

Repertory of Practice of United Nations Organs
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Repertory of Practice of United Nations Organs)
Volume I

ARTICLE 8

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¹ The following subheadings have been amended to be more in line with the practice regarding Article 8.

TEXT OF ARTICLE 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

INTRODUCTORY NOTE

1. During the period under review, the advancement of women in the United Nations system remained a strong policy priority. The period from 1989-1994 did not bring major changes in the application of Article 8. However, a case relevant to the development in the interpretation of Article 8 regarding the limits of preferential treatment based on gender can be noted.² The present study follows the structure of past Supplements.³ This study focuses on the work of the principal organs of the United Nations, the Secretary-General, and the Secretariat in relation to Article 8 of the Charter. The efforts of other bodies within the United Nations system towards the advancement of women will be briefly outlined in part B. Participation of men and women in other United Nations organs.

I. GENERAL SURVEY

2. The financial crisis of the Organization and other factors severely hampered women's recruitment continuously since 1985.⁴ However, it was repeatedly emphasized that the advancement of women should neither be impeded by the temporary suspension of regular recruitment imposed in the context of restructuring measures⁵, nor should budgetary constraints interfere with this important goal.⁶

² Judgment No. 671, *Grinblat* against the Secretary-General, AT/DEC/671.

³ The general survey covers general trends, outlining the approaches adopted to improve the status of women as well as the involved organs and their practice; whereas the analytical summary goes into details of the most relevant measures which relate directly to Article 8.

⁴ A/49/176, para. 21.

⁵ E S C resolution 1992/14, para. 3.

⁶ E S C resolution 1989/29, para. 4; G A resolution 44/75, para. 3.

3. During the period under review, the *Nairobi Forward Looking Strategies* continued to be the conceptual framework for actions towards the advancement of women and were reaffirmed in several documents.⁷

4. By 1994, a certain institutional pattern had evolved with respect to the advancement of women. Every year, the Secretary-General submitted a report on the Improvement of the Status of Women in the Secretariat to the General Assembly.⁸ From 1992 onwards, the Secretary-General also reported annually to the Commission on the Status of Women (CSW).⁹ These reports included statistics on gender distribution by department and grade as well as a description of initiatives taken since the previous reporting period.

5. Every year, both the General Assembly¹⁰ and the Economic and Social Council¹¹ passed at least one resolution on the Improvement of the Status of Women in the Secretariat.

6. The CSW was requested to continue monitoring the improvement of the status of women within the United Nation Secretariat.¹² Also the Steering Committee for the Improvement of the Status of Women¹³ continued its work in monitoring, providing advice, and reporting to the Secretary-General on a regular basis.¹⁴

7. In addition, a Focal Point for Women was established in the Office of the Assistant Secretary-General for Human Resources Management. In April 1989 she took up her assignment, being responsible for all aspects of the program for the

⁷ See *Repertory, Supplement No. 7*, vol. I, under Article 8, para. 5; G A resolutions 44/75, 45/125, 47/93, and 49/167; E S C resolutions 1989/30, 1991/17 and 1994/6.

⁸ A/C.5/44/17; A/45/548; A/46/377; A/47/508; A/48/513; A/49/587.

⁹ E/CN.6/1992/11; E/CN.6/1993/15; E/CN.6/1994/5.

¹⁰ G A resolutions 44/75, 44/185 C, 45/239, 46/100, 47/93, 48/106 and 49/167.

¹¹ E S C resolutions 1989/29, 1990/3, 1991/17, 1992/14, 1993/9 and 1994/6.

¹² E S C resolution 1989/29, para. 5; the annual report of the CSW included a draft resolution on the Improvement of the status of women which it recommended to the Economic and Social Council for adoption: e.g. E/1992/24; E/1993/27.

¹³ Established through ST/SGB/216 (1986).

¹⁴ Subsequent to the annual reports of the Steering Committee, the Secretary-General issued a bulletin stating which of its recommendations he decided to accept: e.g. ST/SGB/226, ST/SGB/227, ST/SGB/229.

improvement of the status of women in the Secretariat. She also served as Secretary to the Steering Committee.¹⁵ In 1992 the Secretary-General decided to regularize the post of Focal Point.¹⁶

8. The Administrative Committee on Coordination (ACC) was also concerned with the advancement of women¹⁷; discussions took place annually in an ad hoc Inter-Agency Meeting on Women¹⁸ and through the network of focal points for women located throughout the United Nations system.¹⁹

9. The General Assembly requested the International Civil Service Commission (ICSC) repeatedly to recommend measures on the advancement of women.²⁰ In 1990, the ICSC decided to form a tripartite working group on the status of women to identify the problems facing women in the United Nations system and strategies for the implementation of its recommendations.²¹

10. Before measures were adopted to improve the status of women, despite all efforts only modest progress was made. Moreover, the achievement of the goals required the full involvement of Member States.²² The General Assembly repeatedly encouraged Member States to support the efforts of the United Nations system to increase the percentage of women by nominating more women candidates, encouraging women to apply for posts and creating national rosters of women candidates to be shared with the Secretariat, specialized agencies and regional commissions.²³

¹⁵ A/45/548, para. 22; A/C.5/44/17, para. 20. The post was initially approved for a period of 2 years.

