

# Repertory of Practice of United Nations Organs

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

### Volume VI

#### PROVISIONAL VERSION

## 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 to represent the United Nations as officials independent of external influence or control, and the corollary obligation on the part of Member States to respect that independence.<sup>1</sup> As part of Chapter XV of the United Nations Charter, Article 100 establishes the principle of the exclusively international character of the Secretariat and its staff members as responsible only to the Organization.<sup>2</sup> This Study concerns decisions undertaken in the period under review to preserve the independence and international character of the Secretariat, 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 previous Studies of Article 100. Certain sub-headings have been changed to reflect developments in the concept of an international civil service and the character of the Secretariat as a result of the expanded responsibilities the United Nations, and the staff who represent it, have assumed. In this Study, sub-sections have been added on maintaining integrity and tolerance in light of their elaboration as part of the professional responsibilities of staff as international civil servants in the revisions to the Staff Regulations and Rules in the period under review.

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.

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<sup>1</sup> 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*.

<sup>2</sup> See discussion under the Study of this Article in the *Repertory of Practice of United Nations Organs*.

The Analytical Summary of Practice will provide a more specific elaboration of significant actions or developments in the period.

4. Certain aspects of the discussion of Article 100, and the international character of the Secretariat, are inter-related with and interjected into discussion of Article 101, notably with respect to geographical distribution.<sup>3</sup> Concern over the character and, hence, composition of the Secretariat may also relate to the study of Article 8.<sup>4</sup> 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.<sup>5</sup>

## I. GENERAL SURVEY

5. The principles of Article 100 were frequently recalled in the period under review. Resolutions of the General Assembly made repeated reference to Article 100.<sup>6</sup> These included emphasis on the application of Article 100 in respect to a number of human resources questions, as well as continuing reference to Article 100 in the context of respect for privileges and immunities. The Assembly also reaffirmed that the practice of secondment of staff from government service was consistent with Article 100.<sup>7</sup> Additionally, the Assembly highlighted the importance of applying the requirements of Article 100 in the Administration's human resources management, notably to officials other than the staff of the Secretariat such as gratis personnel.<sup>8</sup> The period also saw the incorporation of the terms of Article 100 in revisions to the Staff Regulations.<sup>9</sup> Other revisions to the Staff Regulations and Rules adopted in the period codified a number of the responsibilities of staff flowing from Article 100.<sup>10</sup>

6. Decisions respecting the international character of the Secretariat continued to focus on issues of its composition. This included requests to the Secretary-General to expand geographical representation.<sup>11</sup> The

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<sup>3</sup> See discussion under the Study of Article 101 in this *Supplement*.

<sup>4</sup> *Ibid.*, article 8.

<sup>5</sup> *Ibid.*, article 105.

<sup>6</sup> See, e.g., G A resolutions 51/226, 51/227, 51/241, 52/234, 52/252, 53/11, 53/218, and 53/221.

<sup>7</sup> G A resolution 51/226, sect. III B, para. 7 and 53/221, sect. V, para. 24. See also discussion under the Study of this Article in *Supplement 8*.

<sup>8</sup> G A resolution 51/243, para. 11(a). See also G A resolution 52/234, paras. 5, 9 and 11, and 53/11, para. 7.

<sup>9</sup> See ST/SGB/1998/19, reg. 1.2(d). See also G A resolution 52/252 and discussion *infra*.

<sup>10</sup> See, e.g., ST/SGB/1998/19, reg.s 1.1(a), 1.1(b), 1.2(e), 1.2(f).

<sup>11</sup> See, e.g., G A resolution 51/226, sect. IV B, and 53/221, sects. V and IX.

Organization examined the implications of different types of appointment for the international character of the civil service in light of its evolving needs. A specific focus was defining the balance between career positions, and more limited and representative fixed-term appointments.<sup>12</sup>

7. Decisions in the period expanded the definition of the responsibilities of officials in both their professional and personal conduct. In this regard, the predominant development was the adoption of a comprehensive set of amendments to the Staff Regulations and Rules, which provided both elaboration and commentary on the rights and responsibilities of staff as international civil servants.<sup>13</sup> Revisions to the Staff Regulations and Rules included specific emphasis on the principle of integrity in the professional conduct of staff members as international civil servants.<sup>14</sup> Additional revisions to the Staff Regulations and Rules incorporated recognition of the responsibility of staff to exhibit the principles tolerance for different cultures and respect for the equality of men and women as a condition of service.<sup>15</sup> The rights of staff as international officials also received recognition under the revisions.<sup>16</sup> These included rights in the conduct of official duties, notably respect for the privileges and immunities and safety and security,<sup>17</sup> as well as personal conduct.<sup>18</sup>

8. The corollary obligations of Member States to respect the international character of the Secretariat remained a focus particularly in light of continuing threats to the safety and security of United Nations personnel and the expansion of United Nations operations.<sup>19</sup> Issues of respect for privileges and immunities remained a prevailing concern with resolutions on the issue emerging from a number of different Committees of the General Assembly.<sup>20</sup> In this context, the Organization undertook the development of specific measures to ensure respect for

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<sup>12</sup> See, e.g., G A resolutions 51/226, sect. V, para. 4, and 53/221, sect. V, paras. 23 and 25. See also A/C.5/51/34 and A/53/342.

<sup>13</sup> See ST/SGB/1998/19 and G A resolution 52/252. See also G A decision 54/460. Similar provisions were made applicable to other categories of staff and officials other than those of the Secretariat. See A/54/272 and A/54/695 respectively. The Secretary-General initially proposed the revisions as a “Code of Conduct”. See A/52/488 and discussion *infra*.

<sup>14</sup> See, e.g., ST/SGB/1998/19, reg.s 1.2(b), 1.2(g) and 1.3(a), and rules 101.2(f) and 101.2(i) and respective commentaries.

<sup>15</sup> See, e.g., ST/SGB/1998/19, reg. 1.2(a) and rule 101.2(d). See also United Nations Administrative Tribunal [hereinafter UNAT] Judgement No. 785, AT/DEC/785.

<sup>16</sup> See ST/SGB/1998/19, reg. 1.1(c).

<sup>17</sup> ST/SGB/1998/19, reg. 1.2(c) and 101.2(b) and Commentary, para. 3.

<sup>18</sup> Such as rights to vote and belief. *Ibid.*, reg.s 1.2(f) and 1.2(h).

<sup>19</sup> See also discussion under the Study of this Article in *Supplement 8*. In the period, United Nations civilian casualties exceeded that of peacekeeping for the first time. See statement by the United Nations Security Coordinator, ACC/1998/20, para. 37.

<sup>20</sup> See, e.g., G A resolutions 49/238, 51/227, 52/126, 53/87 and 54/192.

the rights and person of officials.<sup>21</sup> Efforts included measures to enhance the protection of officials both in terms of arrest and detention,<sup>22</sup> and personal safety,<sup>23</sup> as well as the expanding the scope of those being protected.<sup>24</sup> The Organization also addressed continuing concern over other issues related to privileges and immunities in terms of restrictions imposed by Member States on staff, including its own nationals on staff.<sup>25</sup> In this context, the Organization extended its examination of the question of secondment, notably following decisions of the United Nations Administrative Tribunal (UNAT).<sup>26</sup> The Organization also reviewed the practice of supplementary payments by some Governments to their nationals on staff, and considered options to prevent it.<sup>27</sup> Continuing consideration was given to the rights of the host State, notably in the implementation of travel restrictions against staff members of certain nationalities.<sup>28</sup>

## II. ANALYTICAL SUMMARY OF PRACTICE

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

9. The expanding and changing role of the United Nations following the end of the Cold War resulted in the devotion of a significant degree of consideration to the future character and composition of the members of the Secretariat, as well as their function as an international civil service. The Secretary-General identified reform of the

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<sup>21</sup> Ibid. See also A/53/501. The Secretary-General affirmed that in excessively dangerous situations where no response from the host country was forthcoming, he may undertake to withdraw United Nations personnel. Ibid., para. 66.

<sup>22</sup> See, e.g., G A resolutions 52/126, paras. 2(a) and (b) and 3, and resolution 53/87, para. 6.

<sup>23</sup> ACC/1996/21 and ACC/1998/4.

<sup>24</sup> Such as extending protection to local staff, and associated personnel. See A/54/154/Add.1 and E/1996/18.

<sup>25</sup> See A/C.5/52/2 and A/53/501. See also, e.g., G A resolutions 49/238, 51/227, and 52/126. See further, e.g., *United Nations Juridical Yearbook, 1995 and 1998*.

<sup>26</sup> See G A resolutions 51/226 III, sect. B, para. 7, and 53/221 V, para. 24. A number of decisions of the United Nations Administrative Tribunal Also considered this issue, see AT/DEC/763 and AT/DEC/930. See also AT/DEC/482 and the Study of this Article in *Supplement 8*.

<sup>27</sup> See G A resolution 51/216, sect. D and decision 54/460. See also ST/SGB/1998/19, reg. 1.2(j) and consideration by the International Civil Service Commission [hereinafter ICSC], A/52/30, paras. 224-241.

<sup>28</sup> See G A resolutions 44/38, 45/46 47/35, 48/42 and 49/56. See also A/44/26, and A/C.5/45/10, and ST/89/10, annex II. Prior consideration of this issue may be found under the Study of this Article in *Supplement 8*. Reference may also be made to consideration of host State obligations in the protection of United Nations personnel.

Secretariat as an essential part of his overall “Programme for Reform” of the United Nations.<sup>29</sup> As part of that programme, he envisaged a Secretariat that was smaller, better trained and better integrated as a global team,<sup>30</sup> as well as one that was more representative both in terms of geographical distribution and gender.<sup>31</sup> He also indicated his intent, as proposed earlier,<sup>32</sup> to formulate for approval by the Assembly a “Code of Conduct” as revisions to the Staff Regulations and Rules designed to ensure that staff are able to meet the requirements as members of the international civil service.<sup>33</sup>

10. The period under review saw specific emphasis on the need to ensure the continued independence of the international civil service.<sup>34</sup> Recalling, inter alia, Article 100, repeated resolutions of the Assembly in the period reaffirmed the Assembly’s support for the integrity and independence of the international civil service.<sup>35</sup> The revisions to the Staff Regulations — initially proposed as a Code of Conduct<sup>36</sup> — began by reiterating:

“Staff members are international civil servants. Their responsibilities are not national, but exclusively international.”<sup>37</sup>

Other provisions offered more specific definition of this concept through the elaboration of the responsibilities of staff as international civil servants in their professional and personal conduct, as well as the obligations of the Secretary-General.<sup>38</sup>

11. A key focus in defining the concept of the international civil service in the period was the question of its composition. The successful functioning of the Secretariat was strongly identified with the existence of an independent international civil service, including the existence of a permanent or career appointments. The Assembly declared:

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<sup>29</sup> See A/51/950 and para. 228. The Assembly commended the initiative of the Secretary-General in its resolution 52/12A.

<sup>30</sup> Ibid., para. 229.

<sup>31</sup> Ibid., para. 230.

<sup>32</sup> See A/C.5/49/1, paras. 28-31.

<sup>33</sup> A/51/950, paras. 53 and 233. See also discussion *infra* and consideration under the Study of Article 101 in this *Supplement*.

<sup>34</sup> See A/C.5/51/34, para. 2 and G A resolution 51/241, annex, sect. XXII, para. 70.

<sup>35</sup> G A resolutions 51/226, para. 2, and 53/221 sect I, para. 6. See also section XXII of the annex to Assembly resolution 51/241 on strengthening the United Nations system.

<sup>36</sup> See ST/SGB/1998/19. The reference to the proposed revisions as a “code” was changed for reasons of clarity in coverage and content. The designation of the proposed revisions was changed in large part to avoid any implication for staff of the United Nations system. See A/52/488/Add.1, para. 3 and A/52/30/add.1, paras. 18 and 48. The Assembly adopted the revisions as amendments to the Staff Regulations by resolution 52/252.

<sup>37</sup> ST/SGB/1998/19, reg. 1.1(a). This provision essentially reproduced former regulation 1.1.

“[I]t is essential for the successful function of the Organization that it has a career international civil service for its core function.”<sup>39</sup>

The Secretary-General similarly reiterated his commitment to career service as an essential component of the Secretariat,<sup>40</sup> stressing that long-term service allowed staff to resist outside pressures, and proved conducive to both the establishment of greater efficiency and skill levels, as well as attracting and retaining well-qualified candidates.<sup>41</sup> At the same time, in light of the changing role of the United Nations — and the question of financing it — there was also recognition of the value of fixed-term or non-career appointments to enable the Secretariat to respond rapidly, flexibly and responsibly to Member State requirements. Such limited appointments would also allow for the intake of new skills and ideas, and broaden representation of men and women from under- and unrepresented countries.<sup>42</sup> At its fifty-first session, the Assembly called for the Secretary-General to ensure a judicious mix of career and fixed-term appointments so as to have an appropriate balance between institutional memory, long-term commitment and independence, and the ability to bring in fresh insights and expertise as well as dismiss non-performing staff.<sup>43</sup> The Assembly specifically stressed that short-term appointments should not be used as an entry to a career position.<sup>44</sup>

12. However, in his report on the ratio of fixed-term appointments, the Secretary-General observed that the concepts of a career position and a fixed-term appointment can no longer be usefully contrasted.<sup>45</sup> The Secretary-General cited several factors as contributing to this development, principal among which was the effect of Assembly resolution 37/127 which recognized the right of staff members to every reasonable consideration for a permanent appointment after five years continuing good service, and the fact that the United Nations Administrative Tribunal, in interpreting this right, found that this expectancy is not conditional on the nature of the staff member’s function or

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<sup>38</sup> See, e.g., reg. 1.2(e). and discussion *infra*.

<sup>39</sup> G A resolution 51/241, annex, sect. XXII, para. 70. See also G A resolution 51/226, sect. V, para. 1.

<sup>40</sup> A/C.5/51/34, para. 2 and annex, para. 2. See also A/49/445.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, para. 2. See also G A resolution 51/241, annex, sect. XXII, paras. 70 and 71. Some States expressed the view that career appointments had in fact become a hindrance to the performance of the Secretariat, advocating a gradual transition to fixed-term non-career appointments as conducive to mobility and the employment of qualified candidates. See A/C.5/51/SR.16, para. 20.

<sup>43</sup> G A resolution 51/241, annex, sect. XXII, para. 71.

