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**Contents**

Text of Article 100.....	3
Introductory Note.....	3
I. General Survey .....	4
II. Analytical summary of practice .....	9
A. The concept of the Secretariat as an international civil service .....	9
B. The obligations of members of the Secretariat .....	14
1. Responsibilities of the Secretary-General with regard to the exercise of functions of staff members.....	14
2. Obligations of staff members regarding the performance of duties.....	34
a. Overall professional responsibility of staff.....	34
b. Responsibility to the Secretary-General in the performance of duties.....	38
c. Acceptance of instructions from external authorities.....	39
d. Discretion in the performance of official duties .....	42
e. Impartiality in the performance of official duties .....	44
f. Integrity in the performance of official duties .....	49
g. Adherence to the principles of equality and non-discrimination in the performance of official duties .....	55
3. Obligations regarding personal conduct.....	60
a. Conduct in the interests of the United Nations .....	60
b. Outside professional or financial activities .....	63
c. Acceptance of gifts, honours or favours .....	66
d. Activities connected with the information media .....	70
e. Political activities.....	71
f. Criminal activities.....	71

C. The obligations of Member States .....	75
1. Privileges and Immunities of the Secretariat .....	75
2. The question of Governments providing the Secretary-General with information relating to staff members.....	80
3. The question of regulation by a State of its own nationals on staff .....	82
4. The question of State regulations applicable to other staff members .....	84
5. Requests to appoint or replace officials .....	87
6. The question of special rights and obligations of the host country .....	88
7. The question of secondment .....	89
8. Supplementary payments to staff.....	92
D. Questions arising from the relationship of staff members to the State of which they are a national.....	93

### **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 establishes the independence of United Nations staff members and the continuing importance of their role as international officials to be free of any control from Member States or any external influence, 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 also establishes the principle of the exclusively international character of the Secretariat and its staff members as responsible only to the Organization.<sup>2</sup>
2. The aim of the present study is to highlight major decisions that were taken during the period under review and designed to ensure the continued independence and impartiality of staff members. It is also the aim to give the reader an idea of the evolution of these decisions and the particular issues and questions that have arisen in connection thereto.
3. The format of this Study largely follows the revised format introduced in previous studies of Article 100. Additionally, for this particular study, certain sub-headings were added to explain notable developments in more detail.

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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.

4. The General Survey provides an overview of the subject as a whole, and serves as a synopsis of the key issues that were addressed by the Organization during the period under review, while the Analytical Summary of Practice provides a more in depth review of significant actions and developments during this period.
  
5. Certain aspects of the discussion concerning the independence and impartiality of staff members, and the relevant actions that were taken, may overlap with other articles of the United Nations Charter. For example, issues with respect to geographical distribution relate to Article 101; issues concerning privileges and immunities relate to Article 105; and issues regarding the representation of women relate to Article 8. As such, more detailed discussions on those issues can be found under the study of those Articles in the Repertory of Practice of the United Nations Organs.

## **I. General Survey**

6. The period under review saw a specific emphasis placed on the need to ensure the continued independence of the international civil service. Through its resolutions, the General Assembly repeatedly recalled Article 100 and reaffirmed its support for the integrity and independence of the international civil service.<sup>3</sup> The General Assembly also reiterated its request that the Secretary-General ensure that the Office of Human Resources Management continued to strengthen its monitoring of delegated authority for human resources management, including compliance with geographical and gender targets, while ensuring that the highest standards of efficiency, competency and integrity serve as the paramount consideration in staff recruitment.<sup>4</sup>
  
7. Throughout this period, the General Assembly also repeatedly reiterated its request that the Secretary-General continue his ongoing efforts to ensure the attainment of equitable geographical distribution in the Secretariat, as well as to ensure as wide a geographical distribution of staff as possible, throughout all departments, offices and levels of the Secretariat, including the Director levels and higher.<sup>5</sup> In furtherance of

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<sup>3</sup> See GA resolutions 66/234; 67/255; and 68/252.

<sup>4</sup> See GA resolutions 65/247.

<sup>5</sup> GA resolution 66/234, para. 5. See also GA resolution 67/255; 68/252; and 70/286.

this goal, the General Assembly addressed both internal and external recruitment processes. Specifically, through resolution 68/252, the General Assembly emphasized the important role of the young professionals programme in improving the geographical representation of underrepresented and unrepresented Member States, and requested the Secretary-General to continue his ongoing efforts in this regard.<sup>6</sup> Concerning the recruitment of external candidates, through resolution 67/255, the General Assembly reaffirmed the principle of non-discrimination against external recruitment, and stressed the importance of ensuring opportunities for external candidates to be considered for selection and recruitment, thus avoiding the placement of limitations on the Organization's ability to select the best candidates on as wide a geographical basis as possible.<sup>7</sup> Regarding the use of consultants, the General Assembly, in its resolution 67/255, stressed that the use of consultants should be governed by the relevant resolutions of the General Assembly and that they should be drawn from the widest possible geographical basis.<sup>8</sup> Further, in December 2013, the Under-Secretary-General for Management promulgated an administrative instruction on consultants and individual contractors.<sup>9</sup>

8. Additionally, during the period under review, the General Assembly repeatedly requested that the Secretary-General review and redouble his efforts to make progress towards achieving the goal of 50/50 gender balance throughout the United Nations system and at all levels in the Secretariat, with full respect for the principle of equitable geographical distribution, in conformity with Article 101, paragraph 3, of the United Nations Charter, particularly considering women from least developed and developing countries, as well as countries with economies in transition and unrepresented or largely underrepresented Member States, and to ensure departmental and managerial accountability concerning gender balance targets.<sup>10</sup>
9. The General Assembly also reaffirmed the need for the full implementation of the United Nations policy of zero tolerance of sexual exploitation and abuse in peacekeeping operations multiple times throughout the period under review,<sup>11</sup> and

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<sup>6</sup> GA resolution 68/252, para. 19.

<sup>7</sup> GA resolution 67/255, para 54.

<sup>8</sup> *Ibid.*, para. 67.

<sup>9</sup> ST/AI/2013/4.

<sup>10</sup> GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>11</sup> See GA resolution 66/264 and 69/307. See also GA resolutions 64/269; 70/114; and 70/255.

emphasized that all acts of sexual exploitation and abuse should, without delay and in accordance with due process of law and the relevant memorandums of understanding between Member States and the United Nations, be investigated and punished.<sup>12</sup> Additionally, during the sixty-eighth session of the General Assembly, a new subparagraph (subparagraph (e)) was added to Staff Rule 1.2, Basic rights and obligations of staff, to reflect the provisions of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13).<sup>13</sup>

10. During the period under review, an increased emphasis was also placed on strengthening accountability. To that end, the General Assembly repeatedly reaffirmed its commitment to strengthening accountability in the Secretariat, and stressed accountability as a central pillar of effective and efficient management, requiring attention and strong commitment at the highest level of the Secretariat.<sup>14</sup> Moreover, in its resolution 69/307, the General Assembly stressed the importance of responsibility and accountability of the most senior managers at Headquarters and in missions in determining organizational behaviour and of leading by example with regard to the conduct of both uniformed personnel and civilian staff in peacekeeping operations.<sup>15</sup>
11. Criminal accountability was also a focus for the General Assembly throughout the period under review. During this period, the General Assembly repeatedly reaffirmed the need to ensure that all United Nations officials and experts on mission “function in a manner that preserves the image, credibility, impartiality and integrity of the United Nations,”<sup>16</sup> and, through its resolutions, urged States to take every appropriate measure to ensure that crimes by United Nations officials and experts on mission were punished, and the perpetrators of such crimes brought to justice in accordance with international human rights standards (including due process), without prejudice to their privileges and immunities, or the privileges and immunities of the United Nations under international law.<sup>17</sup> The General Assembly also encouraged all States to cooperate with each other and with the United Nations in the exchange of information

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<sup>12</sup> GA resolutions 66/264.

<sup>13</sup> GA resolution 68/252.

<sup>14</sup> GA resolutions 64/259; 66/257; 67/253; 68/264; 69/272; and 70/255.

<sup>15</sup> GA resolution 69/307.

<sup>16</sup> GA resolution 65/20. *See also* GA resolution 69/114; and 70/114.

<sup>17</sup> GA resolutions 65/20; 66/93; 67/88; 68/105; 69/114; and 70/114.

and in facilitating the conduct of investigations, as well as, as appropriate, the prosecution of United Nations officials and experts on mission alleged to have committed serious crimes.<sup>18</sup>

12. Additionally, the Organization made several important changes to the rules governing the conduct of staff. During the sixty-seventh session of the General Assembly, the International Civil Service Commission (ICSC) submitted revised standards of conduct for the international civil service, which were contained in Annex IV of A/67/30. The General Assembly subsequently approved the revised standards of conduct, with effect from 1 January 2013, through its resolution 67/257.
13. In 2010, the Under-Secretary-General for Management promulgated an administrative instruction (ST/AI/2010/1) on reporting, retaining and disposing of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources. The administrative instruction highlighted that the intended purpose of the staff regulations and rules dealing with honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources was to ensure staff member's independence and impartiality.<sup>19</sup> The administrative instruction explained that the only latitude allowed is when prior approval was obtained from the Secretary-General in order to accept an honour, decoration, favour, gift or remuneration from a non-governmental source.<sup>20</sup> The procedure for obtaining the Secretary-General's prior approval was detailed in section 5 of the administrative instruction (ST/AI/2010/1).
14. In 2011, the General Assembly adopted resolution 66/234, in which the Assembly decided to amend Staff Regulation 1.2(m) to expand the scope of the definition of conflict of interest to provide a definition beyond financial interest.<sup>21</sup>
15. In 2012, the Secretary-General submitted proposed amendments to the Financial Regulations and Rules of the United Nations.<sup>22</sup> In its resolution 67/246, the General Assembly adopted the revised Financial Regulations of the United Nations, as set forth

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<sup>18</sup> *Ibid.*

<sup>19</sup> ST/AI/2010/1.

<sup>20</sup> *Ibid.*

<sup>21</sup> *See* ST/SGB/2014/1.

<sup>22</sup> A/67/345. The United Nations Financial Regulations and Rules govern the broad financial management of the United Nations.

in the report of the Secretary-General,<sup>23</sup> with the exception of regulation 4.19.<sup>24</sup> In 2013, the Secretary-General promulgated a revised edition of the Financial Rules and Regulations.<sup>25</sup>

16. Further, the Ethics Office continued to administer the financial disclosure programme of the Organization during the period under review. The General Assembly, in its resolution 66/234 adopted on 24 December 2011, welcomed “the significant efforts made by the Ethics Office towards the implementation of the financial disclosure programme, and [requested] the Secretary-General to ensure full compliance by staff in fulfilling their financial disclosure requirements[.]”<sup>26</sup>
17. Throughout the period under review, the General Assembly also continued to repeatedly emphasize the importance of the principle of judicial independence in the system of administration of justice.<sup>27</sup> To this end, in 2012, the General Assembly adopted resolution 67/241, in which the Assembly approved the mechanism for addressing possible misconduct of judges, which was proposed by the Secretary-General in section B of annex VII of his report on administration of justice at the United Nations (A/67/265).<sup>28</sup> In that same resolution, the General Assembly also addressed standards of professional conduct for legal representatives. Specifically, the General Assembly stressed the need to ensure that all those who act as legal representatives, including both staff members and external counsel, were subject to the uniform standards of professional conduct which were applicable in the United Nations system.<sup>29</sup>
18. Additionally, during the period under review, the General Assembly repeatedly requested that the Secretary-General continue exerting all efforts to ensure that the information services of the Secretariat, including publications, the United Nations website, and the United Nations News Service, were maintained for editorial independence, impartiality, accuracy and full consistency with resolutions and

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<sup>23</sup> A/67/345, Annex I.