¹⁶ See E/CN.6/1992/11, para. 15; the decision was taken in response to G A resolution 46/100, para. 4.

¹⁷ E.g. A/C.5/49/62.

¹⁸ Reports of the Ad-hoc-inter-agency meetings on women: e.g. ACC/1992/9; ACC/1993/9; ACC/1994/8.

¹⁹ See A/47/30, Annex X: on targets, focal points and women's groups in the United Nations system.

²⁰ See G A resolutions 44/198, Section III. B; 45/241, Section XI.; and 47/216, Section VI.

²¹ A/45/30, para. 288.

²² A/46/377, para. 9; A/49/587, para. 47.

²³ G A resolutions 44/75, para. 4; 46/100, para. 3; 47/93, para. 5; and 49/167, para. 10; see also E S C resolutions 1991/17, para. 6; 1992/14, para. 4; and 1994/6, para. 7 (especially for the D-1 level and above).

11. The period under review had focused on the pursuit of numerical targets set by the General Assembly²⁴, the Economic and Social Council²⁵, and also by the Secretary-General²⁶. The following quantitative goals were set for the participation of women:

- An overall participation rate of 30 per cent by 1990 in posts subject to geographical distribution;²⁷
- An overall participation rate of 35 per cent by 1995 in posts subject to geographical distribution;²⁸
- Within the above, 25 per cent participation rate in senior posts;²⁹
- As close as possible to 50-50 by 1995 in policy-level positions;³⁰
- Complete parity by the year 2000.³¹

12. To achieve these quantitative targets, the Secretary-General set forth Action Programs³² for the Advancement of Women outlining measures that should be taken towards these ends. In his 1989 report, the Secretary-General noted that he had already approved 51 special measures.³³ The ICSC supported affirmative action programmes to favor women until the organizations of the United Nations common system attained the targets set by them.³⁴

²⁴ G A resolutions 40/258 B, para. 3; 44/75, para. 1; 45/125, para. 1; and 45/239, para. 2.

²⁵ E S C resolutions 1989/29; 1990/3, para. 1; and 1991/17, para. 2.

²⁶ A/C.5/47/SR.21, para. 58; see also A/49/587, para. 32.

²⁷ G A resolutions 44/75, para. 1; 44/185 C, para. 2; goal was not achieved: see e.g. G A resolution 46/100.

²⁸ G A resolution 45/125, para. 1.

²⁹ Referring to the D-1 level and above; G A resolution 45/239, para. 2.

³⁰ At the level of Assistant-Secretary-General and above.

³¹ A/49/587, para. 32 [Strategic plan of action for the improvement of the status of women in the Secretariat (1995-2000)]; endorsed by the General Assembly in G A resolution 49/167.

³² A/C.5/40/30, para. 26; A/47/508, Section IV, para. 15; A/49/587, Section IV.

³³ A/44/222, paras. 146 and 147.

³⁴ A/45/30, para. 276. "The Commission agreed that traditional attitudes remained the biggest obstacle to improving the status of women. The Commission further agreed that qualifications should be the main and indeed sole criterion also in the recruitment and promotion of men and women. All things being equal, however, most members of the Commission were of the view that until the organizations attained the targets set by them, affirmative action programmes favouring women were a necessity. Some members felt that it would be helpful to obtain data showing the progression of women from the P-5 to the D-2 levels with respect to recruitment and promotion from 1980 to the present."