<sup>44</sup> *Ibid.*, para. 72. In this regard, the Assembly also called for specific restrictions on the hiring of consultants and contractors. See G A resolution 51/226, sect. VI.

<sup>45</sup> A/C.5/51/34, paras. 3, and 8-12.



the source of its funding.<sup>46</sup> Consequently, the Secretary-General proposed three approaches to defining the future composition of the Secretariat. Firstly, he proposed the establishment of a maximum limit on the overall number of career appointments based on a proportion of regular budget posts.<sup>47</sup> Secondly he proposed that the Assembly clarify the import of resolution 37/126 to recognize that consideration for a career appointment would also be conditional on the nature of the functions being performed and the number of career appointments available.<sup>48</sup> Finally, the Secretary-General proposed the introduction of a dual track system of appointments with career and non-career tracks.<sup>49</sup>

13. By resolution 51/226, the Assembly took note of the Secretary-General report, requesting that the Secretary-General seek a level of seventy percent permanent appointments in posts subject to geographical distribution. The Assembly further specified that a permanent appointment after five years continuing good service under its resolution 37/126 is not an automatic right, and that other considerations, such as operational realities and core functions, should be taken into account.<sup>50</sup> The Assembly also endorsed in principle the introduction of a dual track career system.<sup>51</sup>

14. Decisions in the period continued to emphasize the international representation of the Secretariat. As noted, a more representative Secretariat was part of the Secretary-General's Programme for Reform.<sup>52</sup> The Assembly included a section on the independence of the Secretariat in the context of its resolution on strengthening the United Nations system in which it called for further efforts to recruit on as wide a geographical base as possible consistent with Article 101 of the Charter.<sup>53</sup> In this regard, a number of States in the Fifth Committee continued to link expansion in the geographical base of recruitment with the independence and international character of the

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<sup>46</sup> Ibid., para. 8. See also AT/DEC/712.

<sup>47</sup> Ibid., paras. 19(a) and 20-27. He stressed that establishing a proportion of career staff at anything less than 75% of regular budget posts would mean that less than 50% of all staff would have a career appointment, calling into question the very concept of a career civil service. Ibid., para. 27.

<sup>48</sup> Ibid., paras. 19(b) and 28-32.

<sup>49</sup> Ibid., paras. 19(c) and 33-48. Some allowance would be made of movement from non-career to career tracks for staff meeting the highest standards of efficiency, competence and integrity.

<sup>50</sup> G A resolution 51/226, sect. V, para. 2.

<sup>51</sup> G A resolution 51/226, sect. V, para. 4. In a report to the fifty-third session, the Secretary-General requested that consideration of such a system be postponed pending Assembly consideration of overall human resources management reform. See A/53/342, para. 81. See also G A resolution 53/221, sect. V, paras. 23 and 25.

<sup>52</sup> A/51/950, para. 230.

Secretariat.<sup>54</sup> Reaffirming that no post should be considered the exclusive preserve of any Member State or group of States,<sup>55</sup> the Assembly also called upon the Secretary-General to undertake specific efforts to recruit candidates from underrepresented and unrepresented Member States, including at the senior-level.<sup>56</sup> The Assembly specifically reiterated the application of national competitive exams in this efforts.<sup>57</sup>

15. A specific issue arising in the context of maintaining the international civil service was the increasing use of gratis personnel. As the Secretary-General observed in his report on the matter,<sup>58</sup> the significant growth in the overall numbers and scope of functions performed by gratis personnel, particularly those on loan from governments in the preceding years raised questions about the international character of the Secretariat under Articles 100 and 101 of the Charter.<sup>59</sup> Responding to the Secretary-General report, a large number of States in the Fifth Committee expressed concern about the growing use of such personnel, specifically those on loan from governments.<sup>60</sup> The Assembly adopted a number of decisions regulating the use and functions of gratis personnel. By resolution 51/243, the Assembly established conditions for the acceptance of gratis personnel from governments, and requested that the Secretary-General ensure that gratis personnel would be subject, inter alia, to the criteria of Article 100, and the obligations and responsibilities applicable to staff. The Assembly specified particular conditions, namely that they are used to provide very specialized expertise for a limited and specified time period, and for provide temporary and urgent assistance in case of a new or expanded mandate, pending a decision by the Assembly.<sup>61</sup> The Assembly also requested that the Secretary-General expeditiously phase out current gratis personnel from governments who fall outside the conditions. The Assembly also decided that gratis personnel provided by governments or other entities

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<sup>53</sup> G A resolution 51/241, annex, sect. XXII, para. 81.

<sup>54</sup> See, e.g., A/C.5/51/SR.16, para. 2, A/C.5/52/10, para. 54 and A/C.5/52/SR.56, para. 2.

<sup>55</sup> G A resolutions 51/226, sect. IV B para. 1, and 53/221, sect. IX, para. 6.

<sup>56</sup> G A resolution 51/226, sect. IV B, paras. 3 and 8. See also G A resolution 53/221, sect. V, para. 15 and sect. IX, para. 7.

<sup>57</sup> *Ibid.*, para. 16.

<sup>58</sup> A/51/688. The Secretary-General divided gratis personnel into two types: type I included those with an historical association with the Organization such as technical cooperation experts or interns; and type II included those personnel provided by governments or other entities. The former category included those who, in some cases, held the status of staff members. *Ibid.*, sect. II.

<sup>59</sup> *Ibid.*, para. 10. See also sect. IV and especially paras. 42-44.

<sup>60</sup> See, e.g., A/C.5/51/SR.49, para. 20, and A/C.5/51/SR.50, paras. 28 and 40.

<sup>61</sup> G A resolution 51/243, paras. 4 and 9. The Assembly reiterated these provisions in subsequent resolutions. See, e.g., G A resolutions 52/234, , 53/11 and 53/218. Particular concern was expressed over the subsequent appointment of gratis personnel in the ad hoc international tribunals. A/C.5/53/SR.51, paras. 11 and 22. See also G A resolution 53/11, para. 4.

were not to be considered staff members, requiring that staff replace all gratis personnel provided by governments by the end of February 1999.<sup>62</sup>

16. In light of increasing attacks on staff, the concept of the Secretariat as an international civil service became increasingly linked with the establishment of comprehensive measures for its protection.<sup>63</sup> Revisions to the Staff Regulations specified the responsibility of the Secretary-General in exercising his authority to ensure the safety and security arrangements necessary for the functioning of the Secretariat.<sup>64</sup> By the same token, the Secretary-General indicated that staff were not obligated to follow instructions manifestly inconsistent with their official functions or threatening to their safety.<sup>65</sup> The Secretary-General recognized his responsibility further to withdraw staff from areas in which they were endangered.<sup>66</sup>

17. The responsibility of States in protecting the international status of the Secretariat was also recognized. By resolution 51/241, the Assembly called on States to scrupulously observe Article 100, noting that compliance was of fundamental importance. The Assembly further recognized the primary obligation of States to protect members of the international civil service; this included not only taking measures to ensure their safety and prompt release from detention, but also their affirmative duty to prosecute and punish those responsible for attacks.<sup>67</sup>

## **B. The obligations of members of the Secretariat**

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

18. Revisions to the Staff Regulations and Rules reflected recognition of the responsibility of the Secretary-General for ensuring the rights and duties of staff. New regulation 1.1(c), introduced to codify the Secretary-General's responsibility for the international civil service,<sup>68</sup> stated:

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<sup>62</sup> G A resolution 52/234, paras. 6 and 9. This was completed with one exception. See G A resolution 53/218, para. 1.

<sup>63</sup> See Secretary-General statement, A/53/501, paras. 66 and 77. See also A/54/154/Add.1 and S/1999/957 and discussion *infra*.

<sup>64</sup> ST/SGB/1999/19, reg. 1.2(c). See also G A resolution 52/252, para. 1.

<sup>65</sup> ST/SGB/1998/19, rule 101.2(b) and Commentary, para. 3. See also A/52/488.

<sup>66</sup> A/53/501, para. 77. See also the decision of the Administrative Committee on Coordination [hereinafter ACC] ACC/1995/4.

<sup>67</sup> G A resolutions 52/126, paras. 2(a) and (b). See also discussion *infra* on privileges and immunities.

<sup>68</sup> ST/SGB/1998/19, reg. 1.1(c), Commentary, para. 2.

“The Secretary-General shall ensure that the rights and duties of staff members, as set out in the Charter and the Staff Regulations and Rules and in the relevant resolutions and decisions of the General Assembly, are respected.”

Some opinion was expressed in the period to the effect that this regulation might be more balanced if it stated that the Secretary-General should not only ensure that the rights and duties of staff were respected, but also to guarantee that they were.<sup>69</sup>

19. The Secretary-General responsibility extended to ensuring the conditions of service sufficient for the maintenance of an independent international civil service. Under new regulation 1.1(d):

“The Secretary-General shall seek to ensure that the paramount consideration in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity.”<sup>70</sup>

This regulation aimed to recognize that in exercising his authority under Article 101 of the Charter to recruit staff of the highest standards of efficiency, competence and integrity, the Secretary-General had an affirmative duty to ensure conditions of service, such as salary, commensurate with such standards.<sup>71</sup> Additional consideration was given to the responsibility of the Secretary-General to preserve rights and establish procedures for staff in the performance of their duties.<sup>72</sup> Note should also be taken of revised rule 101.2 (r), which indicates that the Secretary-General has the responsibility as well as the authority to establish procedures whereby staff may ascertain if their outside activities might conflict with their status as international civil servants.<sup>73</sup>

20. Regulation 1.2 (c) further established the Secretary-General’s particular responsibility for the security of staff:

“Staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations. In exercising his authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.”<sup>74</sup>

Reproducing former regulation 1.2, the revised regulation sought to add recognition of the inherent responsibility of the Secretary-General as chief administrative officer to seek to ensure the safety of staff; a responsibility that this

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<sup>69</sup> See views of the ICSC, A/52/30/Add.1, para. 25. See also A/C.5/52/SR.69, para. 10.

<sup>70</sup> ST/SGB/1998/19, reg. 1.1(d).

<sup>71</sup> Ibid., Commentary, para. 1. This provision was not intended to affect the authority of legislative bodies in establishing such conditions. Ibid.

<sup>72</sup> Ibid., reg. 1.1(c) and rules 101.2(o) and 101.2 (r) and discussion *infra*. See also AT/DEC/744.

<sup>73</sup> Ibid., rule 101.2(r). See also revised rule 101.2(o) requiring that procedures be established for filing and utilizing financial disclosure statements.

regulation provides as a basic right of staff.<sup>75</sup> As a result, the Secretary-General assumed responsibility to ensure reasonable conditions for staff in hardship areas, and they are advised prior to departure of prevailing conditions.<sup>76</sup>

21. Recognition of the paramount importance of the safety and security of staff in light of significant attacks on United Nations personnel led to further assumption of responsibility for their safety.<sup>77</sup> At its fifty-second session, the Assembly requested that the Secretary-General undertake a number of measures to protect staff.<sup>78</sup> These included: ensuring full respect for the human rights, privileges and immunities and redress when rights are violated;<sup>79</sup> considering ways and means to obtain inclusion of the applicable conditions of the Convention on the Safety of United Nations and Associated personnel and the Convention on Privileges and immunities into headquarters and mission agreements;<sup>80</sup> and integrating security matters as an integrated part of planning operations.<sup>81</sup>

22. The Secretary-General also announced his intention to undertake additional measures in light of the situation. Reporting to the fifty-third session of the Assembly pursuant to this resolution, the Secretary-General declared:

“When conditions become excessively dangerous, when no action is taken to punish perpetrators of violence against staff, when humanitarian or human rights actions become pawns of war, the Secretary-General may have no option but to withdraw United Nations staff.”<sup>82</sup>

23. The Organization also undertook to increase provision for the overall well being of staff, maintaining its emphasis on the provision of stress management and counseling.<sup>83</sup> At the outset of the period, the Secretary-General

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<sup>74</sup> ST/SGB/1998/19, reg. 1.2(c).

<sup>75</sup> Ibid., Commentary, para. 3.

<sup>76</sup> Ibid., paras. 4 and 5. The Assembly by resolution 53/87 similarly called upon the Secretary-General to undertake such action. See discussion *supra*.

<sup>77</sup> See, e.g., G A resolutions 52/126, para. 4, 52/252, para. 1, and 53/87, para. 7.

<sup>78</sup> See G A resolution 52/126, para. 4.

<sup>79</sup> Ibid., para. 4(a).

<sup>80</sup> Ibid., para. 4(b).

<sup>81</sup> Ibid., para. 4(c). The Assembly repeated these requests in resolution 53/87.

<sup>82</sup> A/53/501, para. 77. See also decision of the ACC, ACC/1998/4 and E/1999/48, para. 54. The Assembly took note of the Secretary-General's report by resolution 53/87. See further discussion *infra*. As noted, the Commentary to the Staff Rules identified the fact that staff are not obligated to follow instructions threatening to their safety.

<sup>83</sup> G A resolution 49/238, para. 3. See also A/C.5/49/56. Consideration was initiated prior to the period under review. See G A resolution 47/226 and discussion under the Study of this Article in *Supplement 8*.

emphasized that the occupational stress in United Nations activities cannot be ignored, and that it was therefore essential that mechanisms be put in place to provide planning, training and support for staff.<sup>84</sup>

24. Decisions of UNAT touched on several aspects of the responsibility of the Secretary-General and the Administration for staff with regard to their functions. In respect to the protection of staff, in Judgement No. 759, the Tribunal recalled its earlier jurisprudence to the effect that the Administration has a duty to persist in efforts to obtain information relating to detained staff, and that this duty requires vigilant and aggressive action on the part of the Organization.<sup>85</sup> Similarly, in Judgement No. 872, the Tribunal found that the Organization has a duty to make extreme medical decisions in a manner so as to provide staff injured in dangerous locations the greatest opportunity to fully recover both physically and mentally.<sup>86</sup>

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

### *(a) Overall professional responsibility of staff*

25. The period under review saw particular attention devoted to defining and codifying the professional responsibility of the international civil service. The primary focus of this attention was the promulgation of extensive revisions to the Staff Regulations and Rules.<sup>87</sup> A specific impetus in devoting consideration to the professional responsibility of staff was recognition of the need to promote accountability and responsibility among Secretariat officials.<sup>88</sup> In its resolutions, the Assembly repeatedly stressed the enhancement of accountability in the conduct of official duties.<sup>89</sup>

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<sup>84</sup> A/C.5/49/56, para. 3. The Assembly welcomed this report by resolution 49/238. See also A/53/501, para. 47. Taking note of the Secretary-General report, the Assembly by resolution 53/87 called for the Secretary-General to take the necessary measures to ensure that staff are suitably trained.