<sup>24</sup> Regulation 4.19 reads that “[i]ncome derived from investments of the Working Capital Fund shall be credited to miscellaneous income.”

<sup>25</sup> ST/SGB/2013/4.

<sup>26</sup> GA resolution 68/252, para. 13.

<sup>27</sup> GA resolutions 65/251; 66/237; 67/241; 68/254; 69/203; and 70/112.

<sup>28</sup> GA resolution 67/241. *See also* GA resolutions 69/203 and 70/112.

<sup>29</sup> GA resolution 67/241, para. 44.



decisions of the General Assembly, and contained comprehensive, balanced, objective and equitable information in all official languages concerning the issues before the Organization.<sup>30</sup>

19. Finally, the Secretary-General's bulletin on employment and accessibility for staff members with disabilities in the United Nations Secretariat (ST/SGB/2014/3) was also issued during this period. The bulletin set out measures taken to implement General Assembly resolutions<sup>31</sup> aimed at creating a non-discriminatory and inclusive working environment for staff members with disabilities.

## **II. Analytical summary of practice**

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

20. During the period under review, progress was made in the implementation of human resources management reforms, including in the areas of contractual arrangements, recruitment, accountability and mobility.<sup>32</sup> Additionally, during this period, the General Assembly repeatedly emphasized the fundamental importance of human resources management reform in the United Nations as a contribution to the strengthening of the international civil service.<sup>33</sup>
21. The Secretary-General summarized the progress made with regard to human resources reform initiatives as follows:

“[...] The Organization's greatest resource is its workforce. [...] The Organization has undertaken a variety of human resources management reforms to develop a United Nations that is more responsive and flexible, supports a culture of empowerment and performance; allows equal access to career opportunities, irrespective of programmes and sources of funding; and provides staff with the chance to learn and grow so that they can reach their

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<sup>30</sup> GA resolution 65/107B, para. 16. *See also* GA resolutions 66/81 A-B; 67/124 A-B; 68/86 A-B; 69/96 A-B; 69/324; and 70/93 A-B.

<sup>31</sup> *See* GA resolutions 61/106; 64/154; 65/186; and 66/229.

<sup>32</sup> *See* GA resolutions 64/259; 65/247; 66/234; 66/257; 67/253; 67/255; 68/252; 68/264; 68/265; 69/272; 69/324; and 70/255.

<sup>33</sup> *See* GA resolutions 65/247; 66/234; 67/255 and 68/252.

greatest potential. With these conditions in place, the Secretariat can best attract a global, adaptable and dynamic talent pool and ensure that the Organization can function in an integrated and interoperable fashion.”<sup>34</sup>

22. Additionally, the General Assembly repeatedly reaffirmed its commitment to strengthening accountability in the Secretariat, and stressed that accountability was a central pillar of effective and efficient management that requires attention and strong commitment at the highest level of the Secretariat.<sup>35</sup>

23. Moreover, multiple General Assembly resolutions during this time period continued to focus on mobility.<sup>36</sup> Specifically, during its sixty-sixth session, the General Assembly reaffirmed the importance of mobility as a means of developing an international civil service that was more versatile, multi-skilled, experienced, and capable of fulfilling complex mandates.<sup>37</sup> As such, the Secretary-General submitted his proposed (and subsequently refined) mobility and career development framework to the General Assembly during its sixty-seventh and sixty-eighth session, respectively.<sup>38</sup> In its resolution 67/255, the General Assembly defined mobility as “a change in position that involves one change or a combination of changes in role, function, department or duty station or a move from the Secretariat to, or to the Secretariat from, an agency, fund or programme of the United Nations system.”<sup>39</sup> At its sixty-eighth session, the General Assembly approved the refined mobility framework submitted by the Secretary-General, subject to the provisions of General Assembly resolution 68/265.<sup>40</sup> Moreover, at its seventieth session, the General Assembly approved a new mobility incentive to encourage mobility of staff to field duty stations.<sup>41</sup> Additionally, during the period

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<sup>34</sup>A/69/190, para. 3.

<sup>35</sup>GA resolutions 64/259; 66/257; 67/253; 68/264; 69/272; and 70/255.

<sup>36</sup>GA resolution 65/247; 66/234; 66/235; 67/255; 68/265; 69/324; and 70/244.

<sup>37</sup>GA resolution 66/235.

<sup>38</sup>A/67/324/Add.1. For the refined version of the original framework, see A/68/358. See also GA Resolution 67/255.

<sup>39</sup>GA resolution 67/255.

<sup>40</sup>GA resolution 68/265.

<sup>41</sup>GA resolution 70/244. See also, A/70/30. In its report A/70/30, the ICSC recommended to the General Assembly that a mobility incentive be introduced in lieu of the then-current mobility allowance “to encourage the mobility of staff to field duty stations, with annual payments for a maximum period of five years at the same duty station.” The ICSC stated that such an incentive would be structured in the following manner: (i) to apply to staff with five consecutive years of prior service in a common system organization and from their second assignment (that is, the first geographical move); (ii) to exclude “H” duty stations from the mobility incentive; and (iii) to discontinue payment for past moves. See A/70/30, para. 431. In its resolution 70/244, the General Assembly approved the new mobility incentive to encourage mobility of staff to field duty stations, as recommended by the ICSC in its report A/70/30, paragraphs 129 and 431.

under review, pursuant to the General Assembly resolution 68/265, the Secretary-General submitted annual reports on mobility during subsequent sessions of the General Assembly, which contained an update on the preparations for the implementation of the new mobility and career development framework.<sup>42</sup>

24. Also during the period under review, the General Assembly gave considerable attention to the principle of equitable geographical distribution in regards to the composition of the Secretariat. During this time, the General Assembly repeatedly requested that the Secretary-General ensure that due regard was given to the principle of equitable geographical distribution in the employment of staff, in accordance with Article 101, paragraph 3 of the Charter of the United Nations.<sup>43</sup> Further, the Secretary-General continued to submit his reports entitled “Composition of the Secretariat: staff demographics” throughout this period, which presented a demographic analysis of the composition of the Secretariat during a specified time frame.<sup>44</sup>

25. Throughout the period under review, the General Assembly also expressed serious concern that “the urgent goal of 50/50 gender balance in the United Nations system, especially at senior and policymaking levels, with full respect for the principle of equitable geographical distribution, in conformity with Article 101, paragraph 3, of the Charter of the United Nations, remains unmet[.]”<sup>45</sup> Particularly, in General Assembly resolutions 64/141, 65/191, 66/132, 67/148, 68/140, 69/151, and 70/133, the Assembly stated, with concern, that the representation of women in the United Nations system had remained almost static, with negligible improvement in some parts of the system, and in some cases has even decreased, as reflected in the reports of the Secretary-General on the improvement of the status of women in the United Nations system.<sup>46</sup> In these resolutions, the General Assembly strongly encouraged Member States to identify and regularly submit more women candidates for appointment to positions in the United Nations system, especially at more senior and policymaking levels, including in peacekeeping operations.<sup>47</sup>

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<sup>42</sup>A/69/190/Add.1, and A/70/254.

<sup>43</sup>GA resolutions 65/247; 66/234; 67/255; 69/151; and 70/133.

<sup>44</sup>A/65/350; A/66/511; A/67/329; A/68/356; A/69/292; and A/70/605.

<sup>45</sup>GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>46</sup>A/63/364; A/65/334; A/65/334; A/67/347; and A/69/346. *See also* GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>47</sup>GA resolutions 64/141, para.19; 65/191, para.21; 66/132, para.22; 67/148, para.23; 68/140, para.23; 69/151, para. 26; and 70/133, para. 27.

26. In its resolutions on criminal accountability of United Nations officials and experts on mission, the General Assembly repeatedly reaffirmed the need to ensure that every United Nations official and expert on mission work in a way that preserves the United Nation's image, credibility, impartiality and integrity.<sup>48</sup> The Assembly emphasized that crimes committed by such persons were unacceptable and would have a detrimental effect on the fulfilment of the United Nation's mandate, particular in respect to the relations between the United Nations and the host country's local population.<sup>49</sup>
27. Also during the period under review, the number of threats and violent attacks against United Nations personnel continued to rise.<sup>50</sup> For this reason, the General Assembly strongly urged all States to take stronger action to ensure that crimes against such personnel did not remain unpunished and were investigated fully.<sup>51</sup> The General Assembly also affirmed States' need to ensure that perpetrators of any such acts committed on their territory did not operate with impunity, in accordance with national laws and international law obligations.<sup>52</sup>
28. During the sixty-seventh session of the General Assembly, the ICSC submitted revised standards of conduct for the international civil service, which were contained in Annex IV of resolution 67/30. In its resolution 67/257, the General Assembly approved the revised standards of conduct with effect from 1 January 2013. The revised standards of conduct repeated that:
- “If the impartiality of the international civil service is to be maintained, international civil servants must remain independent of any authority outside their organization; their conduct must reflect that independence. [...]”<sup>53</sup>
29. Furthermore, details on reporting, retaining, disposing of honours, decorations, favours, gifts and remuneration from governmental and non-governmental sources

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<sup>48</sup> See GA resolution 69/114. See also GA resolutions 64/110; 65/20; 66/93; 67/88; 68/105; and 70/114.

<sup>49</sup> *Ibid.*

<sup>50</sup> A/67/492.

<sup>51</sup> GA resolution 69/133, para. 11. See also GA resolutions 65/132, para. 11; 66/117, para. 11; 67/85, para. 11; 68/101, para. 11; and 70/104, para. 11.

<sup>52</sup> *Ibid.*

<sup>53</sup> A/67/30, Annex IV. Also see previous version of the report at Annex II of A/56/30.

were addressed in administrative instruction ST/AI/2010/1, which was issued by the Under-Secretary-General for Management in January 2010.<sup>54</sup>

30. Additionally, in 2012, the Secretary-General submitted proposed amendments to the Financial Regulations and Rules of the United Nations.<sup>55</sup> In its subsequent resolution 67/246, the General Assembly adopted the revised Financial Regulations of the United Nations, as set forth in the report of the Secretary-General,<sup>56</sup> with the exception of regulation 4.19.<sup>57</sup> In 2013, the Secretary-General promulgated a revised edition of the Financial Rules and Regulations.<sup>58</sup>
31. Moreover, during the period under review, the General Assembly repeatedly requested that the Secretary-General continue to exert all efforts to ensure that the publications (and other information services) of the Secretariat, including the United Nations website and the United Nations News Service, contained, in all official languages, comprehensive, balanced, objective and equitable information concerning the issues before the Organization. The General Assembly further requested that the Secretary-General ensure that the publications and information services maintain editorial independence, impartiality, accuracy and full consistency with the General Assembly's resolutions and decisions.<sup>59</sup>
32. The period under review also saw increased attention to enhancing the understanding and implementation of the principles of work-life balance and flexible workforce across the Secretariat.<sup>60</sup> The General Assembly, in its resolution 67/255, encouraged the Secretary-General to continue making progress in this regard, including, *inter alia*, taking steps to foster a greater understanding among managers of the benefits of authorizing appropriate remote work, family friendly policies and more flexible working arrangements, as well as the more effective working practices that such

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<sup>54</sup> “Administrative issuance ST/AI/2010/1, which abolished ST/IC/2006/31, implemented the prohibition contained in staff regulation 1.2 and staff rule 1.2 against the receipt by staff of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources.” A/66/692, para. 74.