13. Another critical element in improving the status of women was identification of percentages of women in individual departments. Senior managers were held accountable for the results they had achieved.³⁵

14. By June 1994 the percentage of women in geographical posts had risen to 32.6 per cent (compared with 26.9 per cent in June 1989); at levels D-1 and above to 15.1.³⁶

II. ANALYTICAL SUMMARY OF PRACTICE

A. Participation of men and women in the United Nations Secretariat

1. PROVISIONS CONCERNING RECRUITMENT, APPOINTMENT AND PROMOTION UNDER CONDITIONS OF EQUALITY

15. During the period under review, the Secretary-General introduced a new policy measure applicable not only in the area of recruitment, but also for appointment and promotion. In departments and offices with less than 35 per cent women overall, and in those with less than 25 per cent women at the levels of P-5 and above, vacancies particularly those in the latter group, were to be filled by a woman candidate when there were one or more female candidates who met the requirements.³⁷ The post would only become available for male recruitment after it had been vacant for 12 months, if it had not been possible to secure a qualified woman candidate and despite the best efforts of all concerned, as certified by the Office of Human Resources Management. The other exception to this policy favoring women in recruitment referred to posts that were filled through a competitive examination.³⁸

³⁵ E.g. in the Secretary-General's report A/47/508, paras. 18-22; E/CN.6/1994/5, para. 13; A/47/30, para. 296 (k); G A resolution 48/106, para. 5; E S C resolution 1994/9, para. 5.

³⁶ A/49/587, para. 6.

³⁷ Established in ST/SGB/237 (1991), para. 5; reaffirmed in ST/SGB/252 (1992), para. 2; incorporated in administrative instruction ST/AI/382, paras. 5-7.

³⁸ ST/AI/382, para. 7.

16. A particular area of concern remained in the participation of women in policy level and decision-making positions.³⁹ According to a study⁴⁰, the “glass ceiling” for women in the Secretariat remained at the P-4 level.⁴¹ As a result, a sufficient pool of female candidates who could be promoted to such posts was lacking. To overcome this obstacle, in March 1993, ST/AI/382 on “Special measures to improve the status of women in the Secretariat” stated that qualified women currently in the service of the Organization under any type of appointment, with a good performance record and at least one year’s experience in the United Nations system, would be regarded as internal candidates for available Professional vacancies.⁴²

17. Furthermore, the cumulative seniority provisions were reaffirmed.⁴³ These provisions aimed at averaging the required seniority of women by taking into account the cumulative seniority in both the preceding and current grade.⁴⁴

18. During the period under review, a review of jobs in the General Service and related occupational groups had been carried out with a view to restructuring, which had resulted in an increased number of higher level General Service posts. The improved structure was expected to provide a better career path for support staff.⁴⁵ In 1994, the General Assembly noted that more attention should be paid to career options for women in the General Service Category.⁴⁶ In fact, there were more than four times as many women in the General Service than in the Professional category.⁴⁷

³⁹ In June 1992 there were no women at the Under-Secretary-General level: A/47/508, para. 4; however, progress was achieved in 1993 - three women at the Under-Secretary-General level: A/48/513, para. 5.

⁴⁰ This study was undertaken by a consultant analyzing the obstacles confronting women in the Secretariat; in response to G A resolutions 45/125, 45/239 C and 46/100.

⁴¹ A/47/508, para. 10.

⁴² ST/AI/382, para. 3; similar considerations would apply to qualified women serving with specialized agencies and subsidiary organs within the common system. See also A/48/513, para. 15.

⁴³ ST/AI/382, para. 5.

⁴⁴ ST/AI/338/Add.5 (1988), para. 14 (f) and Annex II, para. 2.

⁴⁵ ST/SGB/252, para. 3.

⁴⁶ A/49/176, para. 33/34.

⁴⁷ A/49/587, para. 13; A/49/176, para. 33.

19. In the context of special measures regarding promotion, one judgment of the Administrative Tribunal (*Grinblat*)⁴⁸ dealt with the limits of preferential treatment based on gender. In this 1994 case, the male applicant claimed that the decision not to short-list him, but only the two female candidates, was motivated by prejudice against his gender, violating Article 8 of the Charter. The Applicant asserted that his non-inclusion was solely due to preferential treatment given by the Appointment and Promotion Board to two women candidates. The Tribunal decided that the Applicant's rights were not fully respected and because his qualifications had been considered equal to those of the two short-listed female candidates, his name should have been included in the short list. Article 101 (3) of the Charter⁴⁹ established a standard under which less qualified persons were not entitled to preferential treatment based on gender. It would be impermissible to view Article 8 of the Charter as overriding Article 101 (3). However, as long as affirmative action was required to redress the gender imbalance, application of Article 8 would permit, as a reasonable measure, preferential treatment to women candidates where their qualifications were substantially equal to the qualifications of competing male candidates.⁵⁰

2. PROVISIONS CONCERNING EQUALITY IN THE WORK ENVIRONMENT

20. During the period under review, the General Assembly repeatedly stressed that attention should not only be given to the representation, promotion and career progression of women, but also to work/life issues to remove direct or indirect discrimination against staff members with family responsibilities (including issues

⁴⁸ Judgment No. 671, *Grinblat* against the Secretary-General, AT/DEC/671.

