bring an end to the practice.¹⁶² The Assembly further requested that ICSC study the practice and propose procedures to resolve the problem.¹⁶³

43. The Organization also considered the issue of imposing taxes on locally recruited nationals or permanent residents.¹⁶⁴ The Secretary-General pointed out that measures to tax the salaries of locally recruited nationals on staff took on different forms, citing examples of not only income taxes, but also permit fees,¹⁶⁵ and social security contributions¹⁶⁶ as measures invading the salary and thereby taxing locally recruited nationals on staff. The Secretary-General cited the exemption enjoyed by all staff, local and internationally recruited, from taxes,¹⁶⁷ explaining the rationale for such an exemption as ensuring the equality of treatment of all staff, irrespective of nationality, and to guarantee that funds contributed by Member States of the Organization to its budget are not diverted to individual States as a revenue raising measure such as income tax.¹⁶⁸ Recalling, inter alia, Article 100, the Assembly took note of the information related to taxes on the salary and emoluments with concern, further requesting States and the Secretary-General to agree urgently on appropriate action.¹⁶⁹

44. The question of national service obligations of staff remained another issue under consideration in the

period.¹⁷⁰ In statements to the Fifth Committee, OLC cited several instances in which local staff had been drafted into the army of a Member State.¹⁷¹ OLC pointed out that the provisions of the Convention on Privileges and Immunities provide that staff members are immune from national service obligations.¹⁷²

45. At the same time, OLC considered the case of a Member State, which, while acceding to the Convention on Privileges and Immunities, had made a formal reservation to the provision exempting staff from national service.¹⁷³ OLC concluded that in this instance, the Member State was under no legal obligation to cancel or defer national service obligations incumbent upon a staff member. OLC indicated that arrangements related to military service in such cases should be governed by the Staff Rules,¹⁷⁴ which provide that the Secretary-General or his authorized representative may request the government to defer or exempt the staff member in question.¹⁷⁵

4. The question of State regulations applicable to other staff members

46. An OLC memo addressed the question of compliance by United Nations officials on official business with visa requirements instituted by Member States.¹⁷⁶ OLC stated that it was the position of the United Nations that the mere visa requirements were not unobjectionable as long as it is a formality, and does not entail an impediment to speedy travel.¹⁷⁷ OLC did point out that the visa issuance procedure should not result in restrictions, which would impede the travel and movement of personnel.¹⁷⁸

¹⁶² See G A resolutions 44/198, sect. III.C, para. 2, and 45/241, sect. IX, para. 3.

¹⁶³ See G A resolution 45/241, sect. IX, para. 4.

¹⁶⁴ See, e.g., A/C.5/44/11, paras. 17-21, A/C.5/45/10, para. 21, A/C.5/46/4, para. 15 and A/C.5/46/4/Add.1, para. 1. Reference was also made to the practice of some Member States of taxing nationals worldwide. Ibid. See also A/C.5/46/SR.24, paras. 54-59 and A/C.5/46/SR.37, para. 38.

¹⁶⁵ See A/C.5/44/11, para. 18.

¹⁶⁶ See *United Nations Juridical Yearbook*, 1993, p. 365. In this regard, OLC explained that it has been the consistent United Nations practice and policy for four decades that mandatory contributions for workman's compensation, social security and pension should be considered a form of direct tax. Ibid., p. 363.

¹⁶⁷ A/C.5/44/111, para. 17. Locally recruited staff on an hourly wage are not exempt.

¹⁶⁸ Ibid. See also A/C.5/46/4/Add.1, para. 1. See also discussion under the study of this Article in *Supplement No. 7*.

¹⁶⁹ See G A resolutions 44/186, para. 13, and 45/240, para. 13.

¹⁷⁰ See also discussion under the study of this Article in *Supplement No. 7*.

¹⁷¹ A/C.5/45/SR.58, para. 10. See also comments of staff representatives, A/C.5/44/21, para. 42.

¹⁷² A/C.5/45/SR.28, para. 10. See Convention on Privileges and Immunities of the United Nations, article V, sect. 18 (c), G A resolution 46 (I).