<sup>55</sup> A/67/345. The United Nations Financial Regulations and Rules govern the broad financial management of the United Nations.

<sup>56</sup> A/67/345, Annex I.

<sup>57</sup> Regulation 4.19 reads that “[i]ncome derived from investments of the Working Capital Fund shall be credited to miscellaneous income.”

<sup>58</sup> ST/SGB/2013/4.

<sup>59</sup> GA resolution 65/107B, para. 16. *See also* GA resolutions 66/81 A-B; 67/124 A-B; 68/86 A-B; 69/96 A-B; 69/324; and 70/93 A-B.

<sup>60</sup> *See* GA resolutions 65/247; 66/234; 67/255; and 70/244.

arrangements can facilitate, while providing due regard to the need to monitor the impact of such activity on staff performance and the importance of ensuring Member State access to the Secretariat remained unaffected.<sup>61</sup> Additionally, the General Assembly, in its resolution 70/244, invited the organizations of the United Nations common system to make efforts to ensure work-life balance and provide career development opportunities.<sup>62</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**

33. The Secretary-General's bulletin entitled "Organization of the Secretariat of the United Nations," issued in July 2015, (ST/SGB/2015/3), stated that the Secretary-General is the head of the Secretariat and the chief administrative officer of the United Nations.<sup>63</sup> Moreover, Staff Regulation 1.1 (c) codified an implicit duty that falls on the Secretary General to ensure that the rights and duties of staff members, as set out in the Charter and Staff Regulations and Rules, as well as the relevant resolutions and decisions of the General Assembly are respected.<sup>64</sup>
34. Furthermore, the Secretary-General's bulletin issued in April 2015, (ST/SGB/2015/1), entitled "Delegation of authority in the administration of the Staff Regulations and Staff Rules," provided that the Secretary-General, as the chief administrative officer of the United Nations, had the primary authority, as well as the primary accountability for the administration of the Staff Regulations and Rules.<sup>65</sup> Regarding delegation of

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<sup>61</sup> GA resolution 67/255, para. 31.

<sup>62</sup> GA resolution 70/244, para. 56.

<sup>63</sup> ST/SGB/2015/3. The Secretary-General's bulletin of 12 September 1997, entitled "Organization of the Secretariat of the United Nations" (ST/SGB/1997/5), and the related amendment of 27 September 2002, entitled "Amendment to Secretary-General's bulletin on the organization of the Secretariat of the United Nations" (ST/SGB/2002/11), were abolished by the Secretary-General's bulletin of 22 July 2015.

<sup>64</sup> ST/SGB/2014/1.

<sup>65</sup> ST/SGB/2015/1. The following administrative issuances or Annexes were superseded by ST/SGB/2015/1:

(a) Secretary-General's bulletin ST/SGB/151, entitled "Administration of the Staff Regulations and the Staff Rules" (Except paragraph 5 (c), which remains delegated to the Controller until superseded through an administrative issuance by the Under-Secretary-General for Management.)

(b) Administrative instruction ST/AI/388, entitled "Personnel Arrangements for the United Nations International Drug Control Programme";

authority, during the period under review, the General Assembly reiterated that the delegation of authority by the Secretary-General should facilitate the better management of the Organization, but stressed that the Secretary-General maintained the overall responsibility for the management of the Organization.<sup>66</sup> Specifically, the General Assembly, in several resolutions<sup>67</sup> during the period under review, reaffirmed the need for the Secretary-General to ensure that the delegation of authority to the Department of Peacekeeping Operations and the Department of Field Support of the Secretariat, as well as the delegation of authority to field missions, strictly complied with the appropriate decisions and resolutions, and the appropriate procedures and rules of the General Assembly.<sup>68</sup>

35. Also during the period under review, the General Assembly repeatedly reiterated that the Secretary-General must ensure that the paramount consideration in the employment of staff was the highest standards of efficiency, competence and integrity, with due regard to the principle of equitable geographical distribution, in accordance with Article 101, paragraph 3, of the Charter.<sup>69</sup> Specifically, the General Assembly requested the Secretary-General to take action on many issues, including: (i) the attainment of equitable geographical distribution in the Secretariat; (ii) gender equality; (iii) safety and security of staff members; (iv) staff health and well-being; (v) protection from sexual exploitation and abuse; (vi) transparency in the selection and appointment of senior managers, and (vii) accountability.

Geographical distribution:

36. During the period under review, the General Assembly continued to give considerable attention to the principle of equitable geographical distribution in regards to the composition of the Secretariat. The General Assembly repeatedly requested that the Secretary-General ensure that due regard was given to the principle of equitable

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(c) Annex I to administrative instruction ST/AI/234/Rev.1, as amended, entitled “Administration of the Staff Regulations and Staff Rules”

<sup>66</sup> GA resolutions 64/269; 65/289; and 69/307.

<sup>67</sup> See GA resolutions 65/289; 66/264; and 69/307.

<sup>68</sup> *Ibid.*

<sup>69</sup> See GA resolutions 65/247; 66/234; 67/255; 69/151; and 70/133.

geographical distribution in the employment of staff, in accordance with Article 101, paragraph 3 of the Charter of the United Nations.<sup>70</sup>

37. The General Assembly, in its resolution 65/247, reiterated its request that the Secretary-General ensure the continued strengthening of delegated authority for human resources management by the Office of Human Resources Management, specifically highlighting compliance with geographical and gender targets, and the need to ensure that the highest standards of efficiency, competency and integrity serve as the paramount consideration in staff recruitment.<sup>71</sup> Furthermore, in its resolution 65/247, the General Assembly decided that staff members should retain geographical status only when serving against a geographical post, except those recruited under the young professionals programme.<sup>72</sup> That provision, in resolution 65/247, represented a change in the criteria for geographical status. Prior to 2011, once geographic status had been given, it was retained throughout the period of uninterrupted service of the staff member, regardless of the nature of the position or the functions to which the staff member may subsequently be assigned.<sup>73</sup>

38. Subsequently, in December 2012, the General Assembly adopted resolution 66/234. In this resolution, the General Assembly requested that the Secretary-General address the issue of the large number of posts that were subject to the system of geographical ranges and not encumbered by staff members with geographical status.<sup>74</sup> Moreover, the General Assembly reiterated its request that the Secretary-General continued the ongoing efforts to ensure the attainment of equitable geographical distribution in the Secretariat, as well as to ensure as wide a geographical distribution of staff as possible, throughout all departments, offices and levels of the Secretariat, including the Director levels and higher.<sup>75</sup> In April 2013, the General Assembly adopted resolution 67/255, which reiterated the latter request.<sup>76</sup>

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<sup>70</sup> GA resolutions 65/247; 66/234; 67/255; 69/151; and 70/133.

<sup>71</sup> GA resolution 65/247, para. 27.

<sup>72</sup> *Ibid.*, para. 66.

<sup>73</sup> A/65/305/Add.2, para. 20. *See also* A/67/329.

<sup>74</sup> GA resolution 66/234, para 7.

<sup>75</sup> *Ibid.*, para. 5.

<sup>76</sup> GA resolution 67/255.



39. During its next session, through resolution 68/252, the General Assembly emphasized the important role of the young professionals programme in improving the geographical representation of underrepresented and unrepresented Member States, and requested the Secretary-General to continue his ongoing efforts in this regard.<sup>77</sup>
40. Throughout the period under review, the Secretary-General continued to submit his reports entitled “Composition of the Secretariat: staff demographics,” which presented a demographic analysis of the composition of the Secretariat during specific period.<sup>78</sup> Additionally, the Secretary-General submitted two reports that reviewed the system of desirable ranges during this same time frame.<sup>79</sup>

Gender equality:

41. During the period under review, the General Assembly expressed serious concern that “the urgent goal of 50/50 gender balance in the United Nations system, especially at senior and policymaking levels, with full respect for the principle of equitable geographical distribution, in conformity with Article 101, paragraph 3, of the Charter of the United Nations, remains unmet[.]”<sup>80</sup> Particularly, in resolutions 64/141, 65/191, 66/132, 67/148, 68/140, 69/151, and 70/133, the General Assembly stated, with concern, that the representation of women in the United Nations system had remained almost static, with negligible improvement in some parts of the system, and in some cases had even decreased, as reflected in the report of the Secretary-General on the improvement of the status of women in the United Nations system.<sup>81</sup>
42. In these resolutions, the General Assembly requested the Secretary-General to review and redouble his efforts to make progress towards achieving the goal of 50/50 gender balance throughout the United Nations system and at all levels in the Secretariat, with full respect for the principle of equitable geographical distribution, in conformity with Article 101, paragraph 3, of the United Nations Charter, particularly considering women from least developed and developing countries, as well as countries with

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<sup>77</sup> GA resolution 68/252, para. 19.

<sup>78</sup> A/65/350; A/66/511; A/67/329; A/68/356; A/69/292; and A/70/605.

<sup>79</sup> See A/65/305/Add.2 and A/69/190/Add.4. See also Supplement No. 11 of Repertory Practice for United Nations Organs for Article 101 for detailed discussion of the issue of “Geographical distribution.”

<sup>80</sup> GA resolutions 64/141, 65/191; 66/132; 67/148; 68/140; 69/151; and 70/255.

<sup>81</sup> A/63/364; A/65/334; A/67/347; and A/69/346. See also GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

economies in transition and unrepresented or largely underrepresented Member States, and to ensure departmental and managerial accountability concerning gender balance targets.<sup>82</sup>

43. On 2 July 2010, the General Assembly adopted resolution 64/289, by which the Assembly decided to establish the United Nations Entity for Gender Equality and the Empowerment of Women, to be known as UN Women:

“by consolidating and transferring to the Entity the existing mandates and functions of the Office of the Special Adviser on Gender Issues and Advancement of Women and the Division for the Advancement of Women of the Secretariat, as well as those of the United Nations Development Fund for Women and the International Research and Training Institute for the Advancement of Women, to function as a secretariat and also to carry out operational activities at the country level.”<sup>83</sup>

44. The Secretary-General also issued several reports on the improvement in the status of women in the United Nations system during the period under review. The reports included statistics, information on progress made and obstacles encountered in achieving gender balance, and recommendations for accelerating progress.<sup>84</sup> Specifically, in his 2010 report on “Improvement of the status of women in the United Nations System” (A/65/334), the Secretary-General stated that the creation of UN Women on 2 July 2010 was a historic step forward which represented an opportunity to accelerate significantly United Nations efforts to achieve the goals of gender equality and the empowerment of women. The Secretary-General further noted that one of UN Women’s functions would be to help the United Nations system be accountable for its own commitments on gender equality, including the regular monitoring of and reporting on system-wide progress.<sup>85</sup>

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<sup>82</sup> GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>83</sup> GA resolution 64/289, para. 49.

<sup>84</sup> A/65/334; A/67/347; and A/69/346.

<sup>85</sup> A/65/334. *See also* Supplement No. 11 of Repertory Practice for United Nations Organs for Article 101 for detailed discussion of the issue of “Gender equality.”

Safety and security of staff members:

45. During the period under review, the General Assembly repeatedly requested the Secretary-General to take the necessary measures to promote full respect for the human rights, privileges and immunities of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation.<sup>86</sup> The General Assembly also repeatedly requested the Secretary-General to submit to the General Assembly a comprehensive and updated annual report on the safety and security of humanitarian personnel and protection of United Nations personnel and on the implementation of the relevant resolutions.<sup>87</sup> During the period under review, pursuant to General Assembly requests, the Secretary-General also issued reports that presented an overview of the global security environment and the associated security threats and challenges facing United Nations personnel, as well as the response of the United Nations to such threats and challenges.<sup>88</sup> The details of these General Assembly resolutions and Secretary-General reports are discussed in another section of this Supplement, entitled “Privileges and Immunities of the Secretariat.”