<sup>85</sup> AT/DEC/759, paras. VI and VII. In this case, the Tribunal found three Note Verbales to the Government of the Member State over a period of 10 years inadequate. See also AT/DEC/579.

<sup>86</sup> AT/DEC/872, para. III. Note should also be taken of Judgement No. 755 in which the Tribunal found that inadequate support and protection on the part of the Administration vitiated the charge of misconduct where staff engage in such misconduct out of a legitimate fear of reprisal. AT/DEC/755. See also discussion *infra*.

<sup>87</sup> See SGB/ST/1998/19. See also G A resolution 52/252, para. 1.

<sup>88</sup> See A/C.5/49/1, paras. 28-31, and A/51/829, sect. C. See also G A resolutions 51/241, sect. XVII, para. 52, and 53/221, sect. IV.

<sup>89</sup> See G A resolutions 51/226, sect. II, para. 2, 51/241, sect. XVII, para. 52, 52/252, paras. 6 and 7, and 53/221, sect. IV.

26. Just prior to the period under review, the Secretary-General had proposed the development of a “Code of Conduct”.<sup>90</sup> In his “Programme for Reform to Renew the United Nations”, the Secretary-General noted the need for further efforts to optimize the talents and dedication of United Nations staff, including a Code to ensure that all United Nations staff meet the highest standard of independence and integrity.<sup>91</sup> The Secretary-General indicated that the Code would lay out in clear form the expectations for conduct and performance by staff, consolidate and update rules, setting standards to avoid real or apparent conflict of interest as well as setting a framework for accountability in performance.<sup>92</sup>

27. Proposing the Code to the fifty-second session,<sup>93</sup> the Secretary-General stressed that following amendment to other series of Staff Rules the Code would apply to all United Nations staff without exception.<sup>94</sup> Accompanying each provision was a Commentary the purpose of which was to explain the provision and its context, though it was stressed that the Commentary itself was not part of the Staff Regulations and Rules.<sup>95</sup>

28. The designation of the revisions as a “code” proved an issue of some initial concern. In introducing the draft Code of Conduct, the Secretary-General noted that the designation of the provisions as a Code emerged as a matter of practice,<sup>96</sup> recalling the International Civil Servants Advisory Board’s *Report on the Standards of Conduct in the International Civil Service 1954* (ICSAB Standards), which contained the ethical and philosophical underpinnings of the international civil service.<sup>97</sup> The Secretary-General stressed, however, that unlike the ICSAB Standards the proposed revisions would form an integral part of Article I of the Staff Regulations. This designation as a Code of Conduct became a principal concern of the International Civil Service Commission (ICSC) in its consideration of the revisions, since it might imply that the Code, like the ICSAB Standards, had system-wide

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<sup>90</sup> A/C.5/49/1, paras. 28-31. The matter had previously been raised in the course of discussion in the Fifth Committee during the Assembly’s forty-seventh session. See discussion under the Study of this Article in *Supplement 8*.

<sup>91</sup> Ibid. A/51/950, para. 53.

<sup>92</sup> A/51/829, sect. C. See also G A resolution 51/226, sect. II, para. 7.

<sup>93</sup> A/52/488.

<sup>94</sup> Ibid., para. 2. The Secretary-General indicated that there was no question of having separate standards of conduct. Ibid., Annex II A 2, Commentary, para. 2. He projected amendments to other categories of staff in line with the amendments. Ibid., para. 7.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., para. 1.

<sup>97</sup> Ibid., para. 4. and Annex III. See also discussion under the Study of this Article in the Repertory.

application.<sup>98</sup> Consequently, the ICSC recommended that the revisions concerning staff conduct be designated with another name so as not to suggest replacement of the system-wide ICSAB Standards.<sup>99</sup> As a result, the Secretary-General proposed that the amendments be designated “Status, Basic Rights and Duties of United Nations Staff Members”.<sup>100</sup>

29. In the Fifth Committee, representatives of most Member States expressed their support for the Secretary-General’s proposal.<sup>101</sup> Recalling, *inter alia*, Article 100, the Assembly adopted the Secretary-General’s proposed revisions subject to a number of modifications, many of which had been suggested by the Secretary-General following comments by various bodies.<sup>102</sup> The Assembly also included several decisions on the interpretation of the provisions.<sup>103</sup> Emphasis was given, for example, to the accountability of managers and the principle that higher-level responsibility of managers entail a commensurate increase in accountability.<sup>104</sup> The revisions were incorporated and issued as a Bulletin.<sup>105</sup>

30. The Assembly also requested that the Secretary-General introduce provisions to make the revisions applicable to all members of the civil service; this included regulations for officials other than Secretariat officials and experts on mission,<sup>106</sup> and staff rules for short-term and project personnel.<sup>107</sup> An additional request of the Assembly was that the Staff Regulations be rendered in gender-neutral language.<sup>108</sup> The Secretary-General presented the requested changes regarding the staff regulations and introduced similar staff rules for short-term and project personnel to the fifty-fourth session of the General Assembly.<sup>109</sup>

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<sup>98</sup> See statements by representatives of various organizations. A/50/30/Add.1, paras. 3, 4, 6, 8 and 17. The Assembly had referred the proposed Code of Conduct to the ICSC by decision 52/461.

<sup>99</sup> *Ibid.*, para. 18 and 48. It should be noted that the United Nations representative accepted that calling the proposed amendments a “code” might have created confusion. *Ibid.*, para. 11.

<sup>100</sup> A/52/488/Add.1, para. 3.

<sup>101</sup> See, e.g., A/C.5/52/SR.53, paras. 15, 19, 26, 29 and 31, and A/C.5/52/SR.67, paras. 1, 6 and 8.

<sup>102</sup> G A resolution 52/252, para. 1. See para 1 (a-f). See also A/52/488/Add.1. A separate modification related to the provision on disclosure of financial information. See discussion *infra* on outside professional or financial activities.

<sup>103</sup> G A resolution 52/252, paras. 4-7.

<sup>104</sup> *Ibid.*

<sup>105</sup> See ST/SGB/1998/19.

<sup>106</sup> G A resolution 52/252, para. 9.

<sup>107</sup> *Ibid.*, para. 12. The Assembly also asked for additional rules governing particular groups of staff such as finance officers and those in procurement. *Ibid.*, para. 10.

<sup>108</sup> *Ibid.*, para. 11.

<sup>109</sup> See A/54/276 and A/54/272 respectively.



31. By its very nature, a large number of the revised regulations and rules relate to the professional conduct of staff.<sup>110</sup> Several, however, concerned the overall professional responsibility of staff in the conduct of their duties.

Under regulation 1.1(b), staff would continue to take an oath, provided under the prior regulations, upon appointment to exercise their functions as an international civil servant with the interests of the United Nations only in view. A specific undertaking to respect the Staff Regulations and Rules was added.<sup>111</sup>

32. The revised regulations contained a section designated “core values”, which included the requirement that staff uphold and respect the principles of the Charter, and the highest standards of efficiency, competence and integrity.<sup>112</sup> Staff members were made specifically accountable for upholding such standards as a condition of service. Under new regulation 1.3(a):

“ Staff members are accountable to the Secretary-General for the proper discharge of their functions., Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions, and their performance will be appraised periodically to ensure that the required standards are met.”<sup>113</sup>

Revised rule 101.3(a) made explicit that staff would be evaluated as to maintaining such standards.<sup>114</sup> Reflecting the ICSAB Standards, the Commentary placed particular emphasis on the reciprocal obligations of staff and their supervisors.<sup>115</sup> Additional revisions to the Staff Regulations recognized the responsibility of staff in the performance of their duties to the Secretary-General,<sup>116</sup> use of property and assets,<sup>117</sup> and the responsibility to respond to request for information.<sup>118</sup>

33. Further provisions included prohibitions on activities that prevented the conduct of official functions:

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<sup>110</sup> See discussion *infra* under the relevant headings.

<sup>111</sup> ST/SGB/1998/19, reg. 1.1(b). The text of the declaration retains the same general wording of former regulation 1.9. However, the decision was made to stipulate a written declaration as a sworn statement made orally depends on the operation of local law. *Ibid.*, Commentary, para. 1. See also ST/SGB/Staff Rules/1/Rev.9, reg.s 1.9 and 1.10.

<sup>112</sup> See ST/SGB/1998/19, reg.s 1.2(a) and 1.2 (b). Reference may also be made to the declaration made by staff upon appointment in which they swear to uphold these standards. See reg. 1.1(b) and discussion *supra*.

<sup>113</sup> *Ibid.*, reg. 1.3(a).

<sup>114</sup> *Ibid.*, rule 101.3(a), Commentary, para. 2. The Assembly specifically called upon the Secretary-General to introduce such mechanisms at its fifty-third sessions. See also G A resolution 53/221, sect. IV, paras. 2 and 4.

<sup>115</sup> ST/SGB/1998/19, rule 101.3(a), Commentary, para. 3. See also Coord/Civil Service/5, 1986 ed., para. 12. See also discussion *infra* on integrity.

<sup>116</sup> ST/SGB/1998/19, reg. 1.2(c).

<sup>117</sup> *Ibid.*, reg. 1.2 (q)

<sup>118</sup> *Ibid.*, reg. 1.2(r). See also revised rule 101.2(a).

“ Staff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization, nor shall staff threaten, intimidate or otherwise engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official duties.”<sup>119</sup>

The introduction of this rule was not intended to prohibit the right of peaceful assembly, or the participation — or non-participation— of staff representatives in official bodies.<sup>120</sup> Rule 101.2(g) also prohibited the destruction of official documents or files.

34. Similarly, the revised rules prohibited the staff from undertaking in their duties acts directed at inducing or obstructing an official course of action. Under rule 101.2(h):

“Staff members shall not seek to influence Member States, principal or subsidiary organs of the United Nations or expert groups in order to obtain a change from a position or decision taken by the Secretary-General, including decisions related to the financing of Secretariat programmes or units, or in order to secure support for improving their personal situation or the personal situation of other staff members, or for blocking or reversing decisions regarding their status or their colleague’s status.”<sup>121</sup>

The introduction of this rule sought to clarify the prohibition against lobbying, particularly Member States, by individual staff,<sup>122</sup> and it generally reproduced provisions issued in an earlier Information Circular.<sup>123</sup> As referenced by that Circular, the ICSAB Standards stated that it was intolerable for staff to prepare documents for governments on political or other controversial questions under discussion, or plead before representative committees for an expansion of activities of their department.<sup>124</sup> The Circular further emphasized that the prohibition against such staff lobbying is of particular relevance in consideration of programme budgets.<sup>125</sup> The Circular also indicated that staff are precluded from seeking to influence government in career related matters.<sup>126</sup> Rule 101.2(i) extended this prohibition to the promise of gifts, favours or remuneration to other staff or third parties to perform, delay or fail to perform an official act.<sup>127</sup>

35. In light of concerns over the designation of the revisions as a “Code”, note should be taken of the consideration devoted to updating the ISCAB Standards as such. The ICSC had placed such an activity on its work

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<sup>119</sup> Ibid., rule 101.2(e).

<sup>120</sup> Ibid., Commentary, paras. 2 and 3. In the period, staff representatives had suspended participation in the deliberations of the ICSC.

<sup>121</sup> Ibid., rule 101.2(h).

<sup>122</sup> Ibid., Commentary.

<sup>123</sup> Ibid. See ST/IC/1996/10 and discussion *infra* on impartiality in the performance of their duties.

<sup>124</sup> Ibid., para. 4. See also COORD/CIVIL SERVICE/5, 1986 ed., para. 26.

<sup>125</sup> ST/IC/1996/10, para. 5.

<sup>126</sup> Ibid., para. 6. See also discussion *infra*.

programme. In endorsing the revisions to the Staff Regulations and Rules, the Assembly, by resolution 52/252, expressed its anticipation of the results, though other bodies expressed reservations.<sup>128</sup> In its report to the fifty-fourth session of the Assembly, the ICSC stated that the proposed standards would largely reproduce the ICSAB Standards with the addition of new sections on the conduct of staff in issues of gender equality, harassment, conflict of interest and the protection of confidential information.<sup>129</sup> Organizations of the United Nations system, including the United Nations itself, supported the idea of maintaining the approach of the ICSAB Standards as guiding principles that were descriptive not prescriptive in nature.<sup>130</sup> The ICSC agreed that the proposed revisions to the ICSAB Standards should take a less punitive approach than the initial draft.<sup>131</sup> With the concerns registered about the tone of the initial draft in respect to such issues as recognition of staff rights, the ICSC decided to form a working group on the matter, and report to the Assembly in the year 2000.<sup>132</sup>

36. As noted, another principal concern related to the professional responsibility of staff in the period was measures to recognize accountability. The delegation of authority and concomitant responsibility of staff had been a key aim of the Secretary-General's "Strategy for Human Resources Management."<sup>133</sup> In endorsing the revisions to the revised regulations and rules, the Assembly had specifically emphasized application of principles of accountability.<sup>134</sup>

37. Accountability in recruitment and promotion was a particular concern. Recalling, *inter alia*, Article 100, the Assembly at its fifty-first session, requested that the Secretary-General issue specific administrative instructions to establish clearly the responsibility and accountability of programme managers for the proper use of human resources as a result of gross negligence, including improper motivation, willful violation of or reckless disregard for Staff

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<sup>127</sup> ST/SGB/1998/19, rule 101.2(i). See also discussion *infra* on integrity.

<sup>128</sup> See comments of the Federation of the International Civil Servants Associations, A/C.5/53/27, para. 27.

<sup>129</sup> A/54/30, para. 179. Other topics such as privacy and information technology were also suggested. *Ibid.*, paras. 181 and 189. In addition, sections on the prohibition on receiving gifts, and the conduct of outside activities would be discussed in more detail. *Ibid.*, para. 179.

<sup>130</sup> *Ibid.*, paras. 181 and 184.

<sup>131</sup> *Ibid.*, para 196.

<sup>132</sup> *Ibid.*, paras. 200 and 201. Consideration similarly would be given to a different designation of the principles so as to emphasize the protection as well as the obligations of staff. *Ibid.*, para. 195. The Assembly took note of the action by resolution 54/238.

<sup>133</sup> See A/C.5/51/1, para. 1. See also A/C.5/49/1, and G A resolution 49/222 A.