¹⁷³ See *United Nations Juridical Yearbook*, 1990, p. 310.

¹⁷⁴ Ibid. See also ST/SGB/Staff Rules/1/Rev.7, appendix C.

¹⁷⁵ Ibid. As indicated, one proposal would have expanded the exemption on the acceptance of honours, decorations, or remuneration for war service prior to appointment to include acceptance of such distinctions while on special leave. See A/C.5/44/SR.42, para. 12 and discussion supra.

¹⁷⁶ *United Nations Juridical Yearbook*, 1993, p. 409.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid., p. 410.

47. Additional concerns in the period centred on the imposition of taxes by various governmental authorities at the local and national level.¹⁷⁹ The Secretary-General also expressed concern over the implementation of laws on the employment of non-resident aliens by a Member State, stating his view that stringent application of immigration regulations would interfere with requirement practices.¹⁸⁰

5. Requests to appoint or replace officials

48. One concern arising in the period was the regulation by Member States of its nationals on staff through the replacement process under purported secondment by which nationals of certain States were replaced by staff of the same nationality in a particular post on a fixed-term basis from States whose nationals primarily serve under such arrangements.¹⁸¹ Following UNAT Judgement No. 482 and resulting changes in secondment practices, the Secretary-General pointed out that since seconded staff may have the right to every reasonable consideration to a career appointment, the *raison d'être* of the replacement system had largely disappeared.¹⁸² Consequently, the Secretary-General proposed that the exceptional replacement procedure should cease with all posts filled through normal recruitment.¹⁸³ Delegations of a number of States supported the proposal to end the practice of replacement,¹⁸⁴ stating that the Secretary-General must be able to select candidates from States other than those whose nationals currently encumbered specific posts.¹⁸⁵ Delegations from a number of other States however objected that termination of the replacement system was premature.¹⁸⁶

¹⁷⁹ See [A/C.5/44/11](#), paras. 19 and 20, [A/C.5/45/10](#), paras. 19 and 21. See also G A resolutions 44/186, para. 13, and 45/240, para. 13.

¹⁸⁰ See [A/C.5/44/11](#), para. 22.

¹⁸¹ See G A resolutions 45/239, sect. II, and 47/226, sect. I.A.2. See also discussion *infra*.

¹⁸² [A/C.5/46/9](#), para. 6. The Secretary-General also indicated that recent admission of a number of States to United Nations membership will also revise downward the desirable ranges. *Ibid.*, para. 7. See also G A resolution 35/10, sect. I.

¹⁸³ *Ibid.*

¹⁸⁴ See [A/C.5/46/SR.24](#), para. 9 and [A/C.5/46/SR.28](#), para. 20.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*, para. 16. See also [A/C.5/46/SR.18](#), para. 18 and [A/C.5/46/SR.35](#), para. 13. Several decisions of the United Nations Administrative Tribunal similarly

49. In the context of reviewing the dismissal of a staff member for misconduct, an OLC memorandum referenced regulations of a Member State requiring governmental approval for the recruitment, transfer and dismissal of local staff by United Nations agencies.¹⁸⁷ In particular, United Nations offices were required to notify the Ministry of Foreign Affairs of any planned dismissal.¹⁸⁸ Citing the obligations undertaken by Member States in Article 100 to respect the exclusively international character of the United Nations staff and not to influence them in the discharge of their responsibilities, OLC cited its view that the Member State's regulations contravene the Secretary-General's authority under the Charter.¹⁸⁹

6. The question of special rights of the host country

50. The Organization devoted continuous attention to the question of the right of the host State to restrict the travel of staff of certain nationalities in the period.¹⁹⁰ Representatives of the Administration repeatedly affirmed their position that the application of travel restrictions by the host country solely on the basis of nationality, which, absent specific evidence, was unjustified and constituted discrimination incompatible with the host country's international obligations.¹⁹¹ This position found support among the delegations of a number of Member States.¹⁹² Representatives of the

concerned the appointment and replacement of staff by those of the same nationality in which the Member State's consent was sought. See, e.g., [AT/DEC/482](#) and [AT/DEC/601](#). See discussion *infra*.