Staff health and well-being:

46. During the period under review, United Nations staff members were increasingly deployed to field duty stations, including many areas with suboptimal medical and health-care infrastructure.<sup>89</sup> As it was indicated in Secretary-General report A/65/305, these deployments came with increased risk to health and safety, as evidenced by recent attacks on United Nations premises (in Baghdad, Algiers and Afghanistan), and exposure to natural disasters (such as in Haiti).<sup>90</sup>

47. In his report A/65/305, the Secretary-General indicated that a number of initiatives had been undertaken to promote and advance the inclusion of staff health and well-being as an independent management priority, including: (a) an in-depth system-wide review of medical services throughout the United Nations by the Joint Inspection Unit in 2010; (b) the implementation of measures to improve mass casualty incident management

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<sup>86</sup> GA resolutions 64/77; 65/132; 66/117; 67/85; 68/101; 69/133; and 70/104.

<sup>87</sup> *Ibid.*

<sup>88</sup> A/65/344; A/66/345; A/67/492; A/68/489; A/69/406; and A/70/383.

<sup>89</sup> A/65/305.

<sup>90</sup> *Ibid.*

and emergency medical responses in field duty stations, such as emergency medical management training with certification for United Nations field physicians; the implementation of a programme to guide field physicians in the development of mass casualty and emergency management plans; and the operationalization of the United Nations medical emergency response team.<sup>91</sup>

48. In his report A/67/324, the Secretary-General informed that additional measures were taken to improve care and support for staff, including the integration of the medical component of the Emergency Preparedness and Support Team into the Medical Services Division's organizational structure, the expansion of the medical electronic record system and the redesign of its website to better address occupational, environmental and preventative health issues.<sup>92</sup>

49. In 2011, the Secretary-General issued his bulletin ST/SGB/2011/4, entitled "Organization of the Office of Human Resources Management," which abolished Secretary-General Bulletin ST/SGB/2004/8.<sup>93</sup> The core functions of the Medical Service Division, as set out in ST/SGB/2011/4, include promotion of staff health, management of risks in the workplace, provision of medical advice to United Nations medical facilities system-wide, and advice on medico-administrative issues.<sup>94</sup>

50. The Secretary-General also discussed issues related to staff health and well-being in his report A/69/190. In this report, the Secretary-General indicated that, in 2013, the Medical Services Division of the Office of Human Resources Management developed a strategic plan,<sup>95</sup> and explained that, to achieve the plan, the Division should be transformed from an entity whose primary focus was on the processing of transactions, such as sick leave, medical evacuation and clearances, to an entity that would oversee the systems of occupational health that keep the Organization's workforce fit for

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<sup>91</sup> *Ibid.*, para. 142.

<sup>92</sup> *See* A/67/324, paras. 114-7.

<sup>93</sup> *See* ST/SGB/2011/4.

<sup>94</sup> *Ibid.*

<sup>95</sup> The strategic plan which was developed by the Medical Services Division had three fundamental goals: "to achieve a measurable reduction in preventable staff harm; to achieve a measurable reduction in expenditure on health-related issues; and to achieve a measurable improvement in staff satisfaction." *See* A/69/190, para. 87.

duty.<sup>96</sup> The report also indicated that the Medical Services Division was increasing its monitoring of staff on long-term sick leave (i.e. longer than 20 consecutive days).<sup>97</sup>

51. In 2014, the Secretary-General's bulletin on employment and accessibility for staff members with disabilities in the United Nations Secretariat was issued (ST/SGB/2014/3). The bulletin set out measures taken to implement General Assembly resolutions<sup>98</sup> aimed at creating a non-discriminatory and inclusive working environment for staff members with disabilities. Section 1 of the Bulletin stated:

“The Organization shall take appropriate measures to eliminate discrimination on the basis of disability in the workplace through, *inter alia*, the adoption of standards and guidelines for the United Nations Secretariat, in order to ensure that staff members with disabilities have access to physical facilities, conferences and services, documentation and information, and professional development. Such measures must be taken within existing resources or with any additional resources approved for this purpose by the General Assembly.”<sup>99</sup>

#### Protection from sexual exploitation and abuse:

52. During the period under review, the Secretary-General presented several reports entitled “Special measures for protection from sexual exploitation and sexual abuse,”<sup>100</sup> submitted in compliance with General Assembly resolution 57/306, in which the Assembly requested the Secretary-General to maintain data on investigations into sexual exploitation and related offences by humanitarian and peacekeeping personnel and all relevant actions taken thereon.<sup>101</sup> The reports contained data on allegations of sexual exploitation and abuse, as well as information on

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<sup>96</sup> A/69/190, para. 87.

<sup>97</sup> In A/69/190, the Secretary-General reported the following: “In 2012, 10 per cent of the staff who took sick leave recorded by the Division had a mental health diagnosis. The days lost to work from these diagnoses accounted for 21 per cent of the total number of days taken as certified sick leave. In 2012, almost 4,560 work days were lost to sick leave related to mental health diagnoses, the equivalent of 21 positions. This does not take into account low productivity and workplace disruptions when staff members with mental health diagnoses are at work while unwell. [...] In addition, approximately 40 per cent of the disability pensions awarded by the United Nations Joint Staff Pension Fund are based on a mental health diagnosis, while the worldwide percentage is approximately 25 per cent.”

<sup>98</sup> See GA resolutions 61/106; 64/154; 65/186; and 66/229.

<sup>99</sup> ST/SGB/2014/3.

<sup>100</sup> A/66/699; A/67/766; A/68/756; A/69/779; and A/70/729.

<sup>101</sup> GA resolution 57/306, para. 10.

measures being taken to strengthen the Organization's response to sexual exploitation and abuse.

53. In his report A/66/699, the Secretary-General indicated that, in January 2011, the Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation and Abuse was established.<sup>102</sup> The IASC Task Force was established with a two-year mandate that was focused on supporting field activities in the several areas: (1) the strengthening of leadership by supporting heads of agencies in implementing obligations concerning protection from sexual exploitation and abuse; (2) supporting field offices in implementing joint community-based complaint mechanisms, including assistance for victims; and (3) supporting members of the Task Force in the institutionalizing of protection from sexual abuse and exploitation in their organizations.<sup>103</sup>

54. In resolution 66/264, the General Assembly encouraged the IASC Task Force on Protection from Sexual Exploitation and Abuse to, “strengthen its leadership role in the implementation of the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel[.]”<sup>104</sup>

55. During the sixty-seventh session of the General Assembly, in his report A/67/766, the Secretary-General stated that a team comprised of experts would be conducting assessment interventions in the field missions that have consistently experienced the largest number of reported allegations of sexual abuse and exploitation, specifically the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Stabilization Mission in Haiti (MINUSTAH), the United Nations Mission in Liberia (UNMIL), and the United Nations Mission in South Sudan (UNMISS).<sup>105</sup>

56. During the sixty-eighth session of the General Assembly, in his report A/68/756, the Secretary-General reported that the aforementioned team of experts had visited those four field missions between June and August 2013, and that, through various sources,

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<sup>102</sup> A/66/699, para. 23.

<sup>103</sup> *Ibid.*

<sup>104</sup> GA resolution 66/264, para. 47.

<sup>105</sup> A/67/766.

the experts identified several factors that set the root contexts for the occurrence and risk of sexual abuse and exploitation.<sup>106</sup> Additionally, an interdepartmental and inter-agency working group reviewed the recommendations of the experts.<sup>107</sup>

57. In his report A/69/779, the Secretary-General stated that:

“[t]he working group met several times in 2014. [...] The working group developed recommendations aimed at further strengthening the response to sexual exploitation and abuse by the United Nations in the areas of prevention, enforcement and remedial action. The recommendations were wide-ranging, with a view towards reinvigorating the Secretary-General’s zero-tolerance policy, bringing increased visibility to this key issue and making a practical impact.[...] The report of the working group was considered at a high-level meeting of United Nations senior leaders that was chaired by the Secretary-General and held in January 2015.”<sup>108</sup>

58. The proposals of the Secretary-General in connection with that process were presented in his report A/69/779.

59. In its resolution 69/307, the General Assembly welcomed the determination of the Secretary-General to strengthen measures for protection from sexual exploitation and sexual abuse in the areas of prevention, enforcement and remedial action.<sup>109</sup>

60. In his report A/70/729, the Secretary-General stated that all peacekeeping missions had established standing task forces on sexual exploitation and abuse, and had put in place sexual exploitation and abuse focal points to provide guidance and monitoring in the application of the zero-tolerance policy.<sup>110</sup> The Secretary-General further noted that, a Secretariat-wide communications and public information strategy was developed in 2015 to support efforts to eliminate sexual exploitation and abuse.<sup>111</sup> The strategy targeted key audiences, including host communities, Member States, troop-contributing and police-contributing countries and United Nations personnel, and

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<sup>106</sup> A/68/756.

<sup>107</sup> See also A/69/779.

<sup>108</sup> *Ibid.*

<sup>109</sup> GA resolution 69/307, para. 44.

<sup>110</sup> A/70/729.

<sup>111</sup> *Ibid.*

recommended tools and tactics for its implementation. The Secretary-General also noted that key elements of the 2006 standard operating procedures for public information activities on sexual exploitation and abuse were updated and included in the strategy.<sup>112</sup> Moreover, the Secretary-General stated that the Departments of Peacekeeping Operations and Field Support were finalizing an e-learning programme on sexual exploitation and abuse that would target all categories of personnel.<sup>113</sup>

Flexible work arrangements:

61. In its resolution 65/247, the General Assembly requested that the Secretary-General report to the General Assembly at its sixty-seventh session on efforts to enhance the understanding and implementation of the principles of work-life balance and flexible workforce across the Secretariat.<sup>114</sup>
  
62. In his report A/67/324, the Secretary-General reported on the progress made since the adoption of General Assembly resolution 65/247. The Secretary-General reported that a comprehensive three-year strategy for the strengthening of flexible working arrangements had been developed, with a three-pronged approach: advocacy, support and tracking of usage.<sup>115</sup> The human resources management scorecard was utilized to establish a baseline of flexible working arrangements usage during 2011. In addition, a pilot of expanded flexible working options was undertaken with the Department for General Assembly and Conference Management and the Department of Public Information, as well as the Office of Internal Oversight Services, in order to inform further development of flexible working practices in the Organization.<sup>116</sup>
  
63. In connection with the implementation of the principles of work-life balance and a flexible workforce across the Secretariat, the General Assembly, in its resolution 67/255, encouraged the Secretary-General to continue taking positive steps in this regard, including, inter alia:  

“through fostering a greater understanding among managers of the benefits of authorizing, where appropriate, remote work, family friendly policies and

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<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> GA resolution 65/247, para. 47.

<sup>115</sup> A/67/324.

<sup>116</sup> *Ibid.*



more flexible working arrangements and the more effective working practices that such arrangements can facilitate, with due regard for the need to monitor the impact on staff performance and the importance of ensuring that access by Member States to the Secretariat remains unaffected[.]”<sup>117</sup>

64. Furthermore, during its seventieth session, the General Assembly, in its resolution 70/244, invited United Nations common system organizations to make efforts to provide career development opportunities and ensure work-life balance, “which are important elements in motivating and retaining staff[.]”<sup>118</sup>

Conflict of interest:

65. During the period under review, the Secretary-General, in his report A/65/213, proposed a possible amendment to Staff Regulation 1.2(m) to address issues of potential conflict of interest. The proposed amendment reflected an all-encompassing definition of conflict of interest that was not limited to financial interest.