<sup>134</sup> See G A resolution 52/252, paras. 6 and 7.

Regulations and Rules.<sup>135</sup> The Assembly also requested that the Secretary-General enhance managerial accountability with respect to human resources management decisions, including the imposition of sanctions in case of demonstrated mismanagement of staff and willful neglect of or reckless disregard for established rules and procedures.<sup>136</sup>

38. The Under-Secretary-General for Administration and Management subsequently issued an Information Circular provided terms of reference for investigation by the Office of Internal Oversight Services (OIOS) in which definitions were provided for categories of professional misconduct resulting in the imposition of sanction.<sup>137</sup> Noting the OIOS definition placed under two principal classifications: misconduct and unsatisfactory performance,<sup>138</sup> the Circular identified “misconduct” as linked to issues of integrity, offering examples constituting failure to maintain the highest standards, such as willful disregard of mandates rules or procedures for personal benefit or false certifications in claims for allowances and benefits.<sup>139</sup> Conduct constituting “unsatisfactory performance” was identified as a failure to perform in accordance with the highest standards of efficiency and competence.<sup>140</sup> These were identified as mismanagement,<sup>141</sup> waste of resources,<sup>142</sup> or abuse of authority.<sup>143</sup> Reference may also be made in this context to the report of the Secretary-General on management irregularities causing financial losses to the Organization in which the Secretary-General identified the cause of losses in three categories: mistake, gross negligence and fraud.<sup>144</sup>

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<sup>135</sup> G A resolution 51/226, sect. II, para. 3.

<sup>136</sup> Ibid., para. 2. The Assembly reiterated this call at its fifty-third session. See G A resolution 53/221, sect. IV, para. 10.

<sup>137</sup> ST/IC/1996/29.

<sup>138</sup> Ibid., para.5. The categories apply mutatis mutandis to United Nations staff and officials who are not staff members. Ibid. The Circular emphasized that the two classifications were not mutually exclusive. Ibid. The Tribunal, in Judgement No. 744, did however indicate that the Secretary-General cannot simply substitute allegations of one for the other in imposing sanctions. See AT/DEC/744 and discussion infra.

<sup>139</sup> ST/IC/1996/29, para. 6.

<sup>140</sup> Ibid., para. 7.

<sup>141</sup> Ibid. The Circular offered as examples omissions to act such as an unreasonable failure to perform tasks or supervise consultants and contractors. Ibid., para. 7(a) (i) and (ii).

<sup>142</sup> Ibid., para. 7 (b). These also included omissions such as a failure to ensure that resources are used solely and efficiently for the purposes of the Organization, or failure to act resulting in loss to the Organization, as well as an act causing such loss. Ibid., para. 7 (b) (i) and (ii).

<sup>143</sup> Ibid., para. 7 (c). This constitutes a discharge of management responsibilities or act or omission motivated by other than the interest or purposes of the Organization.

<sup>144</sup> A/53/849.

39. At its fifty-third session, the Assembly, recalling, inter alia Article 100, reaffirmed its support for the independence and integrity of the international civil service, and recognized the need to promote responsibility and accountability of staff at all levels. Noting that no comprehensive system of accountability and responsibility had been established, the Assembly requested that the Secretary-General report to its fifty-fifth session on the establishment of well-designed mechanisms of accountability, including internal monitoring and control procedures as well as training.<sup>145</sup> The Assembly requested that the procedures and report include: a mechanism to review the decisions of programme managers; back evaluation; the role of the appointment and promotion bodies and the departmental panels; the role of the programme managers in the preparation and submission of budget proposals as well as programme delivery; and the role of coordination, supervision and leadership. In requesting the Secretary-General to include elements enumerated previously,<sup>146</sup> the Assembly noted with concern that some of the administrative instructions on the delegation of authority did not conform to the provisions of Assembly decisions.<sup>147</sup>

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

40. Revisions to the Staff Regulations reaffirmed the principle of staff responsibility to the Secretary-General. New regulation 1.2(c) reproduced the prior regulation that staff are subject to the Secretary-General's authority with added emphasis on safety.<sup>148</sup> Similarly, new rule 101.2(b) provided that "[s]taff members shall follow the directions and instructions properly issued by the Secretary-General and their supervisors."<sup>149</sup>

41. Other provisions added further to the responsibility of staff to follow the direction of the Secretary-General, such as responding to investigations. Under new regulation 1.2(r):

"Staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuse of funds, waste or abuse."<sup>150</sup>

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<sup>145</sup> Ibid., paras. 2 and 3.

<sup>146</sup> Ibid., para. 4. See also G A resolution 48/218 A, sect. E, para. 5.

<sup>147</sup> G A resolution 53/221, sect. IV, para. 6.

<sup>148</sup> Reg. 1.2(c), ST/SGB/1998/19. See also discussion supra on the responsibility of the Secretary-General. Again, this provision reproduces that of former regulation 1.2.

<sup>149</sup> Ibid., rule 101.2(b). The Commentary to this rule highlighted the qualification that instructions must be properly issued; staff members have a duty to obey instructions but a right to have instructions put in writing in case of doubt as to compatibility with regulations and rules. Ibid., Commentary, paras. 1 and 2.

<sup>150</sup> Ibid., reg. 1.2(r).

This provision was intended to clarify that the Secretary-General has the authority to require that staff supply information, and staff have a duty to respond.<sup>151</sup>

42. A number of additional revisions to the Staff Regulations and Rules indicated the responsibility of staff to seek authorization from the Secretary-General.<sup>152</sup> As a general matter, the revisions clarified that the Secretary-General has the discretion to decide if staff have complied with their responsibilities as international civil servants by virtue of their appointment.<sup>153</sup> Specific attention was given to the responsibility to follow the procedures established by the Secretary-General in such matters as financial disclosure.<sup>154</sup> As noted, the Assembly approved the revisions by resolution 52/252.<sup>155</sup> By resolution 53/221, the Assembly reiterated the responsibility and accountability of every staff member to the Secretary-General.

43. Some limitation on the authority of the Secretary-General was recognized. The Assembly emphasized that every delegation of authority should be in accordance with the Charter, the regulations and rules, and entail clear lines of authority.<sup>156</sup> As noted, provisions indicating the authority of the Secretary-General also clarified the fact that staff are not obligated to follow instructions manifestly inconsistent with their official functions, rights or threatening to their safety.<sup>157</sup>

*(c) Acceptance of instructions from external authorities*

44. The revisions also reproduced in essence the prior prohibition in both Article 100 and the Staff Regulations on seeking or accepting instructions from governments or external sources.<sup>158</sup> In relation to questions of the acceptance of instructions from external authorities, reference may also be made, for example, to new regulations

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<sup>151</sup> Ibid., Commentary, para. 2.

<sup>152</sup> See, e.g., ST/SGB/1998/21, reg.s 1.2(i), 1.2(l), 1.2(o) and 1.2(p) and rules 101.2(j), 101.2(k), and 101.2(p).

<sup>153</sup> Ibid., reg.12(e), Commentary, para. 2. However this authority is not unlimited, and the Secretary-General must similarly act without prejudice, improper motive or mistake of fact. Ibid.

<sup>154</sup> Ibid., reg. 1.2(n) and rule 101.2(o).

<sup>155</sup> Pursuant to Assembly request, further revisions were made to the regulations to include gender-neutral language. See A/54/276. See also G A resolution 52/252, para. 11 and decision 54/460.

<sup>156</sup> G A resolution 53/221, sect. IV, paras. 7 and 8.

<sup>157</sup> ST/SGB/1998/19, rule 101.2(b), Commentary, para. 3.

<sup>158</sup> ST/SGB/1998/19, Regulation 1.2(d). The same Regulation appeared previously as Regulation 1.3. See ST/SGB/Staff Rules/1/Rev.9. Similarly and separately, staff must take an oath to this effect. ST/SGB/1998/19, Regulation 1.1(b). See also ST/SGB/Staff Rules/1/Rev.9, Regulation 1.9.

concerning the authority of the Secretary-General,<sup>159</sup> and to revised rules in respect to issues of seeking to influence States or the Secretariat on their own behalf.<sup>160</sup>

*(d) Discretion in the performance of official duties*

45. The revisions included several provisions governing the responsibility of staff members for discretion in the performance of their duties.<sup>161</sup> New regulation 1.2(i) stated:

“Staff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person, or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. These obligations do not cease upon separation from service.”<sup>162</sup>

While generally reproducing former regulation 1.5, the new regulation included the obligation of discretion in communication not only to persons, as in the previous regulation, but also to governments, entities or any other source. The responsibility further expanded to include circumstances not just where the staff member knew, but also when they ought to have known that the information had not been made public.<sup>163</sup>

46. Aspects of the question of the responsibility of staff to maintain discretion in the performance of their duties may be found in the discussion of other amendments to Staff Regulations and Rules. For issues of contact with governments or external authorities, reference may be made to regulations on communication with governments or external bodies.<sup>164</sup> Questions of use of information for personal gain may relate to consideration of issues of integrity.<sup>165</sup> Further, statements of opinion may involve, for example, provisions governing the expression of political or religious convictions,<sup>166</sup> or communications with the information media.<sup>167</sup>

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<sup>159</sup> ST/SGB/1998/19, reg. 1.2 (c).

<sup>160</sup> See ST/SGB/1998/19, rule 101.2(h).

<sup>161</sup> See ST/SGB/1998/19, reg. 1.2(i). The responsibility of staff members to maintain discretion in the performance of their duties was formerly covered under Regulation 1.5. See ST/SGB/Staff Rules/1/Rev.9.

<sup>162</sup> ST/SGB/1998/19, reg. 1.2(i).

<sup>163</sup> ST/SGB/1998/19, reg. 1.2(i), Commentary.

<sup>164</sup> ST/SGB/1998/19, reg. 1.2(d)

<sup>165</sup> Ibid., reg. 1.2(g).

<sup>166</sup> Ibid., reg. 1.2(f).

<sup>167</sup> Ibid., rule 101.2(p).

47. An Information Circular put out by the Assistant Secretary-General for Human Resources Management later incorporated into revised Rule 101.2(h),<sup>168</sup> reminded staff of their obligations regarding communications with government representatives, and reiterated the importance that the Administration attaches to the issue.<sup>169</sup> Recalling the oath undertaken by each civil servant under the Staff Regulations,<sup>170</sup> the Circular noted that attempts by staff to seek support from government representatives towards obtaining a change in decisions taken by the Secretary-General are inconsistent with the obligations of staff as an international civil servant.<sup>171</sup>

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

48. The responsibility of staff members to maintain impartiality in the performance of their duties was an aspect of a number of revisions to the Staff Regulations and Rules as a key component of their duties as members of the international civil service.<sup>172</sup> Several of the revised Regulations specifically recalled the requirement of impartiality in the conduct of official duties. Under the new regulation 1.2(f), staff “shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by their status.”<sup>173</sup> In this context, impartiality was to be defined by reference to the ICSAB Standards, namely that the impartiality required of the civil service implies objectivity, lack of bias, tolerance and restraint.<sup>174</sup>

49. Aspects of the revisions to the Staff Regulations and Rules in other areas also touched upon the responsibility towards impartiality in the performance of duties. The duty towards impartiality constituted part of the definition of integrity required of staff.<sup>175</sup> A specific aspect of the issue of impartiality was of course the political activities of staff. Revisions to the staff Regulations recalled the ICSAB standards to the effect that the impartiality required of international civil servants meant that it was an essential principle that staff refrain from political

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<sup>168</sup> ST/SGB/1998/19, rule 101.2(h), and Commentary. See discussion *supra*.

<sup>169</sup> ST/IC/1996/10, para. 1.

<sup>170</sup> *Ibid.*, para. 2.

<sup>171</sup> *Ibid.*, para. 3. See also consideration under sections on impartiality and integrity in the performance of duties.

<sup>172</sup> See A/52/488. See also ST/SGB/1998/21.

<sup>173</sup> *Ibid.* See also consideration under sections concerning outside political activities and communications with the information media.

<sup>174</sup> *Ibid.*, Commentary, para. 2. See also A/52/488, annex III, para. 8 and COORD/CIVIL SERVICE/5, 1986 ed.



activities.<sup>176</sup> The Secretary-General indicated that under the regulations, as indicated under the ICSAB Standards, staff do not have the freedom of a private person to take sides, enter into a dispute as a partisan or publicly express his/her convictions on matters of a controversial nature, either singly or as a member of a group.<sup>177</sup> Aspects of this restriction can be seen in provisions governing the non-acceptance of instructions from governments or external sources, and the obligation of staff to conduct themselves with the interests of the Organization only in view.<sup>178</sup> Note may also be taken of prohibitions in the Staff Rules against staff offering or promising gifts or favors to other staff to perform, delay or fail to perform an official act.<sup>179</sup> As noted, the Assembly adopted the proposed revisions to the Staff Regulations and Rules by resolution 52/252.

50. In Judgement No. 738, the Tribunal considered further the context of the responsibility towards impartiality. Specifically, the Tribunal considered whether the provision of information to local authorities could constitute a failure of the duty to remain impartial where it endangers fellow staff members.<sup>180</sup> The Tribunal found that the provision of information constituted active participation in civil strife on behalf of one party.<sup>181</sup> The Tribunal affirmed that such an act merited the harshest of disciplinary measures under the Staff Rules.<sup>182</sup>

*(f) Integrity in the performance of official duties*

51. Actions in the period, notably in the context of revisions to the Staff Regulations and Rules, gave specific recognition to the responsibility of staff as international civil servants to maintain principles of integrity in the performance of their duties. The Secretary-General expressed the view that integrity was an essential characteristic of the international civil service.<sup>183</sup> The need to ensure the highest standards specifically of integrity and

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<sup>175</sup> ST/SGB/1998/19, reg. 1.2(b) See also discussion *infra* under the section concerned with integrity in the performance of duties.

<sup>176</sup> *Ibid.*, reg. 1.2(h), Commentary.

<sup>177</sup> *Ibid.*, reg. 1.2(f), Commentary, para. 2.

<sup>178</sup> *Ibid.*, reg. 1.2(e). Note may also be taken of the revision to Staff Rules on the obligation not to seek to influence States or United Nations organs. See rule 101.2(h), *Ibid.*

<sup>179</sup> ST/SGB/1998/19, rule 101.2(i). See also *infra* under the section on integrity in the performance of duties.

<sup>180</sup> AT/DEC/738. In this case, the Applicant did not deny to the Tribunal that he had provided information that was considered to result in the denunciation of the staff member to local police in Rwanda. *Ibid.*, judgement, para. IV.