¹⁸⁷ *United Nations Juridical Yearbook*, 1993, p. 379.

¹⁸⁸ *Ibid.*, p. 380.

¹⁸⁹ OLC went on to point out that staff regulation 1.2 further developed these principles by establishing that "staff members are subject to the authority of the Secretary-General" and are "responsible to him in the exercise of their functions". *Ibid.*, p. 380. OLC reiterated that under Assembly resolution 76 (I), United Nations officials included "all members of the staff of the United Nations with the exception of those recruited locally and assigned hourly rates".

¹⁹⁰ See G A resolutions 44/38, paras. 1 and 4, 45/46, paras. 1 and 4, 46/40, paras. 1 and 4, 47/35, paras. 1 and 4, 48/35, paras. 1 and 5, and 49/56, paras. 1 and 5. Consideration was frequently coupled with the issue of the application of such restrictions against delegations of certain missions to the United Nations.

¹⁹¹ [A/44/26](#), para. 18. See also [A/C.5/45/10](#), para. 18 and [A/C.5/45/SR.15](#), para. 2. See further [ST/89/10](#), annex II.

¹⁹² See [A/44/26](#), para. 13. See further [A/C.5/44/SR.42](#), paras. 59 and 60, and [A/47/26](#), para. 14.

host country maintained however that, as the restrictions on the travel of staff of certain nationalities applied only to their private travel, it did not affect or impede their official duties.¹⁹³ Consequently, its action was consonant with the Headquarters Agreement.¹⁹⁴ The host country asserted that its obligations as a host country in no way contradicted its inherent right to take the necessary steps to safeguard its national security.¹⁹⁵

51. Following the lifting of restrictions against the travel of staff of several nationalities, the Committee on Host Country Relations expressed the hope that remaining restrictions would be lifted as soon as possible.¹⁹⁶ The Assembly endorsed this position in its subsequent resolutions.¹⁹⁷ For its part, the host country stated that in lifting restrictions against certain nationalities did not represent a change in position or policy regarding the right to take such action in the interest of national security, but resulted from a change in the objective circumstances.¹⁹⁸

7. The question of secondment

52. The period under review saw new emphasis placed on the question of the secondment of staff; the practice by which a candidate on government service is offered an appointment for a fixed term with the United Nations with a concurrent request is made to the Government for release of the individual.¹⁹⁹ In previous years, secondment was the only basis by which staff of certain nationalities could be recruited.²⁰⁰ However political changes following the end of the cold war led a number of States to revise

this policy and allow their nationals to seek career appointments.²⁰¹ Decisions of UNAT further prompted the Organization to devote particular consideration to the practice and its implications for the independence of the international civil service under Article 100.

53. In Judgement No. 482, the Tribunal examined the conditions required for a valid secondment, and the type of considerations by the Administration relevant for renewing fixed-term or granting career appointments to staff members purportedly on secondment under Article 100, Staff Rules and the principles established by the General Assembly.²⁰² Judgement No. 482 concerned in particular staff holding language posts and purportedly on secondment, who sought extension of their fixed-term appointments as well as consideration for a career appointment.²⁰³ In this instance, the staff were appointed under a rotational system applied for language services by which governments would recommend nationals for certain posts following the expiry of the term of appointment of the previous staff members of the same nationality.²⁰⁴

54. Considering first the meaning of secondment, the Tribunal recalled its earlier jurisprudence to the effect that secondment implies that seconded staff members have the right to revert to employment in the government at the end of the secondment, retaining rights to promotion and retirement.²⁰⁵ Further, the Tribunal reaffirmed its previous jurisprudence in that

¹⁹³ See [A/44/26](#), para. 16, and [A/47/26](#), para. 13. See also [A/C.5/45/SR.22](#), para. 62, and [A/C.5/48/SR.15](#), para. 53.

¹⁹⁴ [A/47/26](#), para. 15.

¹⁹⁵ See [A/C.5/48/SR.15](#), para. 53. See also [A/C.5/44/SR.42](#), para. 4, and [A/C.5/47/SR.19](#), para. 21.