66. Additionally, on 24 December 2010, the General Assembly adopted resolution 65/247, in which the Assembly requested that the Secretary-General provide a comprehensive report on conflict of interest, including an up-to-date analysis of what constitutes personal conflict of interest, as well as legal, management and mitigation aspects.<sup>119</sup>

67. In response to the request of the General Assembly, the Secretary-General issued report A/66/98, which presented an overview of the main types of conflict of interest faced by staff of the Organization and the regulatory framework applicable to United Nations staff members, including current definitions, legal implications, and the mechanism established to manage and mitigate existing or potential conflicts of interest.<sup>120</sup> One year later, on 24 December 2011, the General Assembly adopted resolution 66/234, amending Staff Regulation 1.2(m).<sup>121</sup>

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<sup>117</sup> GA resolution 67/255, para. 31.

<sup>118</sup> GA resolution 70/244, para. 56.

<sup>119</sup> GA resolution 65/247, para. 79.

<sup>120</sup> A/66/98, para. 2.

<sup>121</sup> On 24 December 2011, the General Assembly adopted resolution 66/234 in which the Assembly decided to amend Staff Regulation 1.2(m) to read as:

“A conflict of interest occurs when, by act or omission, a staff member’s personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity,

Selection and appointment of senior managers in the UN Secretariat:

68. During the sixty-sixth session of the General Assembly, the Secretary-General transmitted to the General Assembly a report by the Joint Inspection Unit entitled “Transparency in the selection and appointment of senior managers in the United Nations Secretariat” (JIU/REP/2011/2).<sup>122</sup> The report was prepared in response to General Assembly resolution 64/259, which requested that the Joint Inspection Unit submit a report on possible measures to further enhance transparency in the selection and appointment process of senior managers.<sup>123</sup> The objective of the study was stated as follows: “to review the effectiveness, coherence, timeliness and transparency of the current selection and appointment processes of senior managers in the United Nations Secretariat and provide recommendations leading to enhanced transparency.”<sup>124</sup> In the report, the Joint Inspection Unit noted that Member States were familiar with the process outlined in the Secretary-General’s report on accountability (A/64/640) and, for the most part, no major concerns were expressed with the description of the process itself. However, concern was expressed regarding the implementation of the process, which was seen as opaque and raised many questions regarding how the process actually works.<sup>125</sup> The Joint Inspection Unit further noted that both Member States and Inspectors recognized the explicit discretionary power of the Secretary-General in making senior manager appointments, but the Inspector believed that discretionary authority did not mean that the Secretary-General had “carte blanche to avoid the process that he has established; discretionary authority should not be used as an excuse to avoid transparency in that process.”<sup>126</sup> Through the report, the Joint Inspection Unit explained that the challenge was to strike a balance between providing enough information to Member States so that they were confident that the process was open, fair and transparent, without compromising the privacy of the candidates and jeopardizing the confidentiality of the deliberative process of either the interview

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independence and impartiality required by the staff member’s status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization.”

<sup>122</sup> A/66/380.

<sup>123</sup> GA resolution 64/259, para. 19.

<sup>124</sup> A/66/380.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

panels or the Secretary-General.<sup>127</sup> As such, the Joint Inspection Unit established a set of guidelines with procedural approaches for enhancing transparency.<sup>128</sup>

69. In a note by the Secretary-General entitled “Transparency in the selection and appointment of senior managers in the United Nations Secretariat,” the Secretary-General stated that the majority of the guidelines identified by the Joint Inspection Unit were in line with the established practice that was followed in the process of appointing senior managers, and that efforts would continue to be made to build upon this recommendation with a view towards strengthening and enhancing the process.<sup>129</sup> The Secretary-General further noted that:

“The selection and appointment of senior managers is a complex process. It should be noted that while there is consistency of purpose, each Secretary-General may have a different approach to implementing the process. To this end, the Secretary-General requires a measure of flexibility and discretion to be able to select a cohesive senior management team that works in synergy. The present report [A/66/380/Add.1] summarizes the objectives of the Secretary-General in selecting his senior leadership team and outlines his approach to the selection and appointment of senior managers in the United Nations Secretariat. The core principle is merit. In the search for the most suitable person for a particular position, the Secretary-General takes great care to ensure the fairness and transparency of the process while protecting the privacy of the candidates and panel members.”<sup>130</sup>

70. On 9 April 2012, the General Assembly adopted resolution 66/257, which welcomed the aforementioned report of the Joint Inspection Unit.<sup>131</sup>

#### Accountability:

71. During the period under review, the General Assembly repeatedly reaffirmed its commitment to strengthening accountability in the Secretariat, and stressed

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<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.* See also JIU/REP/2011/2, para. 87.

<sup>129</sup> A/66/380/Add.1.

<sup>130</sup> *Ibid.*, para. 2.

<sup>131</sup> GA resolution 66/257, para. 22.

accountability as a central pillar of effective and efficient management that required attention and strong commitment at the highest level of the Secretariat.<sup>132</sup>

72. Near the start of the period under review, on 29 March 2010, in General Assembly resolution 64/259, the Assembly defined such accountability<sup>133</sup> and requested that the Secretary-General report on the implementation of the Assembly's resolution.<sup>134</sup>

73. In his report A/66/692, the Secretary-General transmitted to the General Assembly his report on the implementation of Assembly resolution 64/259. The report highlighted the progress made to strengthen accountability within the Secretariat, in particular the efforts in the following areas: (i) promoting a culture of accountability; (ii) delegation of authority; (iii) implementation of recommendations of oversight bodies; (iv) personal and institutional accountability; (v) reform of the performance appraisal system; (vi) selection and appointment of senior managers; (vii) enterprise risk management and internal control framework; and (viii) concrete measures to prevent potential conflicts of interest in the then-current process governing procurement.<sup>135</sup> The report noted that strengthening accountability was a work in progress and that more work remained to be done.<sup>136</sup>

74. After reviewing the Secretary-General's report A/66/692, the ACABQ stated that it agreed with the Secretary-General on his assertion that the strengthening of accountability remained a work in progress and that much more work remained.<sup>137</sup> The ACABQ further stated that it nevertheless considered that some elements of the

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<sup>132</sup> GA resolutions 64/259; 66/257; 67/253; 68/264; 69/272; and 70/255.

<sup>133</sup> The General Assembly, in its resolution 64/259, adopted on 29 March 2010, defined accountability as follows:

“Accountability is the obligation of the Secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception.

Accountability includes achieving objectives and high-quality results in a timely and cost-effective manner, in fully implementing and delivering on all mandates to the Secretariat approved by the United Nations intergovernmental bodies and other subsidiary organs established by them in compliance with all resolutions, regulations, rules and ethical standards; truthful, objective, accurate and timely reporting on performance results; responsible stewardship of funds and resources; all aspects of performance, including a clearly defined system of rewards and sanctions; and with due recognition to the important role of the oversight bodies and in full compliance with accepted recommendations.”

<sup>134</sup> GA resolution 64/259, para. 33.

<sup>135</sup> A/66/692, para. 2.

<sup>136</sup> *Ibid.*

<sup>137</sup> A/66/738.

framework for accountability were established, on which the Organization could build an effective accountability system and improve upon the management of its operations.<sup>138</sup> As such, and considering that the implementation of an effective accountability system was a several-year process, the Committee recommended that the General Assembly request the Secretary-General to submit an annual report on progress made towards the implementation of the accountability framework for its consideration.<sup>139</sup>

75. Additionally, the General Assembly, in its resolution 66/257 adopted on 9 April 2012, acknowledged that the development of an accountability system in the United Nations Secretariat was a complex process, stressed the importance of promoting a culture of accountability, results based management, enterprise risk management and internal controls at all Secretariat levels through the continued commitment and leadership of managers at the senior-level,<sup>140</sup> and reiterated its request that the Secretary-General take appropriate measures to that end, including, *inter alia*, the training of relevant staff.<sup>141</sup>

76. In response to General Assembly resolution 66/257, the Secretary-General submitted a second progress report on the implementation of the United Nations Secretariat's accountability system.<sup>142</sup> This report detailed several initiatives that had been undertaken since the last report, with a particular emphasis on the implementation of enterprise risk management and a conceptual framework for results-based management.

77. In its subsequent resolution 67/253, which was adopted on 12 April 2013, the General Assembly noted, with concern, that “the current legacy systems of the United Nations related to monitoring and evaluating progress and performance, and the weaknesses in the financial reporting arrangements, do not contribute to the effective monitoring and evaluation of progress and performance[.]”<sup>143</sup> Also in this resolution, the General Assembly recognized that the results-based management framework still required

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<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> GA resolution 66/257, para. 3.

<sup>141</sup> *Ibid.*

<sup>142</sup> A/67/714.

<sup>143</sup> GA resolution 67/253, para. 4.

further development<sup>144</sup> and requested that the Secretary-General further refine the framework to take into account the points highlighted in its resolution.<sup>145</sup> The General Assembly also welcomed the progress made towards the implementation of enterprise risk management so far, and welcomed the plans of the Secretary-General to implement a Secretariat-wide risk assessment.<sup>146</sup>

78. In response to General Assembly resolution 67/253, the Secretary-General issued, the third progress report A/68/697 on the implementation of the accountability system in the United Nations Secretariat. In this report, the Secretary-General provided information on the following aspects of the accountability system: (i) International Public Sector Accounting Standards (IPSAS)<sup>147</sup> and Umoja;<sup>148</sup> (ii) result-based management; (iii) enterprise risk management; and (iv) other initiatives to strengthen accountability.

79. Regarding IPSAS and Umoja,<sup>149</sup> the Secretary-General stated that these two initiatives would substantially change the way the Secretariat worked by increasing the availability of timely and complete information, which would enable faster decision-making and provide for better service delivery through the improved planning and implementation of activities, as well as better results measurement.<sup>150</sup>

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<sup>144</sup> *Ibid.*, para. 5.

<sup>145</sup> *Ibid.*, para. 6.

<sup>146</sup> *Ibid.*, para. 7.

<sup>147</sup> By its resolution 60/283, the General Assembly approved the adoption of the accruals-based International Public Sector Accounting Standards (IPSAS). In A/68/697, the Secretary-General identified additional benefits of the adoption of IPSAS by the United Nations to strengthen accountability through “better performance analysis and management and improved governance and oversight.” *See also* A/60/846/Add.3.

<sup>148</sup> The qualitative and quantitative benefits of Umoja outlined by the Secretary-General in previous reports submitted to the General Assembly (*see* A/64/380, sect. II; A/65/389, sect. II; A/66/381, sect. IV.D; A/67/360, sect. III.G; and A/68/375, sect. III.F). In A/68/697, the Secretary-General further explained how Umoja would enhance accountability and transparency in the Organization. *Also note* that Umoja originates in the decision of the General Assembly in its resolution 60/283 to replace the Integrated Management Information System with a “next-generation enterprise resource planning system or other comparable system.” The Umoja governance structure was initially presented in the report of the Secretary-General on enterprise systems for the United Nations Secretariat worldwide (A/62/510/Rev.1). In its resolution 63/262, the General Assembly determined that the implementation should aim at consolidating the management of all financial, human and physical resources under a single integrated information system for the entire Organization, including peacekeeping and field missions.

<sup>149</sup> A/68/697.

<sup>150</sup> *Ibid.*, para. 15.