<sup>181</sup> *Ibid.*, para. III.

<sup>182</sup> *Ibid.*, para. VI. In this regard, the Tribunal affirmed the unanimous recommendation of the Joint Disciplinary Committee [hereinafter JDC].

<sup>183</sup> ST/SGB/19, rule 101.3(a), Commentary, para. 2.

independence was the motivation behind revisions to the Staff Regulations and Rules.<sup>184</sup> Under the revised Staff Regulations, the concept of integrity was given specific recognition in defining the professional obligations of staff members,<sup>185</sup> which identified it as a “core value” of the international civil service.<sup>186</sup> The Organization also devoted particular attention in the period to the issue of measures to combat fraud and misconduct in the administration of the Secretariat in the period.<sup>187</sup>

52. Defined as a core value, new regulation 1.2(b) provided:

“Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty, and truthfulness in all matters affecting their work and status.”<sup>188</sup>

53. Application of the ICSAB Standards relating to integrity from which this provision derives a number of elements was given particular recognition.<sup>189</sup> New regulation 1.2(g) elaborated on the application of this responsibility:

“Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour.”<sup>190</sup>

This provision was intended to encompass misuse of office for personal interests or reasons that can be professional as well as pecuniary.<sup>191</sup>

54. Several of the revisions to the Staff Rules provided further illustration of the conduct required of staff. New rule 101.2(f) stipulated:

“Staff members shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.”<sup>192</sup>

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<sup>184</sup> See Secretary-General’s “A Programme for Reform”, A/51/950, para. 53.

<sup>185</sup> See reg. 1.2(b). Similarly, the ICSC expressed the view that the promotion of ethical behavior was the purpose behind the development of the revisions. See A/54/30, para. 196.

<sup>186</sup> Ibid., reg. 1.2(b).

<sup>187</sup> See G A resolutions 53/221 and 53/225. See also ST/IC/1996/29.

<sup>188</sup> Reg. 1.2(b), ST/SGB/1998/19. The first sentence of this provision reflects the definition under Article 101 para. 3 of the paramount consideration in recruitment. See discussion under the Study of Article 101 in this *Supplement*.

<sup>189</sup> G A resolution 52/252, para. 4. See also COORD/CIVIL SERVICE/5, 1986 ed., para. 4.

<sup>190</sup> Ibid., reg. 1.2(g). See also discussion *infra* on outside professional or financial activities.

<sup>191</sup> Ibid., Commentary, paras. 1 and 3. Staff Regulations interpreted personal interests in this context to extend beyond family and friends to those not recognized as creating a dependency. Ibid., para. 3.

<sup>192</sup> Ibid., rule 101.2(f). The rule establishes that the focus is on a deceitful act, not mere misrepresentation by accident or carelessness. Ibid., Commentary.

Further new rule 101.2(i) provided a prohibition on bribery or influence peddling among staff as well as with third parties:

“Staff members shall neither offer nor promise any favour, gift, remuneration or any other personal benefit to another staff member or to any third party with a view to causing him or her to perform, fail to perform or delay the performance of any official act. Similarly, staff members shall neither seek nor accept any favour gift, remuneration or any other personal benefit to another staff member or from any third party in exchange for performing, failing to perform or delaying the performance of any official act.”<sup>193</sup>

In this context, the Secretary-General stressed in particular that supervisors must be free of intimidation or favorites, and that solicitation or acceptance by them of favours, gifts or loans from their staff must not be practiced or even suspected.<sup>194</sup>

55. Reference may also be made to a number of other provisions of the revised Staff Regulations and Rules, involving aspects of this responsibility. Notable among these are responsibilities with respect to conflicts of interest or outside business or professional activities,<sup>195</sup> and those concerning the acceptance of gifts or favours.<sup>196</sup>

56. In addition to revisions to the Staff Regulations and Rules, the period also saw consideration of issues of practice in the context of examination of waste, fraud and mismanagement. At its fifty-first session, the Assembly requested that the Secretary-General enhance managerial accountability with respect to human resources management decisions, referencing specifically action in cases of mismanagement, willful neglect or disregard of established rules and procedures.<sup>197</sup> Pursuant to decision 51/469 B, the Secretary-General further reported to the fifty-third session on definitions of categories of management irregularities, and distinguishing cases of mistake from fraud.<sup>198</sup>

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<sup>193</sup> Ibid., rule 101.2(i). See also observations of the ICSC, A/52/30/Add.1, para. 41.

<sup>194</sup> Ibid., rule 101.3(a), Commentary, para. 3.

<sup>195</sup> See ST/SGB/1998/19, reg.s 1.2 (m-o) and rules 101.2 (n) and (o) and discussion *infra*.

<sup>196</sup> Ibid., reg.s 1.2(j-l) and rules 101.2 (j-m) and discussion *infra*.

<sup>197</sup> G A resolution 51/226, sect. II, para. 2. The Assembly reiterated this request in resolution 53/221.

<sup>198</sup> A/53/849. The Secretary-General distinguished between losses due to mistakes, gross negligence and fraud. See also views of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), A/53/954. Consideration was to be undertaken at the resumed fifty-fourth session in the year 2000.

57. An information circular issued by the Under Secretary-General for Administration and Management on the terms of reference for investigation of mismanagement and misconduct provided further definition of activities constituting a failure to maintain the highest standards of integrity.<sup>199</sup> These included:

“(a) Any willful and unwarranted disregard of the Organization’s legislative mandates or of its Staff Regulations and Staff Rules and other administrative issuances and any failure to exercise proper care that is either intended to result in personal benefit or misappropriation of monetary or other resources of the Organization;

(b) Any act, for example, any type of false certification in respect to claims for benefits and allowances, or failure to act, which demonstrates a failure to maintain the highest standards of integrity required by the Charter as well as any statement, written or oral, or silence that is intended to mislead and that results in the misappropriation of monetary or other resources of the Organization.”<sup>200</sup>

58. Several decisions of the Tribunal considered aspects of the failure to meet the standards of integrity or truthfulness required of the international civil service.<sup>201</sup> The Tribunal considered whether the circumstances surrounding the act or the motivation behind a failure of integrity or honesty vitiated against the imposition of sanctions by the administration. In respect to the former, in Judgement No. 755, the Tribunal considered whether conditions of inadequate support and protection by the Administration diminished the finding that the staff member failed to meet the standards required. Finding that it does, the Tribunal asserted that a staff member’s fear of reprisal mitigated against his being a free agent in the act constituting a failure of integrity, in this instance accepting the bribe.<sup>202</sup> By contrast, in Judgement No. 908, the Tribunal affirmed that the falsification of records, even without the intent to cause harm, could be considered willful misconduct warranting disciplinary measures.<sup>203</sup> The Tribunal did not accept that the seriousness of the misconduct as defined by the intent of the staff member in undertaking the action, asserting that mens rea is only one aspect to be considered.<sup>204</sup>

59. Reference may also be made to Judgement No. 934 in which the Tribunal found that staff members who fail to take elementary steps to avoid the appearance of corrupt practices (by distancing themselves for the activity

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<sup>199</sup> ST/IC/1996/29.

<sup>200</sup> Ibid., para. 6.

<sup>201</sup> See AT/DEC/755, AT/DEC/898, AT/DEC/908 and AT/DEC/934 .

<sup>202</sup> AT/DEC/755, para. VIII.

<sup>203</sup> AT/DEC/908, para. IX.

<sup>204</sup> Ibid., para. XV. In this case, the staff member admitted to falsifying data on vaccinations to prevent wastage and to vaccinate unregistered children.

and perpetrators) — whatever their actual involvement — may be considered knowing or culpable in bring the Organization into disrepute.<sup>205</sup>

*(g) Adherence to principles of equality and non-discrimination in the performance of official duties*

60. Revisions to the Staff Regulations and Rules in the period under review also gave specific recognition to the responsibility of staff as international civil servants to reflect the principles of the Charter regarding tolerance for different cultures and groups, and respect for the equality of men and women.<sup>206</sup> Establishing such conduct as a “core value” for staff, new regulation 1.2(a) stated:

“Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. Consequently, they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them.”<sup>207</sup>

Reflecting the principles expressed in the preamble to the Charter, this regulation sought to recognize the obligations of officials representing the Secretariat flowing from a commitment to those values.<sup>208</sup> Representatives of a number of Member States similarly expressed the view that the conduct and composition of the international civil service should reflect the principles of tolerance and equality of treatment.<sup>209</sup>

61. In this context, revisions to the Staff Rules singled out discrimination and harassment as specific instances of prohibited conduct:

“Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace, or in connection with work, is prohibited.”<sup>210</sup>

62. As noted, the Assembly, by resolution 52/252, adopted the revisions to the Staff Regulations and Rules.<sup>211</sup>

In its subsequent session, the Assembly, recalling inter alia, Article 100, reiterated that recruitment, appointment and

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<sup>205</sup> AT/DEC/934, paras. XXXVIII and XL.

<sup>206</sup> Reference may be made to consideration of this issue in the Studies of Articles 8 and 101 in this *Supplement*.

<sup>207</sup> ST/SGB/1998/19, reg. 1.2(a). See also A/52/488.

<sup>208</sup> ST/SGB/1998/19, reg. 1.2(a), Commentary.

<sup>209</sup> See A/C.5/52/SR. 56, para. 2, and A/C.5/53/SR.29, paras. 29-32 and 43-45. See also views of the Consultative Committee on Administrative Questions (CCAQ), A/54/30, para. 182.

<sup>210</sup> ST/SGB/1998/19, rule 101.2(d). This rule reproduces the core of the 1992 Secretary-General bulletin indicating the United Nations policy on equal treatment of men and women, and prohibitions on discrimination or harassment. See ST/SGB/253. The ICSC was of the view that a better definition should be provided under revised regulation 1.2(a) and rule 101.2 (d). See A/52/30/Add.1, paras. 27 and 38.

<sup>211</sup> The Assembly specifically emphasized that implementation of the new staff rule should be in accordance with the Administrative Instruction ST/AI/379. G A resolution 52/252, para. 5.

promotion should be made without distinction as to race, sex or religion, and requested that the Secretary-General, as a matter of priority, ascertain whether racial discrimination existed in recruitment, promotion or placement, and ensure full compliance with the provisions of the Charter and the regulations and rules of the Organization.<sup>212</sup>

63. During the period, the Tribunal also considered a number of cases concerning the responsibility of staff to uphold principles of tolerance and equality. In Judgement No. 785, the Tribunal considered whether the official approval by staff of discriminatory treatment towards other staff in mission housing constitutes misconduct, and if such misconduct may be mitigated by practical circumstances.<sup>213</sup> Even accepting the lack of personal animus,<sup>214</sup> the Tribunal agreed that the need to respect the fundamental principle of the Charter — respect for human rights — could not be sacrificed under any circumstances.<sup>215</sup> The Tribunal therefore accepted that the mere fact alone of agreeing to such a condition sufficient to constitute professional misconduct.<sup>216</sup> The Tribunal held that the inability to uphold and protect a basic principle of the Charter by agreeing to discriminatory treatment of staff constituted misconduct under the Staff Rules.<sup>217</sup>

64. A number of cases also concerned allegations of discrimination or harassment based on gender.<sup>218</sup> In Judgement No. 707, the Tribunal indicated that a convincing standard of evidence was necessary to support such allegations.<sup>219</sup> Respecting such allegations, the Tribunal subsequently accepted that discrimination may be very tangible to the individual involved, and yet very difficult to document and prove in accordance with judicial standards of evidence.<sup>220</sup> In this regard, judgements of the Tribunal during the period consistently emphasized the responsibility of the Administration to investigate allegations and maintain uniform procedural and due process provisions.<sup>221</sup> Reference may also be made to Judgement No.851 in which the Tribunal considered in part whether the requirement that staff in the General Service category sit for an exam for promotion to the professional category

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<sup>212</sup> G A resolution 53/221, sect. V, paras. 2 and 3.

<sup>213</sup> AT/DEC/785.

<sup>214</sup> Ibid., para. III.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid., paras. III and V. In the case, the Applicant did not contest his having agreed to these conditions.

<sup>217</sup> Ibid.

<sup>218</sup> See AT/DEC/707, AT/DEC/805 and AT/DEC/814.

<sup>219</sup> AT/DEC/707, para. III.

<sup>220</sup> AT/DEC/758, para. IX. In this case the Tribunal found that some evidence of an element of discrimination did not fully sustain the burden of proof. Ibid.

<sup>221</sup> AT/DEC/707, para. III and IX, AT/DEC/805, para. IX, and AT/DEC/814. See also AT/DEC/560.

constitutes a form of discrimination.<sup>222</sup> Citing its prior jurisprudence, the Tribunal affirmed that the competitive G-to-P exam system places no improper restriction on the eligibility of staff, and as a consequence, whatever their qualifications, staff must use the avenue expressly provided by the General Assembly.<sup>223</sup>

### 3. OBLIGATIONS REGARDING PERSONAL CONDUCT

#### (a) *Conduct in the interests of the United Nations*

65. Consideration of issues of the personal conduct of staff emerged primarily in the revisions to the staff regulations and rules. In this regard, the ICSAB Standards stressed that staff must set a high standard of personal conduct; one that will not bring the Organization into disfavour, or infringe upon its demonstrable interests. The ICSAB Standards — to which the Assembly directed the Administration and staff to take account in implementing the revisions<sup>224</sup> — stressed that staff must avoid placing themselves in such a position where their private interests would conflict with those of the Organization.<sup>225</sup> Following the admonition of the ICSAB Standards, the revisions sought to reiterate that effecting such conduct is based on staff understanding the linkage between their own conduct and the success of the Organization:<sup>226</sup>

“High standards of conduct are best attained by a universal understanding among staff members of the relation between their conduct and the success of the international organizations, and by the development of a strong tradition among men and women who are jealous of the reputation of the organizations that they serve and are anxious to safeguard it.”<sup>227</sup>

66. The written declaration staff members undertake upon appointment under revised regulation 1.1(b) similarly maintained the requirement that staff conduct themselves with the interest of the United Nations only in view.<sup>228</sup> This responsibility was made explicit under new regulation 1.2(e), which stated:

“By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants.”<sup>229</sup>

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<sup>222</sup> AT/DEC/851.

<sup>223</sup> AT/DEC/851, paras. III and IV. See also AT/DEC/722.

<sup>224</sup> See G A resolution 52/252, para. 4.