¹⁹⁶ [A/47/26](#), para. 55 (d), [A/48/26](#), para. 58 (d), and [A/49/26](#), para. 73 (d).

¹⁹⁷ See G A resolutions 47/35, paras. 1 and 4, 48/35, paras. 1 and 5, and 49/56, paras. 1 and 5.

¹⁹⁸ [A/45/26](#), para. 22.

¹⁹⁹ See [A/C.5/45/12](#), para. 4. It should be noted that provisions for secondment also exist on an inter-agency basis between international organizations of the United Nations system.

²⁰⁰ *Ibid.*, para. 5. See also consideration by the International Court of Justice, Advisory Opinion, *I.C.J. Reports, 1987*, p. 1. Further discussion of this issue can be found in this section under the study of this Article in *Supplement No. 7*.

²⁰¹ See, e.g., [A/C.5/45/SR.15](#), paras. 27 and 28, [A/C.5/45/SR.22](#), para. 40 and [A/C.5/45/SR.24](#), para. 37.

²⁰² [AT/DEC/482](#).

²⁰³ *Ibid.* Assembly resolution 37/126 provided that staff members on fixed-term appointment with five years of continuing good service shall be given every reasonable consideration for a career appointment. Assembly resolution 38/232 further allowed for the Organization to dispense with probationary appointments as a prerequisite to a career appointment following five years good service on a fixed-term basis. A separate claim related to reimbursement from the Tax Equalization Fund for portions of their salary claimed as remitted to their Government was considered “not receivable”. *Ibid.*, para. XVIII.

²⁰⁴ *Ibid.*, para. XLI. The Tribunal noted as significant the position taken by the government of the staff member against renewal of fixed-term contracts for its nationals and its opposition to career appointments — a position referenced by the Administration in denying the applicant renewal and career appointment.

²⁰⁵ *Ibid.*, para. XXIII. See also [AT/DEC/92](#) and [AT/DEC/192](#).

secondment must be defined in writing by the competent authority in documents specifying the conditions and particularly duration of secondment.²⁰⁶ Consequently, the Tribunal identified secondment as an objective condition that neither the Administration, a government nor staff members could invoke absent such prerequisites, particularly required documentation of status on government service.²⁰⁷ Consequently, the Tribunal stated that the Secretary-General cannot request authorization or comply with a decision of a Government to renew or not renew a contract, and to do so would be incompatible with Article 100.²⁰⁸

55. Turning to the right to consideration for a career appointment, while recognizing the Secretary-General's discretionary powers in deciding to grant such appointments, the Tribunal nevertheless held that these powers were circumscribed by the Charter, particularly Articles 100 and 101 and the Staff Regulations and Rules.²⁰⁹ The Tribunal found that, in this instance, basing the interests of the United Nations on the opposition of a Member State to granting its nationals career appointments was not a permissible use of such discretion. Deference to such opposition constituted a breach of the Charter and the relevant Assembly resolutions.²¹⁰ The Tribunal therefore determined that the Secretary-General's refusal to consider a career appointment for such staff based on Member State opposition exceeded the limits of his discretion, was contrary to the interests of the United Nations, and ignored the basic principles of the international civil service.²¹¹

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, paras. XXIII and XXV. Subsequent judgements in the period, recalling Judgement No. 482, reaffirmed the necessity of full documentation for a valid secondment. In one case, the Tribunal found that the absence of documentation of the position staff purportedly on secondment would resume following their United Nations appointment vitiated the claim to be on government service, rendering the secondment — and the request for government consent to contract renewal — in error. [AT/DEC/535](#), para. VI.

²⁰⁸ *Ibid.*, para. XXV.

²⁰⁹ *Ibid.*, para. XXIX.

²¹⁰ *Ibid.*, para. XLI.

²¹¹ *Ibid.*, para. XLII. In this case, the Tribunal considered the case “exceptional” and awarded compensation that exceeded its normal award. *Ibid.*, para. XLVI. Subsequent consideration by the Tribunal of implementation of this judgement may be found in Judgements Nos. 559, 566 and 686.