80. Regarding result-based management, the Secretary-General indicated that a working group on results based management was convened, whose members broadly represented the functional units responsible for the different work areas of the Organization.<sup>151</sup>
81. Regarding enterprise risk management and the internal control framework, the Secretary-General explained that the enterprise risk management function, which was located in the Office of the Under-Secretary-General for Management, had continued providing assistance and advice to different areas of the Organization which were working towards the full implementation of enterprise risk management as part of their operations, such as the Capacity Development Office of the Department of Economic and Social Affairs of the Secretariat and the United Nations Environment Programme.<sup>152</sup>
82. Afterwards, on 9 April 2014, the General Assembly adopted resolution 68/264, in which the Assembly took note of the third progress report of the Secretary-General on the accountability system in the United Nations Secretariat; and emphasized the importance of “promoting a culture of accountability, result-based management, enterprise risk management and internal control at all levels in the Secretariat through the continued leadership and commitment of senior managers.”<sup>153</sup> In this resolution, the General Assembly encouraged the Secretary-General to continue strengthening and improving the accountability framework by taking advantage of benefits related to the IPSAS and Umoja deployments.<sup>154</sup> The General Assembly also requested that the Secretary-General report thereon in the next accountability progress report.<sup>155</sup>
83. In his fourth progress report A/69/676, the Secretary-General provided an update on the implementation of enterprise risk management<sup>156</sup> and result based management.<sup>157</sup> He also described the progress made since the previous report on accountability (A/68/697) in a number of areas, including: personal accountability,<sup>158</sup> accountability

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<sup>151</sup> *Ibid.*, para. 21.

<sup>152</sup> *Ibid.*, para. 39.

<sup>153</sup> GA resolution 68/264, para. 3.

<sup>154</sup> *Ibid.*, para. 6.

<sup>155</sup> *Ibid.*, para. 6.

<sup>156</sup> A/69/676, Section II.

<sup>157</sup> *Ibid.*, Section III.

<sup>158</sup> *Ibid.*, Section IV.

in field missions,<sup>159</sup> the link between Umoja, IPSAS and accountability,<sup>160</sup> procurement<sup>161</sup> and ethics.<sup>162</sup>

84. On 2 April 2015, the General Assembly adopted resolution 69/272, which took note of the fourth progress report of the Secretary-General and: (i) noted, with appreciation, the progress made towards strengthening the enterprise risk management system;<sup>163</sup> (ii) reaffirmed that result-based management and performance reporting were essential pillars of a comprehensive accountability framework;<sup>164</sup> (iii) emphasized the importance of establishing and fully implementing real, effective and efficient mechanisms that foster institutional and personal accountability at all levels;<sup>165</sup> (iv) encouraged the Secretary-General to continue to strengthen and improve the accountability framework by taking advantage of the benefits related to the deployment of IPSAS and the Umoja enterprise resource planning system;<sup>166</sup> (v) noted the continuing efforts and recent initiatives undertaken by the Secretariat to strengthen ethics in the Organization;<sup>167</sup> (vi) requested the Secretary-General to ensure that the procurement training programme fully addressed the provisions of the United Nations Procurement Manual regarding the respective roles of the Headquarters Committee on Contracts and the Local Committees on Contracts in the procurement process and that the general principles of United Nations procurement are taken into account in developing an accountability system; and (vii) encouraged the Secretary-General to continue efforts to strengthen accountability in all sectors of field missions.<sup>168</sup>

85. The Secretary-General's fifth progress report, A/70/668, was organized around three concepts embedded in the accountability system of the Secretariat. The first concept was performance and results. Under this category, the report discussed the progress made by the Organization in results-based management and enterprise risk management, among others. The second concept was stewardship of resources. Under this category, the possible content of an anti-fraud policy was described, and an

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<sup>159</sup> *Ibid.*, Section V.

<sup>160</sup> *Ibid.*, Section V.

<sup>161</sup> *Ibid.*, Section VIII.

<sup>162</sup> *Ibid.*, Section VII.

<sup>163</sup> GA resolution 69/272, para. 7.

<sup>164</sup> *Ibid.*, para. 10.

<sup>165</sup> *Ibid.*, para. 16.

<sup>166</sup> *Ibid.*, para. 22.

<sup>167</sup> *Ibid.*, para. 24.

<sup>168</sup> *Ibid.*



aggregate analysis of high risk recommendations issued by the oversight bodies was provided. The third concept was compliance. Under this concept, the report discussed the activities developed by the Ethics Office, and accountability in the peacekeeping area and procurement.<sup>169</sup>

86. The General Assembly, during its seventieth session, adopted resolution 70/255, which took note of the fifth progress report of the Secretary-General and: (i) recognized the importance of results-based management and the need to strengthen the capacity of the Secretariat for programme monitoring and reporting, and requested the Secretary-General to continue his efforts to accelerate the implementation of the results-based management framework throughout the Secretariat in a phased manner;<sup>170</sup> (ii) welcomed the progress made in establishing risk management framework tools, noted the phased implementation of the enterprise risk management system was ongoing in the peacekeeping missions, and requested the Secretary-General to make full use of the lessons learned throughout the field missions;<sup>171</sup> (iii) reaffirmed that the zero-tolerance approach to fraudulent acts and corruption, to be included in the anti-fraud framework, was indispensable for the strengthening of accountability at all levels, and stressed that a single agreed definition, across the United Nations system, of what constitutes fraud and suspected or presumptive fraud, was essential in order to develop effective counter-fraud policies to ensure compatibility and comparability of related data across entities and to improve overall transparency;<sup>172</sup> (iv) encouraged the Secretary-General to continue efforts to strengthen accountability in all sectors of field missions and to ensure the full implementation of the zero-tolerance policy of the Organization regarding any kind of sexual exploitation and abuse;<sup>173</sup> (v) requested the Secretary-General to develop a clear, transparent and precise set of guidelines and parameters, aimed at defining areas of responsibility and non-compliance in respect of those areas of responsibility;<sup>174</sup> and (vi) emphasized that the evaluation function, in particular self-evaluation, was an essential managerial tool, and that senior managers had a responsibility to use evaluation to improve performance.<sup>175</sup>

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<sup>169</sup> A/70/668.

<sup>170</sup> GA resolution 70/255, paras. 10-11.

<sup>171</sup> *Ibid.*, paras. 13-14.

<sup>172</sup> *Ibid.*, paras. 4-5.

<sup>173</sup> *Ibid.*, para 26.

<sup>174</sup> *Ibid.*, para 19.

<sup>175</sup> *Ibid.*, para 16.

## **2. Obligations of staff members regarding the performance of duties**

### **a. Overall professional responsibility of staff**

87. To highlight the importance of professional responsibility, the revised standards of conduct of the international civil service (approved by General Assembly resolution 67/257) state:

“The United Nations and the specialized agencies embody the highest aspirations of the peoples of the world. Their aim is to save succeeding generations from the scourge of war and to enable every man, woman and child to live in dignity and freedom. [...] The international civil service bears responsibility for translating these ideals into reality. It relies on the great traditions of public administration that have grown up in member States: competence, integrity, impartiality, independence and discretion. But over and above this, international civil servants have a special calling: to serve the ideals of peace, respect for fundamental rights, economic and social progress, and international cooperation. It is therefore incumbent on international civil servants to adhere to the highest standards of conduct; for, ultimately, it is the international civil service that will enable the United Nations system to bring about a just and peaceful world.”<sup>176</sup>

88. During the period under review, a number of changes were made to the rules and regulations which govern the overall professional responsibility of staff. Amendments to the staff regulations and rules in connection with professional responsibility of Staff included changes in Staff Regulation 1.2 (m) and an addition to Staff Rule 1.2. During the sixty-sixth session of the General Assembly, Staff Regulation 1.2 (m) was amended to expand the scope of the definition of conflict of interest to provide a definition beyond financial interest.<sup>177</sup> Further, during the sixty-eighth session of the General Assembly, a new subparagraph (subparagraph (e)) was added to Staff Rule 1.2, Basic rights and obligations of staff, to reflect the provisions of the Secretary-

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<sup>176</sup> Annex IV of A/67/30.

<sup>177</sup> See ST/SGB/2014/1.

General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13).

89. Additionally, in 2010, the Under-Secretary-General for Management promulgated an administrative instruction (ST/AI/2010/1) on reporting, retaining and disposing of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources.
90. Subsequently, in 2013, the Secretary-General promulgated a revised edition of the Financial Rules and Regulations.<sup>178</sup> Rule 101.2 of the revised edition required all United Nations staff to comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those regulations and rules. Moreover, under this rule, any staff member who contravened these regulation and rules could be held personally accountable and financially liable for his or her actions.
91. Generally speaking, during the period under review, increased emphasis was placed on strengthening accountability. To that end, the General Assembly repeatedly reaffirmed its commitment to strengthening accountability in the Secretariat, and stressed accountability as a central pillar of effective and efficient management, requiring attention and strong commitment at the highest level of the Secretariat.<sup>179</sup> The General Assembly, in its resolution 64/259, adopted on 29 March 2010, defined accountability as follows:

“Accountability is the obligation of the Secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception.

Accountability includes achieving objectives and high-quality results in a timely and cost-effective manner, in fully implementing and delivering on all mandates to the Secretariat approved by the United Nations intergovernmental bodies and other subsidiary organs established by them in compliance with all resolutions, regulations, rules and ethical standards; truthful, objective, accurate and timely reporting on performance results; responsible stewardship

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<sup>178</sup> ST/SGB/2013/4.

<sup>179</sup> GA resolutions 64/259; 66/257; 67/253; 68/264; and 69/272.

of funds and resources; all aspects of performance, including a clearly defined system of rewards and sanctions; and with due recognition to the important role of the oversight bodies and in full compliance with accepted recommendations.”<sup>180</sup>

92. In related report A/66/734, the ACABQ expressed the belief that such adoption of a definition of accountability provided the Organization with a clear direction for the further development of the accountability framework, as well as the strengthening of accountability mechanisms and establishment of enforcement instruments.<sup>181</sup>
93. Regarding criminal accountability, the General Assembly reaffirmed the need to ensure that all United Nations officials and experts on mission “function in a manner that preserves the image, credibility, impartiality and integrity of the United Nations.”<sup>182</sup> The General Assembly expressed its deep concern that, if reported criminal conduct was not investigated and prosecuted (as appropriate), it would create the negative impression that United Nations officials and experts on mission operate with impunity.<sup>183</sup>
94. Regarding gender equality, the General Assembly welcomed the establishment and operationalization of UN-Women, noting the importance of its work towards more effective and coherent mainstreaming (across the United Nations), and its role in leading, coordinating and promoting the accountability of the United Nations system in its work on gender equality and the empowerment of women, as established by General Assembly resolution 64/289.<sup>184</sup>
95. During the period under review, the General Assembly also continued to emphasize the importance of the principle of judicial independence in the system of administration of justice.<sup>185</sup> In 2012, the General Assembly adopted resolution 67/241, in which the Assembly approved the mechanism for addressing possible misconduct of judges, which was proposed by the Secretary-General in section B of annex VII of his

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<sup>180</sup>GA resolution 64/259.

<sup>181</sup>A/66/738, para. 10.

<sup>182</sup>GA resolution 65/20. *See also* GA resolutions 69/114 and 70/114.

<sup>183</sup>GA resolution 65/20. *See also* GA resolution 68/105.

<sup>184</sup>GA resolution 67/226. *See also* GA resolutions 65/259, 67/148; 68/140; 69/151; and 70/133.