<sup>225</sup> COORD/CIVIL SERVICE/5, 1986 ed., paras. 4, and 53.

<sup>226</sup> ST/SGB/1998/19, reg. 1.2(f), Commentary, para. 1.

<sup>227</sup> Ibid. See also COORD/CIVIL SERVICE/5, 1986 ed., para. 2.

<sup>228</sup> ST/SGB/1998/19, reg. 1.1(b). This obligation is repeated in the new reg. 1.2(e). Ibid. Formerly staff undertook a similar oral oath under regulation 1.9.

<sup>229</sup> Ibid., reg. 1.2(e).

While repeating in part the staff declaration, it was felt necessary to specifically add the responsibility of staff to be loyal to the aims and purposes of the United Nations, which arise from their very status as staff members, beyond issues of official conduct.<sup>230</sup>

67. The revisions similarly reiterated the responsibilities of staff with regard to their private obligations.<sup>231</sup> New rule 101.2(c) amplified this obligation:

“Staff members must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts.”

This rule aimed to make clear to staff their affirmative obligation to honour private obligations.<sup>232</sup> As a consequence, the revisions sought to indicate the responsibility of staff to avail themselves of all existing means under the applicable national law to appeal an order or obtain relief from the obligation to comply pending appeal.<sup>233</sup> Family-related or civil legal matters are particularly emphasized as non-performance of personal obligations, such as alimony or child-support, was identified as a recurrent problem.<sup>234</sup> Failure to honour private obligations may be treated as a disciplinary matter.<sup>235</sup> Additional provisions of the revised regulations touched on overall personal conduct. In particular, revisions concerning the expression of political or religious convictions emphasized the obligation not to affect the interest of the United Nations adversely, or their own status as international civil servants.<sup>236</sup>

68. The Tribunal in Judgement No. 934 considered in part whether a staff member by his apparent conduct could be deemed to adversely affect the interests of the United Nations, absent a finding of actual misconduct.<sup>237</sup> The Tribunal found that the Administration was entitled to take disciplinary action against staff where they culpably or knowingly allowed the impression to arise of involvement in matters as would bring the Organization into

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<sup>230</sup> Ibid., Commentary, para. 1.

<sup>231</sup> Ibid., reg. 1.1(f). This provision reproduces the requirement formerly under regulation 1.8.

<sup>232</sup> Ibid., Commentary, para. 2. In this regard, as a result of privileges and immunities, the Commentary reiterated that staff salaries are not subject to garnishment by domestic courts. Ibid. See also Administrative Instruction ST/AI/399 and discussion under the Study of this Article in *Supplement 8*.

<sup>233</sup> Ibid., para. 2.

<sup>234</sup> Ibid., para. 1. See also discussion under this section in the Study of this Article in *Supplement 8*.

<sup>235</sup> Ibid., para. 3.

<sup>236</sup> See reg.s 1.2(f) and 1.2(h), and discussion *infra* on political activities of staff.

<sup>237</sup> AT/DEC/934.



disrepute.<sup>238</sup> In the view of the Tribunal, if a staff member fails to appreciate or conform to the standards expected — that is to take even elementary steps to distance himself from the appearance of misconduct, the Secretary-General is entitled to consider the staff member culpable of misconduct absent convincing evidence.<sup>239</sup>

*(b) Outside professional or financial activities*

69. Under the revisions to the Staff Regulations, several new provisions concerned the participation of staff in outside businesses, professional or financial activities.<sup>240</sup> Some of the provisions of the revised regulations were drawn from provisions of the Staff Rules, notably rule 101.6.<sup>241</sup> As an initial matter, the revised regulations included provisions on conflict of interest. Under regulation 1.2(m):

“Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations.”<sup>242</sup>

Reproducing the essence of former staff rule 101.6(b), the regulation was introduced to put staff on notice that they cannot be actively associated with a profit-making business or other concern, if either the concern or the staff member is to profit by association with the Organization.<sup>243</sup>

70. While the Secretary-General would resolve questions of a conflict of interest,<sup>244</sup> revisions to the Staff Rules provided for disclosure by staff of any potential conflict of interest:

“A staff member who has occasion to deal in his or her capacity with any matter involving a profit-making business or other concern in which he or she holds a financial interest, directly or indirectly, shall disclose the measure of that interest to the Secretary-General and, except as otherwise authorized by the Secretary-General, either dispose of that financial interest or formally excuse himself or herself from participating with regard to any involvement in that matter which gives rise to the conflict of interest situation.”<sup>245</sup>

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<sup>238</sup> Ibid., paras. XXXVIII and XLI.

<sup>239</sup> Ibid., paras. XL and XLI.

<sup>240</sup> See ST/SGB/1998/19, reg.s 1.2 (m-p).

<sup>241</sup> Ibid., reg.s 1.2 (m) and (o), Commentary. See also ST/SGB/Staff Rules/1/Rev.9 and rule 101.6.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid., Commentary, para. 1. The Commentary indicates that, as an example, a staff member cannot work in the Office of Legal Affairs and act for outside clients. However, fund-raising by staff association was permitted. Ibid., para. 2.

<sup>244</sup> Ibid., para. 1.

<sup>245</sup> Ibid., rule 101.2(n).

Reiterating the provisions of former rule 101.6(c), this new rule introduced provisions on the consequences of such disclosure, namely that a staff member will be required to undertake further action absent Secretary-General instructions to the contrary.<sup>246</sup>

71. It was the recommendation of the Office of Internal Oversight Services (OIOS) as well as the Office of Legal Affairs that the reference to direct or indirect interest be included in revisions to the staff rules to cover issues where the spouse of a staff member, but not the staff member themselves, benefit from an official matter.<sup>247</sup> In this regard, at its fifty-first session, the Assembly had stipulated that Secretariat guidelines for staff on financial interests include a provision on financial disclosure for senior management.<sup>248</sup> New regulation 1.2(n) provided for such standing disclosure on an on-going basis:

“ All staff members at the Assistant Secretary-General level and above shall be required to file financial disclosure statements upon appointment and at intervals as prescribed by the Secretary-General, in respect of themselves and their dependent children, including any substantial transfers of assets and property to spouses and dependent children from the staff member or from any other source that might constitute a conflict of interest, after knowledge of the appointment or during its tenure, to provide certification stating that there is no conflict of interest with regard to the economic activities of spouses and dependent children, and to assist the Secretary-General in verifying the above-mentioned certification on his special request. The financial disclosure statements will remain confidential and will only be used, as prescribed by the Secretary-General, in making determinations pursuant to staff regulation 1.2(m).”<sup>249</sup>

The aim of this regulation was to minimize the risk of officials being perceived as using their position for personal gain.<sup>250</sup> It is left to the Secretary-General to determine the form and periodicity of such disclosures.<sup>251</sup>

72. It should be noted that this provision had been the subject of some debate.<sup>252</sup> A majority of the ICSC reviewing the proposed regulations, pursuant to Assembly request, objected that requiring disclosure, particularly by

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<sup>246</sup> Ibid., Commentary, para. 1. In this regard, the prior exception that the mere holding of shares does not constitute a financial interest has been eliminated, and staff must now disclose their shareholder interest in a corporation with which they deal on an official basis. Ibid., para. 2. As the Commentary provides, the question of whether a conflict exists would depend on the extent of that shareholder interest and the nature of the staff member’s duties. Ibid.

<sup>247</sup> See A/52/339, para. 60. On the other hand., some members of the ICSC also cited the complexity of disclosure where a spouse or dependent child did not form part of the family unit. A/52/30/Add.1, para. 35.

<sup>248</sup> G A resolution 51/241, sect. XXV, para. 83. These disclosures were to be dealt with on the basis of confidentiality. *ibid.*

<sup>249</sup> Ibid., regulation 1.2(n).

<sup>250</sup> Ibid., Commentary, para. 1.

<sup>251</sup> Ibid., para. 2. See also rule 101.2(o), which provided that the Secretary-General will establish procedures for filing and utilization of financial disclosure statements.

<sup>252</sup> See A/52/30/Add.1, paras. 34-37. See A/52/488, draft reg. 1.2(o).

spouses of staff members, might be difficult under national law, might discourage candidates from accepting employment and could constitute an invasion of privacy.<sup>253</sup> Additional considerations centered on the extension of requirements to staff at lower-levels in such areas as procurement;<sup>254</sup> a position supported by representatives of several Member States.<sup>255</sup> The Assembly amended the proposed regulation to eliminate the requirement of disclosure by spouses.<sup>256</sup>

73. Further provision covered outside employment and activities themselves:

“Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General.”<sup>257</sup>

Based on prior rule 101.6(a), this regulation includes the practice of a profession whether as an employee or independent contractor and whether during or outside the workweek.<sup>258</sup>

74. New regulation 1.2(p) set out the conditions for the Secretary-General to grant such approval:

“The Secretary-General may authorize staff members to engage in an outside occupation or employment, whether remunerated or not, if:

- i) The outside occupation or employment does not conflict with the staff member’s official functions or the status of an international civil servant;
- ii) The outside occupation or employment is not against the interest of the United Nations; and
- iii) The outside occupation or employment is permitted by local law at the duty station or where the occupation or employment occurs.”<sup>259</sup>

In setting out the key factors in determining whether a staff member may pursue an outside occupation, the Commentary to this Regulation indicated that the question of whether the occupation was permissible depended in part on the staff member’s particular duties.<sup>260</sup> Reference may also be made to rule 101.2(r) introduced in the period, which provided:

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<sup>253</sup> Ibid., para. 34. Staff representatives similarly expressed an objection to the regulation. See A/C.5/52/SR.53, para. 13.

<sup>254</sup> A/52/30/Add.1, para. 36.

<sup>255</sup> See A/C.5/52/SR 56, para. 3, and A/C.5/52/SR.67, para. 14.

<sup>256</sup> G A resolution 52/252, para. 1(f). The issue of the interest of spouses of staff members arose in the context of investigations by the OIOS. See A/52/339.

<sup>257</sup> ST/SGB/1998/19, reg. 1.2(o).

<sup>258</sup> Ibid., Commentary, paras. 1 and 2. Employment was defined as the legal relationship where one person provides work and skill at the control and direction of another. Ibid., para. 2.

<sup>259</sup> ST/SGB/1998/19, reg. 1.2(p).

<sup>260</sup> For example, under the first condition, part-time work in an outside law firm was not compatible with the official functions of a staff member working in the Office of Legal Affairs. Ibid., Commentary, para. 2. It was also not permissible for a staff member to engage in outside employment if such employment violated the terms of the visa under which the staff member is employed with the United Nations. Ibid., para. 4.

“The Secretary-General shall establish procedures whereby staff may seek in confidence clarification as to whether proposed outside activities would conflict with their status as international civil servants.”<sup>261</sup>

*(c) Acceptance of honours, gifts or favours*

75. The revisions contained a number of new provisions governing the acceptance of honours, gifts, favours or remuneration.<sup>262</sup> As an initial matter, all honours, gifts and remuneration from Governments were prohibited.

Regulation 1.2(j) provided that:

“No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government.”<sup>263</sup>

The impetus behind this provision was to stress the importance of the appearance of strict independence and impartiality of staff with respect to national governments, and thus reaffirm the absolute prohibition on the acceptance of benefits from Governments.<sup>264</sup> This prohibition was intended to apply whatever the reason for the award, even if unrelated to the staff member’s service with the Organization.<sup>265</sup> The revision specifically eliminated the exception for the acceptance of honours for wartime service prior to appointment.<sup>266</sup>

76. Provision was made, however, in respect to unanticipated benefits bestowed by a Government. Regulation 1.2(k) provided:

“If refusal of an unanticipated honour, decoration, favour, or gift from a Government would cause embarrassment to the Organization, the staff member may receive it on behalf of the Organization and then report and entrust it to the Secretary-General, who will either retain it for the Organization or arrange for its disposal for the benefit of the Organization or for a charitable purpose.”<sup>267</sup>

This provision sought to regulate a recurrent problem whereby a public refusal of an unanticipated benefit could result in an unpleasant incident.<sup>268</sup> Acceptance of the benefit must be on behalf of the United Nations.<sup>269</sup>

Remuneration offered by a Government however must always be refused.<sup>270</sup> In this regard, it was the view of the

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<sup>261</sup> Ibid., rule 101.2(r).

<sup>262</sup> Regulation 1.6 formerly governed the acceptance of honours, gifts, favours and so forth.

<sup>263</sup> ST/SGB/1998/19, reg. 1.2(j),

<sup>264</sup> ST/SGB/1998/19, reg. 1.2(j), Commentary, paras. 2 and 3.

<sup>265</sup> Ibid., para. 3. Provision was however made for the acceptance of child benefits. Ibid., n.1.

<sup>266</sup> Ibid.

<sup>267</sup> ST/SGB/1998/19, reg. 1.2(k).

<sup>268</sup> Ibid., Commentary, para. 1.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid. The Commentary states that refusal of remuneration, as staff are paid by the Organization, could hardly cause embarrassment. Ibid. The Commentary indicates that the Secretary-

ICSC that prohibitions on remuneration in these regulations should be deemed to include supplementary payments by Member States to their nationals on staff.<sup>271</sup>

77. Separate provisions governed the acceptance of benefits from non-governmental sources. Regulation 1.2(l) provided:

“No staff member shall accept any honour, decoration, favour, gift or remuneration from any non-governmental source without first obtaining the approval of the Secretary-General.”<sup>272</sup>

This Regulation is largely based on the prior Regulation 1.6.<sup>273</sup> Revisions to the Staff Rules provided further guidance on the acceptance of honours, gifts or favours from non-governmental sources. Revised Staff Rule 101.2(j) provided:

“Acceptance by staff members of any honour, decoration, favour, gift or remuneration from non-governmental sources requires the prior approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the interests of the Organization, and with the staff member’s status as an international civil servant. However, staff members may occasionally accept, without prior approval, minor gifts of essentially nominal value having regard to the duty station concerned, provided that all such gifts are promptly disclosed to the head of the office, who may direct that the gift be entrusted to the Organization or returned to the donor.”<sup>274</sup>

78. A number of provisions and exceptions were included in the limitations on the acceptance of gifts, honours, and remuneration. The revisions allowed the acceptance of gifts of nominal value in view of the fact that they would not seem to present a significant risk of undermining the integrity or independence of staff, and the cost and effort involved in seeking prior approval.<sup>275</sup> What constitutes “essentially nominal value” was left to the judgment of staff and the head of the office.<sup>276</sup> However such acceptable gifts would include academic awards, academic distinctions or commemorative items as provided previously and included under Rule 101.2(k). For purposes of this rule, universities are not considered to be government sources and an honorary degree or certificate may be accepted from

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General will communicate the Organization policy on the acceptance of such benefits so as to avoid unanticipated benefits to the largest extent possible., Ibid., para. 3.