56. Following Judgement No. 482, the Secretary-General reviewed the question of secondment in a report to the Fifth Committee.²¹² Among its advantages, the Secretary-General cited the fact that secondment can provide a means of obtaining experienced and skilled staff in particular areas of interest for both the Organization and States, it can help maintain the balance between fixed-term and career appointments.²¹³ At the same time, the Secretary-General identified as a disadvantage that widespread use of secondment could lead to earmarking particular posts for staff of certain nationalities, the costs of frequent rotation arising from recruitment and repatriation, and the fact that it might diminish the impression of a truly independent international civil service.²¹⁴ The Secretary-General concluded that,

“[I]n short, while secondment, practiced on a limited scale, can be beneficial to the international civil service, it could, under certain circumstances, undermine the achievement of the Secretary-General's resolve to enhance the independence and efficiency of the Secretariat in accordance with the provisions of the Charter of the United Nations.”²¹⁵

57. Citing the implications of the Tribunal Judgement, notably that a valid secondment now required a complex tripartite agreement between the Organization, staff and the government,²¹⁶ the Secretary-General proposed giving explicit recognition to the practice through amendment of the Staff Regulations, allowing for the creation of secondment through a notation in the Letter of Appointment.²¹⁷ The Secretary-General noted a further implication of the Tribunal's judgement was that many staff previously thought to be on secondment were, in fact, on fixed-term contracts to which no special conditions attached, and therefore were eligible for consideration for career appointments per Assembly resolution 37/126.²¹⁸ The

²¹² [A/C.5/45/12](#), para. 1.

²¹³ *Ibid.*

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*, para. 12.

²¹⁷ *Ibid.*, para. 13.

²¹⁸ *Ibid.*, para. 15. Under Assembly resolution 37/126 staff on a fixed term are to be given every reasonable consideration for a career appointment with five years continuing good service. The Secretary-General noted that the Tribunal decision also restricted the factors to be

Secretary-General indicated that he would give particular attention to Charter provisions, but also to the necessity of ensuring adequate turnover of personnel in the interest of the Organization's performance.²¹⁹ Welcoming the Secretary-General's report and observations,²²⁰ most States expressed the view that secondment could be beneficial and should continue on a limited scale.²²¹

58. Pursuant to resolution 45/239, the Secretary-General proposed amendments to the Staff Regulations, which under regulation 4.1, provided explicit recognition of secondment, as well as incorporated revisions to the "Letter of Appointment" to the effect that such a Letter was to be conclusive proof for all purposes of the existence and validity of secondment from government service.²²² Affirming that secondment was both beneficial and not in conflict with either Articles 100 or 101 of the Charter,²²³ the Assembly adopted the amendments with some modification.²²⁴ The Assembly went on to decide on principles governing secondment, namely that, irrespective of length, secondment be based on tripartite agreement between the Organization, the State and staff concerned and that renewal or extension of secondment status shall be

considered in granting such an appointment. *Ibid.*, para 12.

²¹⁹ *Ibid.*, para. 15.

²²⁰ See [A/C.5/45/SR.15](#), para. 29, [A/C.5/45/SR.24](#), para. 64, and [A/C.5/45/SR.25](#), para. 6. One Member State voiced disagreement with both the Secretary-General's observations and the Tribunal judgement. See [A/C.5/45/SR.19](#), paras. 4, 5 and 7.

²²¹ [A/C.5/45/SR.22](#), paras. 31, 40 and 64, [A/C.5/45/SR.25](#), paras. 10 and 30, and [A/C.5/45/SR.26](#), para. 28.

²²² [A/C.5/46/9](#), annex II. The proposed amendments met with the support of most delegations in the Fifth Committee. See, e.g., [A/C.5/46/SR.18](#), para. 23, [A/C.5/46/SR.24](#), para. 9 and [A/C.5/46/SR.35](#), para. 11.

²²³ See G A resolution 47/226. See also G A resolution 45/239 A, sect. II, para. 1.