<sup>185</sup>GA resolutions 65/251; 66/237; 67/241; 68/254; 69/203; and 70/112.

report on administration of justice at the United Nations (A/67/265).<sup>186</sup> In subsequent resolution 69/203, adopted on 18 December 2014, the General Assembly requested that the Secretary-General submit a single code of conduct for all legal representatives, without prejudice to other lines of disciplinary authority, to the Assembly.<sup>187</sup> In his report A/70/187, the Secretary-General reported that the preparation of a single code of conduct for all representatives was under way, and was expected to be ready for presentation at the seventy-first session of the General Assembly.<sup>188</sup>

96. Also during the period under review, the General Assembly noted, with appreciation, the contributions of the Ethics Office to “promoting the highest standards of ethics and integrity among staff members of the Organization.”<sup>189</sup>

97. Reaffirming the independence and the separate and distinct roles of the internal and external oversight mechanisms, the General Assembly recalled that the Office of Internal Oversight Services of the Secretariat should exercise operational independence related to the performance of its internal oversight functions, under the authority of the Secretary-General and in accordance with the relevant resolutions.<sup>190</sup>

98. Additionally, during the sixty-eighth session of the General Assembly, regarding the human rights treaty body system, the General Assembly reaffirmed the importance of the independence of the human rights treaty bodies and independence and impartiality

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<sup>186</sup>The mechanism for addressing possible misconduct of judges proposed by the Secretary-General in section B of Annex VII to A/67/265 is described as follows:

“In his reports contained in documents A/63/314 and A/66/275 and Corr.1, the Secretary-General proposed that allegations regarding the misconduct or incapacity of a judge of either the Dispute Tribunal or the Appeals Tribunal should be reported to the President of the relevant Tribunal. Upon receipt of such a complaint, after preliminary review, the President would establish a panel of experts to investigate the allegations and report its conclusions and recommendations to the Tribunal. All judges of the Tribunal, with the exception of the judge under investigation, would review the report of the panel. Should there be a unanimous opinion that the complaint of misconduct or incapacity was well-founded and where the matter was of sufficient severity to suggest that the removal of the judge would be warranted, they would so advise the President of the Tribunal, who would report the matter to the General Assembly and request the removal of the judge. In cases where the complaint of misconduct or incapacity was determined to be well-founded but was not sufficient to warrant the judge’s removal, the President would be authorized to take corrective action, as appropriate. Such corrective action could include issuing a reprimand or a warning. The President would submit a report to the General Assembly on the disposition of complaints. The types of misconduct that would warrant the sanctioning of a judge would be violations of the code of conduct for the judges or violations of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, as set out in Secretary-General’s bulletin ST/SGB/2002/9.” A/67/265, Annex VII.

<sup>187</sup>GA resolution 69/203, para. 44.

<sup>188</sup>A/70/187, para. 139.

<sup>189</sup>GA resolution 67/255, para. 73. *See also* GA resolution 68/252.

<sup>190</sup>*See* GA resolution 66/236; 67/258; 68/21; 69/252; and 70/111.

of its members. The General Assembly recalled the requirement that the members of the human rights treaty bodies be individuals of high moral standing serving in their personal capacity, and highlighted that their independence and impartiality was essential for the performance of their duties and responsibilities.<sup>191</sup>

99. The final issue addressed by the General Assembly concerning the overall professional responsibility of Staff during the period under review addressed matters related to information. Specifically, the General Assembly stressed that the primary objective of the news services which were implemented by the Department of Public Information was the timely delivery of accurate, objective and balanced news and information emanating from the United Nations system, in all four mass media (print, radio, television and internet), to the media and other worldwide audiences.<sup>192</sup> In the same resolution, the General Assembly further stressed the overall emphasis on multilingualism from the planning stage, and reiterated the Assembly's request that the Department ensure the accuracy, impartiality and freedom from bias of all breaking news stories and news alerts.<sup>193</sup>

#### **b. Responsibility to the Secretary-General in the performance of duties**

100. In addition to the overall professional responsibility of staff, the responsibility to the Secretary-General in the performance of duties was also addressed during the period under review. As such, Secretary-General Bulletin (ST/SGB/2015/3), entitled "Organization of the Secretariat of the United Nations," stated that the Secretariat is headed by the Secretary-General, who is the chief administrative officer of the United Nations, and consisted of the listed major organizational units,<sup>194</sup> each headed by an official accountable to the Secretary-General.

101. Further, Staff Regulation 1.3(a) (ST/SGB/2014/2) states that:

"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

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<sup>191</sup>GA resolution 68/268.

<sup>192</sup>GA resolution 69/96B. *See also* GA resolutions 64/96B; 66/81B; 67/124B; 68/86B; and 70/93 A-B.

<sup>193</sup>*Ibid.*

<sup>194</sup>For the list, *see* ST/SGB/2015/3, Section 3.

functions. Their performance will be appraised periodically to ensure that the required standards of performance are met[.]”<sup>195</sup>

102. In 2010, the Under-Secretary-General for Management promulgated an administrative instruction (ST/AI/2010/1) on reporting, retaining and disposing of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources. The administrative instruction highlighted the intended purpose of the staff regulations and rules dealing with honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources to ensure staff member’s independence and impartiality. The administrative instruction explained that the only latitude allowed was when prior approval was obtained from the Secretary-General in order to accept an honour, decoration, favour, gift or remuneration from a non-governmental source.<sup>196</sup> The procedure for obtaining the Secretary-General’s prior approval was detailed in section 5 of the administrative instruction (ST/AI/2010/1).

103. During the period under review, the General Assembly addressed the Secretary-General’s power to delegate authority and reaffirmed the need for the Secretary-General to ensure that the delegations of authority to the Department of Peacekeeping Operations and the Department of Field Support of the Secretariat and field missions were in strict compliance with the relevant resolutions and decisions, as well as the relevant rules and procedures, of the General Assembly on this matter.<sup>197</sup> In these resolutions, the General Assembly also stressed that the heads of departments reported to, and were accountable to, the Secretary-General.<sup>198</sup>

### **c. Acceptance of instructions from external authorities**

104. During the period under review, the Organization also addressed the acceptance of instructions from external authorities. To that end, the revised standards of conduct for the international civil service (A/67/30, Annex IV), approved by the General Assembly resolution 67/257, state that:

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<sup>195</sup>ST/SGB/2014/1.

<sup>196</sup>ST/AI/2010/1.

<sup>197</sup> GA resolutions 64/269; 65/289; and 69/307.

<sup>198</sup> *Ibid.*

“[...] [I]nternational civil servants must remain independent of any authority outside their organization; their conduct must reflect that independence. In keeping with their oath of office, they should not seek nor should they accept instructions from any Government, person or entity external to the organization. It cannot be too strongly stressed that international civil servants are not, in any sense, representatives of Governments or other entities, nor are they proponents of their policies. This applies equally to those on secondment from Governments and to those whose services have been made available from elsewhere. International civil servants should be constantly aware that, through their allegiance to the Charter and the corresponding instruments of each organization, member States and their representatives are committed to respect their independent status.”<sup>199</sup>

105. In addition to discussing the importance of the independence of international civil servants, the revised standards of conduct for the international civil service (A/67/30, Annex IV) provided further detail regarding the meaning of such independence, as follows:

“In providing services to a legislative or representative body, international civil servants should serve only the interests of the organization, not that of an individual or organizational unit. It would not be appropriate for international civil servants to prepare for Government or other international civil service representatives any speeches, arguments or proposals on questions under discussion without approval of the executive head. It could, however, be quite appropriate to provide factual information, technical advice or assistance with such tasks as the preparation of draft resolutions.”<sup>200</sup>

[...] “International civil servants are not representatives of their countries, nor do they have authority to act as liaison agents between organizations of the United Nations system and their Governments. The executive head may, however, request an international civil servant to undertake such duties, a unique role for which international loyalty and integrity are essential. For their part, neither Governments nor organizations should place international civil

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<sup>199</sup> A/67/30, Annex IV, para. 8.

<sup>200</sup> *Ibid.*, para. 28.



servants in a position where their international and national loyalties may conflict.”<sup>201</sup>

106. The Organization also addressed consultants and individual contractors in this context. In December 2013, the Under-Secretary-General for Management promulgated an administrative instruction on consultants and individual contractors (ST/AI/2013/4),<sup>202</sup> which indicates that:

“Consultants and individual contractors shall respect the impartiality and independence of the Secretariat and shall neither seek nor accept instructions regarding the services performed under the individual contract from any Government or other authority external to the Organization. During the period of their service for the Secretariat, consultants and individual contractors shall refrain from any conduct that would adversely reflect on the United Nations and shall not engage in any activity that is incompatible with the aims and objectives of the Organization.”<sup>203</sup>

107. In a case brought before the United Nations Dispute Tribunal, the Tribunal held that dictating what decision senior United Nations officials should take in difficult circumstances was not part of the Tribunal’s function. However, the Tribunal found that it was “undoubtedly the task and duty of the Tribunal to protect the fundamental rights of staff members to be treated fairly and in accordance with the principles of the United Nations Charter, bulletins and various issuances of the Secretary-General.”<sup>204</sup> The Tribunal further stated that, above anything else, nothing should be said or done by or on behalf of the United Nations (and/or its agencies) which would give the impression that the inherent principles and values of the Charter could, or should, be set aside in exchange for expedience.<sup>205</sup>

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<sup>201</sup> *Ibid.*, para. 34.

<sup>202</sup> ST/AI/2013/4.

<sup>203</sup> ST/AI/2013/4.

<sup>204</sup> Judgment No. UNDT/2010/119.

<sup>205</sup> *Ibid.*

#### **d. Discretion in the performance of official duties**

108. The importance of discretion in the performance of official duties was also addressed during the period under review. For instance, in the revised standards of conduct (A/67/30, Annex IV), the International Civil Service Commission noted that:

“Because disclosure of confidential information may seriously jeopardize the efficiency and credibility of an organization, international civil servants are responsible for exercising discretion in all matters of official business. They must not divulge confidential information without authorization. International civil servants should not use information to personal advantage that has not been made public and is known to them by virtue of their official position. These obligations do not cease upon separation from service. Organizations must maintain guidelines for the use and protection of confidential information, and it is equally necessary for such guidelines to keep pace with developments in communications and other new technology. It is understood that these provisions do not affect established practices governing the exchange of information between the secretariats and member States, which ensure the fullest participation of member States in the life and work of the organizations.”<sup>206</sup>

109. In December 2013, the Organization also addressed consultants and individual contractors in this context. In this regard, the administrative instruction on Consultants and individual contractors (ST/AI/2013/4)<sup>207</sup> promulgated during this period indicates that:

“Consultants and individual contractors shall exercise the utmost discretion in all matters relating to the discharge of their functions. Unless otherwise authorized by the appropriate official in the department, office or mission concerned, consultants and individual contractors may not communicate at any time to the media or to any institution, person, Government or other external authority any information that has not been made public and that has become known to them by reason of their association with the Secretariat. Consultants and individual contractors may not use such information without the written

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<sup>206</sup>A/67/30, Annex IV, para. 39.

<sup>207</sup>ST/AI/2013/4.

authorization of the Organization. These obligations do not lapse upon cessation of their service with the United Nations.”<sup>208</sup>

110. Further, during the period under review, the exercise of discretion of the Administration was considered in several cases before the Tribunals.<sup>209</sup> In *Sanwidi*, the Appeals Tribunal found that “[w]hen judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate.”<sup>210</sup> The Appeals Tribunal further held that the Dispute Tribunal could consider whether relevant matters have been ignored or whether irrelevant matters had been considered, as well as examine whether the decision was absurd or perverse.<sup>211</sup> However, the Appeals Tribunal stated that it was not the role of the Dispute Tribunal to consider the correctness of the Secretary-General’s choice amongst the different options open to him. Further, the Appeals Tribunal held that it was not the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.<sup>212</sup> In *Sanwidi*, the Tribunal held that the Dispute Tribunal was conducting a “judicial review” -- not a “merit-based review.” Specifically, the Tribunal in *Sanwidi* held that:

“In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker’s administrative decision. This is a misunderstanding of the delicate

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<sup>208</sup> *Ibid.*

<sup>209</sup> See Judgment No. 2010-UNAT-084; Judgment No. 2010-UNAT-022; Judgment No. 2011-UNAT-115; and Judgment No. 2011-UNAT-122.