<sup>271</sup> A/52/30/Add.1, para. 32.

<sup>272</sup> ST/SGB/1998/19, reg. 1.2(l). A non-governmental source is defined as any intergovernmental organization, non-governmental organization or private source. Ibid., para. 2.

<sup>273</sup> Ibid., Commentary, para. 1.

<sup>274</sup> ST/SGB/1998/19, rule 101.2(j).

<sup>275</sup> Ibid., Commentary, para. 1.

<sup>276</sup> Ibid., para. 2. In this regard, the Commentary allowed that what is considered a minor gift at United Nations headquarters might take on a different significance at a smaller field office. Ibid.

universities in all countries.<sup>277</sup> Additionally, revised rule 101.2(l) allowed for the acceptance of official meals and receptions:

“Staff members, as part of their official functions, will be expected from time to time to attend governmental or other functions such as meals and diplomatic receptions. Such attendance is not considered receipt of a favour, gift or remuneration within the meaning of the Staff Regulations and Rules.”<sup>278</sup>

79. Revised Rule 101.2(m) similarly provided for more general exceptions to the limitation on the acceptance of benefits:

“The Secretary-General may, in exceptional cases, provided that this is in the interest of the United Nations and not incompatible with the staff member’s status, authorize a staff member to receive from a non-governmental source an honour, decoration, favour, gift or remuneration other than those referred to in staff rules 101.2 (j) to (l) above.”<sup>279</sup>

80. Finally, rule 101.2(s) introduced an exception for the reimbursement of expenses from governmental or non-governmental sources for authorized activities:

“Staff members who are authorized by the Secretary-General to participate in activities by a Government, intergovernmental organization, non-governmental organization or other private source, may receive from the Government, intergovernmental organization, non-governmental organization or private source, accommodation and travel and subsistence allowance generally in line with those payable to the United Nations. In such cases the travel subsistence allowance that may otherwise be payable by the United Nations shall be reduced as envisaged in staff rule 107.15(a).”<sup>280</sup>

The aim of this new rule was to distinguish the notion of gifts from invitations routinely extended by Governments or other organizations and sources to attend conferences or meetings dealing with United Nations-related matters.<sup>281</sup>

The aim was to recognize the contemporary practice, as well as to allow the Organization to save money on allowances.<sup>282</sup> In this context, note should be taken of the provision under the revised rules requiring the Secretary-General to establish procedures whereby a staff member may seek clarification as to whether a proposed activity would conflict with their status as international civil servants.<sup>283</sup>

*(d) Activities connected with the information media*

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<sup>277</sup> Ibid., Commentary. In this context, the Commentary explained that since universities are not considered government sources in many countries, it would be incongruous to allow staff to accept awards from some but not all universities. Ibid.

<sup>278</sup> Ibid., Rule 101.2(l).

<sup>279</sup> Ibid., rule 101.2(m). This provision reflects the exception allowed under the prior rule 101.9(c).

<sup>280</sup> Ibid., rule 101.2(s).

<sup>281</sup> Ibid., Commentary.

<sup>282</sup> Ibid.

81. Revisions to the Staff Rules proposed by the Secretary-General did not introduce significant changes to the prior provisions governing the activities of staff in relation to the information media.<sup>284</sup> The revised Rule 101.2(p), as adopted by the Assembly,<sup>285</sup> basically reproduced the provisions of prior Rule 101.6(e). The intent of this rule was to require that staff seek permission if the outside activities connected with the media relate to the purpose, activities or interests of the United Nations, and that no permission would be needed for social or charitable activities that have no relation to the Organization.<sup>286</sup> Recalling the ICSAB Standards, it was emphasized in the Commentary that outside activities that are of benefit to the Organization, or contribute to the achievement of its goals or the development of professional skills would be encouraged.<sup>287</sup> Examples given of such activities included authoring scholarly articles, participation in symposia and limited teaching activities.<sup>288</sup>

82. Other aspects of the revisions to the Staff Regulations bearing on staff activities with the information media include, for example, regulation 1.2(i) defining the obligation of staff to exercise discretion and not to communicate any information they know or ought to know has not been made public.<sup>289</sup> Similarly, in respect to personal views and convictions, under regulation 1.2(f), staff would be required to avoid any public pronouncement that may adversely reflect on their status or on the integrity, independence and impartiality required of them.<sup>290</sup>

83. A 1995 Memorandum of the OLC considered legal issues arising in proposed changes to the Administrative Instruction concerning attribution of authorship at the United Nations.<sup>291</sup> The OLC recalled that under this Instruction, publications issued by the United Nations are attributed to the United Nations, while documents emanating from the Secretariat are attributed to the Secretary-General or the Secretariat.<sup>292</sup> The proposed changes sought to provide a more flexible and consistent policy of attribution, allowing attribution to staff.<sup>293</sup>

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<sup>283</sup> See ST/SGB/1998/21, rule 101.2(r),

<sup>284</sup> See A/52/688, draft rule 101.2(p).

<sup>285</sup> G A resolution 52/252, para. 3.

<sup>286</sup> ST/SGB/1998/19, rule 101.2(p), Commentary, para. 2. The Commentary indicates that if such a request is denied, a reason for that refusal will be given. *ibid.*

<sup>287</sup> *Ibid.*, para. 3.

<sup>288</sup> *Ibid.*

<sup>289</sup> ST/SGB/1998/19, reg. 1.2(i). See also discussion *supra* on discretion in the performance of duties.

<sup>290</sup> *Ibid.* See also discussion on outside political activities.

<sup>291</sup> See *United Nations Juridical Yearbook, 1995*, p. 471. See also ST/AI/189/Add.6/Rev.3.

<sup>292</sup> *United Nations Juridical Yearbook, 1995*, p. 471.

<sup>293</sup> *Ibid.*, p. 472.

84. Noting the aim of a more transparent and effective system of accountability and responsibility,<sup>294</sup> the OLC presented no legal objections to the adoption of a more flexible approach,<sup>295</sup> but it did consider three prospective legal issues arising from implementation. As an initial matter, the OLC considered the consistency of such a practice with existing Staff Regulations and Rules, concluding that there was nothing in the Staff Regulations or Rules that prevented implementation of a more liberal policy of attribution of authorship.<sup>296</sup> Examining next whether attribution might result in claims of copyright to the work under national legislation, particularly that of the host country, the OLC expressed concern that, while such a claim would not be relevant to works attributed to staff, claims could arise in the case of consultants engaged to write policy papers.<sup>297</sup> Finally, the OLC considered the issue of the consistency of such a policy with legislative authority, noting that in some cases legislative bodies may request a report from the Secretary-General or department.<sup>298</sup> In this context, the OLC concluded it may be inappropriate to attribute the written material to anyone other than the Secretary-General or department.<sup>299</sup>

*(e) Political activities*

85. Revisions to the Staff Regulations and Rules retained much of the emphasis on caution in the conduct by staff members of any outside political activities. Recalled in connection with the revised regulations was the statement by the ICSAB that:

“[I]n view of the independence and impartiality required by their status, it is an essential principle that international civil servants, while retaining their right to vote, should refrain from political activities.”<sup>300</sup>

86. Consequently, revisions to the Staff Regulations and Rules retained much of the prior restrictions on outside political activities, except that the wording of provisions was recast in a more positive tone.<sup>301</sup> New regulation 1.2(f) provided:

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<sup>294</sup> Ibid.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid., pp. 472-473. In this regard, the OLC noted that the prohibition on public pronouncements that may adversely reflect on the status of staff would presumably not be relevant to a work published by the United Nations. Similarly, the prohibition on disclosure of information not made public would also not be relevant. Ibid.

<sup>297</sup> Ibid. The OLC proposed a written agreement to the effect that the United Nations would retain all property rights, including copyright. Ibid., p. 474. See also discussion supra on the use of gratis personnel.

<sup>298</sup> Ibid.

<sup>299</sup> Ibid.



“While staff members’ personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.”<sup>302</sup>

In this regard, it was the intention of the revisions to recognize that, while personal convictions and views remain inviolable, staff do not retain the freedom of a private person to “take sides” and enter into a dispute as a partisan or publicly express convictions of a controversial nature.<sup>303</sup> Consequently, new regulation 1.2(h) expressed the view formerly under regulation 1.7 that, outside of the right to vote, staff have a responsibility to ensure that their participation in any political activity is consistent with, and does not reflect adversely upon, their status as international civil servants.<sup>304</sup>

87. Permissible political activities were clarified under rule 101.2(q), reflecting in essence former rule 101.8(a):

“Membership in a political party is permitted, provided that such membership does not entail action, or an obligation to take action, by the staff member contrary to staff regulation 1.2(h). The payment of normal financial contributions to a political party shall not be construed as an activity inconsistent with the principles set out in staff regulation 1.2(h).”<sup>305</sup>

Some members of the ICSC expressed the view that membership in political parties should only be permitted if those parties had aims consistent with those of the United Nations.<sup>306</sup>

88. As noted, the Assembly adopted the revisions to the Staff Regulations and Rules by resolution 52/252. By resolution 52/252, the Assembly did however require changes to the regulations and rules originally proposed by the Secretary-General, significant among which were provisions recognizing staff participation in staff associations and participation by staff representatives.<sup>307</sup> Draft regulations proposed by the Secretary-General had included recognition of the right of staff to participate in activities related to their own organization and representation

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<sup>300</sup> COORD/CIVIL SERVICE/5, 1986 ed., para. 33. See also paras. 34-37.

<sup>301</sup> ST/SGB/1998/19, reg.s 1.2(f) and 1.2(h), Commentary, para. 1.

<sup>302</sup> Ibid., reg. 1.2(f).

<sup>303</sup> Ibid., Commentary, para. 2. See also ICSAB Standards, COORD/CIVIL SERVICE/5, 1986 ed., para. 8.

<sup>304</sup> ST/SGB/1998/19, reg.1.2(h).

<sup>305</sup> Ibid., rule 101.2(q).

<sup>306</sup> A/52/30/Add.1, para. 43. It was agreed that the provisions of regulation 1.2(a), (f) and (h) covered that concern. *ibid.*

insured against retaliatory treatment by the Administration.<sup>308</sup> Following the recommendation of the Staff-Management Coordination Committee and the Staff Associations, the Secretary-General proposed — and the Assembly consequently endorsed — the removal of all references to staff representatives and representation.<sup>309</sup>

89. Reference may be made in this context to Judgement No. 924 of the Tribunal in which it affirmed that freedom of association is a highly important interest for both the staff and the Administration, and it must be protected against abuses of power by the authorities.<sup>310</sup> However, the Tribunal was of the view that the coexistence of freedom of association and good administration of the Organization must be reasonably balanced.<sup>311</sup>

*\*\* (f) Criminal activities*

### **C. The obligation of Member States**

#### **1. PRIVILEGES AND IMMUNITIES, AND THE SAFETY AND SECURITY OF SECRETARIAT OFFICIALS**

90. The question of respect for privileges and immunities remained a significant concern in the period under review.<sup>312</sup> Recalling, inter alia, Article 100, the Assembly stressed that respect for privileges and immunities was becoming even more imperative owing to the growing number of assignments entrusted to the United Nations.<sup>313</sup> In this context, consideration of the question of respect for the privileges and immunities of officials continued to be closely linked to the issue of ensuring the safety and security of officials.<sup>314</sup> In his report on respect for privileges and immunities to the fifty-third session of the Assembly, the Secretary-General identified the issue of the safety and security of officials as a matter of “paramount importance”.<sup>315</sup> Member States identified the issue of the safety and

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<sup>307</sup> See G A resolution 52/252, para. 1(a).

<sup>308</sup> See A/52/488, draft reg. 1.2(g). See also A/C.5/50/23.

<sup>309</sup> A/52/488/Add.1, paras. 2 and 3.

<sup>310</sup> AT/DEC/924, para. VIII.

<sup>311</sup> Ibid. Thus the Tribunal accepted that exceptions may be made, but within the limits of reason. Ibid.

<sup>312</sup> See also discussion under the Study of Articles 58 and 105 in this *Supplement*. See further discussion under the Study of this Article in *Supplements 7 and 8*.

<sup>313</sup> G A resolution 51/227. See also statement by the President of the Security Council, S/PRST/1997/13.

<sup>314</sup> See consideration under the Study of this Article in *Supplement 7*.

<sup>315</sup> Ibid., para. 5.

security of officials as a major obstacle to the implementation of the United Nations missions and mandates.<sup>316</sup>

Amendments to the staff regulations included specific provision regarding the obligation of the Secretary-General to ensure the safety and security of staff.<sup>317</sup> Also highlighted during the period were issues of secondment, supplementary pay, tax and travel of officials.<sup>318</sup>

91. As a question of respect for privileges and immunities, the Organization reiterated the obligation of Member States to ensure the safety and security of officials under the Charter.<sup>319</sup> In this context, the Secretary-General repeatedly recalled that the primary responsibility for the security and protection of staff rests with the host Governments,<sup>320</sup> flowing from every government's normal and inherent function of maintaining order as well as from their obligations under the Charter.<sup>321</sup> However, the Secretary-General observed that experience had shown that Governments were often unwilling or unable to assume the responsibility to protect staff.<sup>322</sup> Recognizing the responsibility of governments to protect United Nations officials,<sup>323</sup> the Assembly urged States to take measures to ensure the safety of United Nations personnel and their speedy release from arrest or detention.<sup>324</sup> The Assembly further called on States to undertake specific measures to ensure protection of United Nations staff, including access to detained staff by independent medical teams and enabling United Nations representatives to attend hearings involving detained staff.<sup>325</sup> The Assembly continued to call on the Secretary-General to take the necessary measures to ensure full respect for the human rights, privileges and immunities of United Nations personnel, notably by including applicable conditions of the Convention on Privileges and Immunities in any negotiations for a United Nations operation.<sup>326</sup>

92. Concern over respect for privileges and immunities of officials in this context resulted in continuing expansion in consideration of the issue. Following the Assembly's call for a more coordinated and unified approach

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<sup>316</sup> See A/C.5/51/SR.10, para. 59.

<sup>317</sup> See regulation 1.2(c), ST/SGB/1998/20 and discussion *supra*.