²²⁴ See G A resolution 47/226 I, sect. A.2, para. 5. The relevant modification proposed by a delegation in the Fifth Committee called for supporting documentation of the terms and conditions of secondment in addition to the letter of appointment to serve as the conclusive proof of secondment. As the representative explained, the Secretary-General's proposal did not mention the right of the seconded staff to re-employment by their home government as an aspect that must be stipulated in writing to ensure it was understood. [A/C.5/46/SR.28](#), para. 19.

similarly subject to tripartite agreement.²²⁵ The Assembly called upon the Secretary-General, in consultation with ICSC, to develop a standard procedure for secondment consistent with Articles 100 and 101, taking into account the interests of the parties.²²⁶

8. Supplementary payments to staff

59. The practice by Member States of making supplementary payments to its nationals on staff also emerged as a particular issue of concern in the period under review. Following its review of the practice pursuant to Assembly resolution 43/226,²²⁷ ICSC undertook consideration of the practice,²²⁸ including the possibility of disciplinary action against staff.²²⁹ Concluding that the practice contravened the Charter as well as Staff Regulations, ICSC requested that the Assembly and the Secretary-General take action to discourage and eliminate its continuation.²³⁰ Taking note of the ICSC conclusions, the Assembly requested that the Secretary-General and the executive heads of the specialized agencies take appropriate steps to bring the practice to an end.²³¹ Concerned over the continuing lack of response, the Assembly, in resolution 45/241, invited those States to respond to the request for information by ICSC, and encouraged States to take measures to reduce the practice. The Assembly repeated its request that the Secretary-General take measures and make proposals as appropriate to end the practice.²³²

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

60. A 1993 OLC memorandum addressed the question of the obligation to recognize a change in a staff member's nationality, such as by virtue of

²²⁵ See G A resolution 47/226, sect. I.A.2, paras. 1-3.

²²⁶ *Ibid.*, para. 4.

²²⁷ See also G A resolution 42/221, sect. VII.

²²⁸ [A/44/30](#), paras. 80-90. The matter of deductions from staff pay was also considered.

²²⁹ [A/44/30](#), para. 87. See also [A/45/30](#), para. 219. ICSC decided not to pursue disciplinary proceedings or sanctions. *Ibid.*

²³⁰ *Ibid.*, para. 90. See also [A/45/30](#), para. 220 (c).

²³¹ See G A resolution 44/198, sect. III.C, paras. 1-2.

²³² See G A resolution 45/241, para. 3. ICSC was requested to study the practice and propose measures.

marriage. OLC stated that the Staff Regulations and Staff Rules required that staff inform the Secretary-General of their intention to change nationality before such change becomes final.²³³ Consequently, OLC concluded that the Secretary-General does not have the power under existing Staff Regulations and Staff Rules to prevent staff from changing their nationality. However, as to recognition of the new nationality, OLC cited UNAT jurisprudence to the effect that such a question was within the discretion of the Secretary-General under the Staff Regulations and Rules within the policies laid down by the Assembly.²³⁴ As the Assembly had offered no firm guidelines with regard to the change in nationality issue,²³⁵ OLC concluded that the Secretary-General appeared to have wide discretion in recognizing change in nationality, taking into account the circumstances and interests of the Organization, such as political aspects, geographical distribution of posts and financial implications.²³⁶ From the legal standpoint, OLC did point out that there would be no objection to accepting a request for change of nationality for administrative purposes, though the determination of the effective date would be within the Secretary-General's discretion.²³⁷

²³³ See also [ST/SGB/Staff Rules/1/Rev.8](#). In the case in question, this requirement had been satisfied.

²³⁴ *Ibid.* See also [AT/DEC/326](#). This case was discussed in subsequent jurisprudence of the United Nations Administrative Tribunal. See discussion in [AT/DEC/333](#) as well as consideration by the International Court of Justice, Advisory Opinion, *I.C.J. Reports, 1987*, pp. 65-66. Further discussion of this issue can be found in this section under the study of this Article in *Supplement No. 7*.

²³⁵ *United Nations Juridical Yearbook, 1993*, p. 392. A policy regarding the acquisition of permanent residence had been promulgated. See [ST/AI/294](#).

²³⁶ *Ibid.*

²³⁷ OLC noted as the relevant date that of the decision sent to the staff member. *Ibid.*