⁴⁹ “The paramount consideration in the employment of the staff... shall be the necessity of securing the highest standards of efficiency, competency, and integrity.” Reference to this “paramount consideration” can also be found in G A resolutions 44/185 C, para. 2; 45/239 C, para. 2; and 47/226, para. 11.

⁴⁹ G A resolution 45/125, para. 1.

⁵⁰ Already in 1991 (judgment No. 507, *Fayache* against the Secretary-General, AT/DEC/507) the tribunal had noted that the application of an averaging seniority calculating technique did not purport to authorize the promotion of females whose relative qualifications or merit were lower than male collaterals.

such as spouse employment, job-sharing, flexible working hours, child-care arrangements, career-break schemes and access to training).⁵¹

21. Furthermore, the crucial importance of an organizational climate conducive to the equal participation of women and men in the work of the Organization was stressed. The ICSC suggested a number of steps to foster a more collegiate climate (especially the elimination of all gender-biased language⁵² and the creation of policies against sexual harassment).⁵³

22. In the period from 1989-1994, equal treatment of men and women was promoted in particular through the elaboration of provisions on the prevention of sexual harassment. In October 1992 three circulars on sexual harassment were issued.⁵⁴ ST/AI/379 on “Procedures for dealing with sexual harassment” contained a definition⁵⁵ for sexual harassment and established informal and formal procedures for dealing with incidents of sexual harassment⁵⁶. The procedures were widely distributed throughout the Secretariat, and programme managers of all departments and offices were made personally accountable to the Secretary-General for the implementation of the guidelines.⁵⁷

⁵¹ G A resolutions 47/216, Section VI, para. 1 and 49/167, para. 6; A/C.5/49/62, para. 4; A/47/30, para. 296 (f), (g).

⁵² Efforts were made to remove all use of gender-biased language: see e.g. A/47/508, para. 24.

⁵³ A/47/30, para. 296 (j).

⁵⁴ ST/SGB/253 “Promotion of equal treatment of men and women in the Secretariat and prevention of sexual harassment”; ST/IC/1992/67 “Guidelines for promoting equal treatment of men and women in the Secretariat”; and ST/AI/379 “Procedures for dealing with sexual harassment”.

⁵⁵ ST/AI/379, para. 2: “Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. It is particularly serious when behavior of this kind is engaged in by any official who is in a position to influence the career or employment conditions of the recipient of such attentions”.

⁵⁶ ST/AI/379, paras. 5-7: the informal approach; paras. 8-12: formal procedures (written complaint to the Assistant Secretary-General for Human Resources Management).

⁵⁷ E/CN.6/1994/5, para. 15.

B. Participation of men and women in other United Nations organs

23. As most of the documents dealing with the status of women addressed not only the Secretariat, but also the specialized agencies,⁵⁸ the advancement of women became a policy priority in the organizations of the United Nations common system as well. At the outset of the period, the agencies recommitted themselves to full implementation of their responsibilities under the *Nairobi Forward Looking Strategies*.⁵⁹ However, the proportion of women at senior and middle management levels continued to be low.⁶⁰ The technical agencies indicated that they had not been traditionally attractive to female candidates and therefore faced particular problems in recruiting women for higher-level positions.⁶¹

24. Nevertheless, it was reaffirmed that quantitative objectives were useful tools for measuring progress in improving the representation of women, even though modalities for setting them might differ among organizations in the United Nations system.⁶² Regarding the advancement of women, cooperation and coordination would be maintained with all departments and offices of the United Nations and the United Nations system through the network of focal points of the United Nations Secretariat and of the specialized agencies and also through the annual ad hoc ACC inter-agency meetings on the status women.⁶³

⁵⁸ E.g. G A resolutions 44/77, para. 18; 45/125, para. 1; 47/216, Section VI, para. 1; and 48/106, paras. 2 and 3; E S C resolutions 1989/105, 1990/3, para. 1; and 1992/14, para. 5; often simply referring to the United Nations system.

⁵⁹ ACC/1989/DEC/24-32, page 6.

⁶⁰ A/45/489, para. 81.

⁶¹ A/48/30, para. 239; ACC/1992/6, paras. 112 and 113: an additional difficulty continued to be the small number of women candidates put forward by national administrations.

⁶² A/47/30, para. 296 (b).

⁶³ A/45/6/Rev.1: Medium -Term Plan 1992-1997, Vol.II, para. 27.8.