<sup>318</sup> These are discussed *infra* as appropriate.

<sup>319</sup> See statement of the ACC, A/C.5/50/29, annex.

<sup>320</sup> A/C.5/50/3, para. 4 and A/C.5/51/3, para. 5. See also G A resolution 54/192. See further discussion under the Study of this Article in *Supplement 8*.

<sup>321</sup> A/C.5/51/3, para. 5.

<sup>322</sup> A/53/501, para. 21. See also A/C.5/52/2.

<sup>323</sup> See G A resolution 54/192.

<sup>324</sup> G A resolution 52/126, para. 2(a) and (b).

<sup>325</sup> *Ibid.*, para. 3. See also G A resolution 53/87.

<sup>326</sup> See GA resolution 53/87, para. 6.

to the issue, the Administrative Committee on Coordination (ACC) made the issue of respect for privileges and immunities, and the safety and security of officials a standing item on its agenda.<sup>327</sup> Resolutions on issues of the protection of United Nations personnel emerged, for example, from the Plenary, as well as the Third and Fifth Committees of the Assembly.<sup>328</sup> Secondly, concern over respect for privileges and immunities resulted in proposals for further measures to ensure protection. These included, for example, the development of minimum criteria for security beyond which United Nations operations in an area would be temporarily suspended.<sup>329</sup> The Secretary-General stated his view that in the absence of action by governments, “United Nations personnel can no longer be expected to fill vacuums created by political inaction on the part of Member States.”<sup>330</sup> The Secretary-General allowed that such a decision would rest on both political and operational considerations as well as technical questions.<sup>331</sup> Taking note of the Secretary-General’s report, the Assembly, by resolution 53/87, called on the Secretary-General to take all necessary measures to ensure full respect for human rights, privileges and immunities of personnel and including security matters as an integral part of planning United Nations operations. Additional measures to ensure respect for privileges and immunities, included recognition of the need to strengthen the office of the United Nations Security Coordinator (UNSECOORD).<sup>332</sup>

93. The Organization also considered expanding the scope of personnel to whom States would undertake specific obligations to protect. It may be recalled that the Convention on the Safety of United Nations and Associated Personnel, adopted by the Assembly at its forty-ninth session, was seen to be limited in scope by the

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<sup>327</sup> See ACC/1996/20, para. 53. In this regard, it should also be noted that the question was specifically considered a matter for the ACC itself to consider, rather than its subsidiary bodies, such as the Consultative Committee on Administrative Questions (CCAQ). See E/1999/48, para. 52.

<sup>328</sup> See, e.g., G A resolutions 49/238, 51/227, and 52/126. It was however the view of a number of States that matters related to privileges and immunities, including the safety and security of personnel should be dealt with in the Fifth Committee. See A/C.5/53/SR.28, para. 15, and A/C.5/53/SR.28, para. 44.

<sup>329</sup> A/53/501, para. 66. The Secretary-General observed that when conditions become excessively dangerous and no action is taken to punish perpetrators, the Secretary-General may have no option but to withdraw United Nations staff. *Ibid.*, para. 77. See also E/1999/48, para. 52.

<sup>330</sup> A/53/501, para. 77.

<sup>331</sup> *Ibid.*, para. 66.

<sup>332</sup> G A resolution 54/192, para. 14. See also ACC/1998/4, para. 29. During the period, the UNSECOORD undertook a number of functions to protect officials. See, e.g., ACC/1996/21. See also consideration under the Study of Article 58 in this *Supplement*.

Administration.<sup>333</sup> The Secretary-General and the ACC sought to extend specific protection to local staff, incorporating coverage for all United Nations personnel, including those recruited locally.<sup>334</sup> Reporting to the Security Council at the end of the period, the Secretary-General noted the emergence of consensus in favor of extending the scope of the Convention.<sup>335</sup>

94. As noted, action was similarly taken to recognize the privileges and immunities of officials other than those of the Secretariat. Draft regulations reiterated that privileges and immunities are conferred in the interest of the Organization and that it is for the Secretary-General to decide if they exist and whether they will be waived.<sup>336</sup> In light of the expanding range of United Nations missions being undertaken, the OLC also considered the conditions for extending privileges and immunities to a variety of personnel, who, while not technically staff members, worked in support of United Nations mandates and missions. The OLC was prompted to address whether other categories qualify as either experts on mission or should be accorded certain privileges and immunities for the independent exercise of their functions on behalf of the United Nations.<sup>337</sup> These included, special rapporteurs,<sup>338</sup> consultants and contractors,<sup>339</sup> national military contingents,<sup>340</sup> goodwill ambassadors,<sup>341</sup> and observers from NGOs participating in United Nations meetings.<sup>342</sup> Among the criteria cited by the OLC was the question of whether the functions were performed for or on behalf of the United Nations,<sup>343</sup> and whether the functions were commercial in nature.<sup>344</sup>

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<sup>333</sup> Prior to the period, both the Secretary-General and the ACC had expressed the view that, prior to its adoption, the scope of the draft Convention should be extended to other areas. See Secretary-General report, A/48/349, paras. 3 and 34.

<sup>334</sup> A/54/154/Add.1, para. 3. See also E/1996/18, para. 110. Other issues included the provision of insurance coverage and evacuation measures for local staff. See ACC/1996/21, para. 22 and 23 and ACC/1997/10, para. 5. See also the views of staff representatives, A/C.5/52/18, appendix II, paras. 4-10.

<sup>335</sup> S/1999/957.

<sup>336</sup> A/54/695, draft reg. 1.2(e). The Assembly by resolution 52/252 recognized the obligations of the Secretary-General to ensure that the rights and duties of such officials are respected.

<sup>337</sup> United Nations Juridical Yearbook, 1997, tktkt

<sup>338</sup> United Nations Juridical Yearbook, 1996, p.437

<sup>339</sup> United Nations Juridical Yearbook, 1995 p.407 and 1997, tktkt.

<sup>340</sup> United Nations Juridical Yearbook, 1996, p.450.

<sup>341</sup> United Nations Juridical Yearbook, 1997, tktkt

<sup>342</sup> United Nations Juridical Yearbook, 1997 tktkt

<sup>343</sup> United Nations Juridical Yearbook, 1997 tktkt.

<sup>344</sup> Thus contractors were not considered to be “experts on mission” as the commercial nature of their functions did not fall within the scope of understanding of “experts” as it has evolved within the Organization and among States, *United Nations Juridical Yearbook, 1997*, tktkt.

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

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

95. In 1998, the OLC considered the question of the requirement by a Member State that its locally-recruited nationals perform military service.<sup>345</sup> The OLC stated that it was vital for the United Nations to insist that States comply with their obligations under the Convention on Privileges and immunities, and specifically section 18(c) exempting staff from military service. It was the view of the OLC that, "...any precedent to agree to permit a State to violate its obligations to exempt officials from national service obligations would be a very unfortunate precedent."<sup>346</sup>

96. The OLC observed that under the Staff Rules the Secretary-General might agree to permit staff to serve where they volunteer and seek advance approval from the Secretary-General. However, the OLC pointed out that this provision required advance approval. The OLC noted that a retroactive decision of any nature has consistently been held null and void by UNAT. A decision to waive immunity from national service without the consent of the staff members concerned, in the view of the OLC, would violate the Staff Rules and expose the Organization to claims for damages, including punitive damages, especially if the staff member were to be killed or injured. The OLC did allow that if the staff member were to volunteer, and if a submission was made explaining in detail why a waiver would be in the interest of the United Nations, the Secretary-General could validly decide to waive immunity retroactively, applying the provisions of Appendix C of the Staff Rules that deal with staff who have volunteered in advance.

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

5. REQUESTS TO APPOINT OR REPLACE OFFICIALS

97. In connection with its resolution on strengthening the United Nations system, the Assembly at its fifty-first session recalled Article 100 in section on the independence of the Secretariat.<sup>347</sup> Stressing the fundamental importance of Article 100, paragraph 2, the Assembly declared it was timely to call upon Member States to

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<sup>345</sup> United Nations Juridical Yearbook, 1998, tktkt.

<sup>346</sup> Ibid.

<sup>347</sup> G A resolution 51/241, sect. XXV.

scrupulously observe its provisions. In this connection, the Assembly requested that the Secretary-General prepare guidelines on what constitutes acceptable representations to him and his staff on appointments.<sup>348</sup>

## \*\*6. THE QUESTION OF SPECIAL RIGHTS OF THE HOST COUNTRY

### 7. THE QUESTION OF SECONDMENT

98. During the period, the Assembly repeatedly reiterated the principle that secondment from government service was consistent with article 100.<sup>349</sup> In this context, the Assembly urged the Secretary-General to pursue the practice of secondment on a wider scale as appropriate.<sup>350</sup>

99. Several cases before UNAT considered the principles applicable to secondment and the implications of a purported secondment for continued employment. Judgement No. 763 concerned in part whether staff may unilaterally remove themselves from the status of secondment, if such a status compromised the independent exercise of their functions.<sup>351</sup> The Tribunal declared that all staff, whether or not on secondment, must be able to perform their functions in an independent and professional manner.<sup>352</sup> In the view of the Tribunal, it is the duty of the Administration to safeguard such conditions.<sup>353</sup> Nevertheless, the Tribunal affirmed that a staff member validly on secondment is not entitled to extract himself unilateral from the secondment.<sup>354</sup> At the same time, the Tribunal reaffirmed that the condition of secondment does not preclude the possibility of further employment on a non-secondment basis upon completion of the appointment under secondment.<sup>355</sup>

100. In Judgment No. 930, the Tribunal considered the validity of not granting a new or permanent contract to staff based, in part, on awareness on the part of the Organization that the government of the Member State expected the staff member to resume service with the government.<sup>356</sup> The Tribunal highlighted the fact that the Administration must consider the interests of the Organization in granting such an appointment, and that an

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<sup>348</sup> Ibid., para. 82. Reference was also made to the importance of compliance with Article 101 in respect to recruitment. Ibid., para. 81.

<sup>349</sup> G A resolutions 51/226 III, sect. B, para. 7, and 53/221 V, para. 24. See also discussion under the Study of this Article in *Supplement 8*.

<sup>350</sup> Ibid.

<sup>351</sup> AT/DEC/763, para. III.

<sup>352</sup> Ibid., para. IV.

<sup>353</sup> Ibid.

<sup>354</sup> Ibid.

<sup>355</sup> Ibid., para. V.

<sup>356</sup> See AT/DEC/930.

understanding between a staff member, his government and the Organization that the staff member would resume government service could validly be prominent among these interests.<sup>357</sup> In the view of the Tribunal, therefore, it was proper for the Administration to take the position that it would respect the tripartite understanding that the staff member would resume government service, and this did not qualify as an extraneous factor in considering the staff member for a further appointment.<sup>358</sup>

## 8. SUPPLEMENTARY PAYMENTS TO STAFF

101. Pursuant to a request from the Assembly,<sup>359</sup> the ICSC undertook consideration of the practice of supplementary payments to staff.<sup>360</sup> The ICSC devoted consideration of the question both from the perspective of its impropriety both in respect to the Charter and the Staff Regulations,<sup>361</sup> and secondly, in relation to the issue of the inadequacy of salary levels within the Common System of United Nations organizations.<sup>362</sup> As regards the former, the ICSC noted that it had been dealing with the subject periodically for 20 years, and, despite some success, there appeared “...room for more rigorous commitment to the principle of freedom from outside influence that was at the heart of the international civil service.”<sup>363</sup> Citing Article 100, the ICSC unequivocally reaffirmed that the practice of supplementary payments to staff by Member States was inappropriate and at variance with the spirit of the Charter.<sup>364</sup> While the ICSC recommended that the United Nations reissue instructions as to the unacceptability of supplementary payments, it also accepted that other approaches might be considered as those pursued to date had yielded mixed results.<sup>365</sup> The ICSC observed that the aspect of influence by Member States as well as attempts by staff to influence governments suggested a broader approach to the issue.<sup>366</sup> It requested that its secretariat continue

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<sup>357</sup> Ibid.

<sup>358</sup> Ibid., paras. VIII and IX.

<sup>359</sup> G A resolution 45/241, sect. IX.

<sup>360</sup> A/50/30, paras. 224-241.

<sup>361</sup> Ibid., para. 231. The ICSC noted that such supplementary payments might take the form of either structured arrangements for making payments to staff during employment in the international civil service or upon return to national service, or they might take the form of ad hoc assistance as an element of expenditure such as housing. Ibid., para. 230.

<sup>362</sup> Ibid., para. 231. Representatives of both organizations of the Common System and staff highlighted this point. Ibid., paras. 227 and 229. For further consideration of this issue, refer to the Study of Article 101 in this *Supplement*..

<sup>363</sup> A/50/30, para. 238.

<sup>364</sup> Ibid., paras. 238. See also para. 241(b), and the views of Staff Representatives, para. 228.

<sup>365</sup> Ibid., para. 240. The ICSC observed that the practice of post-service payments, though intrinsically the same as supplementary payments, presented greater difficulties in establishing evidence. Ibid., para. 239.

<sup>366</sup> Ibid., para. 240.



to collect the necessary data from Member States with a view to complementing the report to be made on the matter to the Assembly.<sup>367</sup>

102. For its part, the Assembly recalled its rejection of the propriety of supplementary payments<sup>368</sup> requesting that the Secretary-General take such measures as appropriate to end the practice.<sup>369</sup> The Assembly also requested that the Secretary-General make proposals on how to end the practice.<sup>370</sup> An invitation was further extended to Member States to discontinue the practice.<sup>371</sup>

103. Reference may also be made in this context to proposed revisions to the Staff Regulations, which provided an absolute prohibition on the acceptance of honours, decorations, favours, gifts or remuneration from any Government.<sup>372</sup> In its consideration of the proposed regulations, the ICSC pointed out that the word “remuneration” was deemed to include supplementary payments by Member States to their nationals on staff.<sup>373</sup>

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

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<sup>367</sup> Ibid., para. 241 (d).

<sup>368</sup> See G A resolution 45/241 and discussion under the Study of this Article in *Supplement 8*.

<sup>369</sup> G A resolution 51/216, sect. D, para. 1.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid., para. 3. Organizations were requested to issue or reissue instructions to staff on the unacceptability of receiving supplementary payments.

<sup>372</sup> A/52/488, draft reg. 1.2(k). Staff reg. 1.2(j) incorporated this provision. See ST/SGB/1998/19.

<sup>373</sup> A/52/30/Add.1, para. 32.