<sup>210</sup> Judgment No. 2010-UNAT-084, para. 40.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.”<sup>213</sup>

111. Additionally, in *Rolland*, the Appeals Tribunal held that “there is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. [In the context of the staff selection system, if] the management is able to even minimally show that the Appellant’s candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.”<sup>214</sup>

112. In *Islam*, the Appeals Tribunal noted that “when a justification is given by the Administration for the exercise of its discretion it must be supported by the facts.”<sup>215</sup>

#### **e. Impartiality in the performance of official duties**

113. The revised standards of conduct of the international civil service, approved by General Assembly resolution 67/257, state that:

“Managers and supervisors serve as role models and they have therefore a special obligation to uphold the highest standards of conduct. It is quite improper for them to solicit favours, gifts or loans from their staff; they must act impartially, without favouritism and intimidation.”<sup>216</sup>

114. As referenced in previous sections, the Under-Secretary-General for Management promulgated ST/AI/2010/1, entitled “Reporting, retaining and disposing of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources” in 2010. As indicated by this instruction, the intended purpose of the related staff regulations and rules is to ensure the independence and impartiality of staff members.<sup>217</sup>

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<sup>213</sup>*Ibid.*

<sup>214</sup>Judgment No. 2011-UNAT-122, para. 26.

<sup>215</sup>Judgment No. 2011-UNAT-115, para. 29.

<sup>216</sup>A/67/30, Annex IV, para. 17.

<sup>217</sup>ST/AI/2010/1. Note that Staff Regulation 1.2, under its subsections (j), (k) and (l), addresses the prohibition against staff receiving any honour, decoration, favour, gift or remuneration from governmental and non-

115. In its resolutions concerning the criminal accountability of United Nations officials and experts on mission, the General Assembly reaffirmed, several times, the need to ensure that all United Nations officials and experts on mission “function in a manner that preserves the image, credibility, impartiality and integrity of the United Nations.”<sup>218</sup> The General Assembly emphasized that crimes committed by such persons were unacceptable, and that they had a detrimental effect on the fulfilment of the United Nation’s mandate, especially with respect to relations between the United Nations and the host country’s local population.<sup>219</sup>

116. Additionally, in its resolution regarding the human rights treaty body system, the General Assembly reaffirmed the importance of the independence of the human rights treaty bodies, and the independence and impartiality of its members. Specifically, the General Assembly stated that the independence and impartiality of the members’ of the human rights treaty bodies were essential for the performance of their duties and responsibilities, “in line with the respective treaties, and recalling the requirement that they be individuals of high moral standing serving in their personal capacity[.]”<sup>220</sup>

117. In its resolutions concerning the Office of Internal Oversight Services, reaffirming the independence and the separate and distinct roles of the internal and external oversight mechanism, the General Assembly recalled that the Office of Internal Oversight Services of the Secretariat should exercise operational independence in the performance of its internal oversight functions, under the authority of the Secretary-General, in accordance with the relevant resolutions.<sup>221</sup>

118. In the resolutions adopted by the General Assembly entitled “Questions relating the information,”<sup>222</sup> the Assembly emphasized that:

“the contents of public information and communications should be placed at the heart of the strategic management of the United Nations

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governmental sources. Subsections (j) and (k) of Staff Regulation 1.2 deal with the prohibition on acceptance from governmental sources, and subsection (l) deals with the necessity of prior approval by the Secretary-General for acceptance from non-governmental sources. Staff Rule 1.2 (k) through (o) address the same matters.

<sup>218</sup>GA resolution 65/20. *See also* 66/93; 67/88; 68/105; 69/114; and 70/114.

<sup>219</sup> *Ibid.*

<sup>220</sup>GA resolution 68/268.

<sup>221</sup>*See* GA resolutions 66/236; 67/258; 68/21; 69/252; and 70/111.

<sup>222</sup>GA resolutions 64/96B; 66/81B; 67/124B; 68/86B; 69/96B; and 70/93B.

and that a culture of communications and transparency should permeate all levels of the Organization as a means of fully informing the peoples of the world of the aims and activities of the United Nations, in accordance with the purposes and principles enshrined in the Charter of the United Nations, in order to create broad-based global support for the United Nations[.]”<sup>223</sup>

119. In these resolutions,<sup>224</sup> the General Assembly requested that the Secretary-General continue exerting all efforts in order to ensure that publications and other information services of the Secretariat (including the United Nations website and the United Nations News Service) contain comprehensive, balanced, objective and equitable information about the issues before the Organization, in all official languages, and that editorial independence, impartiality, and accuracy was maintained, as well as full consistency with resolutions and decisions of the General Assembly.<sup>225</sup>

120. In its resolution on “Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution”, the General Assembly requested that the Secretary-General continue to offer good offices (in accordance with the Charter and relevant United Nations resolutions) and continue providing the appropriate mediation support to United Nations special representatives and envoys. The General Assembly further requested the Secretary-General to enhance partnerships with Member States and regional and sub-regional organizations.<sup>226</sup> Also in this resolution, the General Assembly highlighted the importance, at all levels, of well-trained, impartial, experienced and geographically diverse mediation process and substance experts, in order to ensure timely support of the highest quality to mediation efforts. Further, the General Assembly supported the efforts of the Secretary-General to maintain an updated roster of mediators, and encouraged the continued efforts to improve its gender balance, as well as its equitable geographical representation.<sup>227</sup>

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<sup>223</sup> GA resolution 69/96B. *See also* GA resolutions 64/96B; 66/81B; 67/124B; 68/86B; and 70/93B.

<sup>224</sup> GA resolutions 64/96B; 66/81B; 67/124B; 68/86B; 69/96 B; and 70/93B.

<sup>225</sup> GA resolution 69/96B. *See also* GA resolutions 64/96B; 66/81B; 67/124B; 68/86B; and 70/93B.

<sup>226</sup> GA resolution 65/283.

<sup>227</sup> *Ibid.*

121. Additionally, the General Assembly emphasized the importance of the principle of judicial independence in the system of administration of justice during the period under review.<sup>228</sup> Further, in its report on administration of justice at the United Nations (A/65/304), the Internal Justice Council (A/65/304) reported its concerns regarding the lack of any mechanism for dealing with complaints against judges, and stated that it believed this to be a matter that required urgent attention.<sup>229</sup> Subsequently, the General Assembly, through its resolution 66/237, requested the Secretary-General to submit a report providing proposals and analysis for a mechanism for addressing possible misconduct of judges.<sup>230</sup> In response, the Secretary-General provided proposals and analysis for a mechanism for addressing possible misconduct of judges in Annex VII of A/67/265. In A/67/547, the ACABQ noted that the proposals of the Secretary-General and the Internal Justice Council would appear to be more cost-effective, and the Committee had no objection to such proposals.<sup>231</sup> On 24 December 2012, the General Assembly adopted resolution 67/241, in which the Assembly approved the mechanism for addressing possible misconduct of judges proposed by the Secretary-General in section B of annex VII to his report on administration of justice at the United Nations (A/67/265). In its report A/68/306, the Internal Justice Council stated that the judges welcomed the approval of a mechanism for addressing possible misconduct of judges by the General Assembly in resolution 67/241, and noted that the implementation of the necessary procedural framework was under preparation.<sup>232</sup> During the sixty-ninth session of the General Assembly, the Secretary-General, in his report A/69/227, submitted a detailed proposed mechanism for addressing potential complaints made under the code of judicial conduct for judges of the Tribunals.<sup>233</sup> In its resolution 69/203, the General Assembly requested the Secretary-General to submit a refined proposal with regard to the scope of application and the title of the mechanism for addressing complaints under the code of conduct of judges.<sup>234</sup> The refined proposal of the Secretary-General was set out in Annex V to his report on administration of justice at the United Nations (A/70/187). On 3 November 2015, the President of the General Assembly transmitted a letter from the Chair of the Sixth

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<sup>228</sup> GA resolutions 65/251; 66/237; 67/241; 68/254; 69/203; and 70/112.

<sup>229</sup> A/65/304.

<sup>230</sup> GA resolution 66/237, para. 44.

<sup>231</sup> A/67/547, para. 52.

<sup>232</sup> A/68/306, para. 14.

<sup>233</sup> A/69/227, Annex VII.

<sup>234</sup> GA resolution 69/203, para. 46.

Committee to the Chair of Fifth Committee, which welcomed the refined proposal of the Secretary-General and recommended approving the mechanism with an amendment.<sup>235</sup> The General Assembly, in its resolution 70/112, approved the proposal of the Secretary-General and the amendment suggested by the Sixth Committee, and decided to adopt the mechanism with the amendment as proposed therein and annexed to resolution 70/112.<sup>236</sup>

122. In its resolution 67/241, the General Assembly addressed standards of professional conduct for legal representatives. Specifically, the General Assembly stressed the need to ensure that all those who act as legal representatives, including both staff members and external counsel, were subject to the uniform standards of professional conduct which were applicable in the United Nations system.<sup>237</sup> Further, the General Assembly requested that the Secretary-General, consulting with the Internal Justice Council and other relevant bodies, prepare a code of conduct for external legal representatives who were not staff members.<sup>238</sup> The Secretary General reported, in A/68/346, that the preparation of such code of conduct was under way and was expected to be ready for presentation at the sixty-ninth session of the General Assembly.<sup>239</sup> On this matter, the Internal Justice Council, in A/68/306, emphasized that one common code of conduct for all counsel who appear before either the Dispute Tribunal or the Appeals Tribunal should exist, and that different codes of conduct would violate the important principle that the Tribunals should treat both parties with equality, as counsel for the two sides would be held to two different standards, depending on whether counsel was external or not.<sup>240</sup> In its resolution 68/254, adopted on 27 December 2013, the General Assembly, while stressing that all individuals acting as legal representatives “are subject to the same standards of professional conduct applicable in the United Nations system”, requested the Secretary-General to present the code of conduct for external legal representatives, which would include the appropriate sanctions for breaches thereof, as safeguards against frivolous applications, to the General Assembly during

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<sup>235</sup> A/C.5/70/9. A/C.5/70/9. The Committee recommended approving the mechanism with the following amendment in the first sentence of paragraph 5: “The types of conduct that would warrant the sanctioning of a judge are violations of the standards established in the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal approved by the General Assembly in resolution 66/106.” A/C.5/70/9, Annex.

<sup>236</sup> GA resolution 70/112, para. 40.

<sup>237</sup> GA resolution 67/241, para. 44.

<sup>238</sup> *Ibid.*

<sup>239</sup> A/68/346, para. 119.

<sup>240</sup> A/68/306, para. 139.



the Assembly's sixty-ninth session.<sup>241</sup> The Secretary-General subsequently presented a proposed code of professional conduct for external legal representatives in Annex VI of A/69/227. In its resolution 69/203, adopted on 18 December 2014, the General Assembly requested the Secretary-General to submit a single code of conduct for all legal representatives, without prejudice to other lines of disciplinary authority.<sup>242</sup> In A/70/187, the Secretary-General reported that preparation of a single code of conduct for all representatives was under way, and was expected to be ready for presentation at the seventy-first session of the General Assembly.<sup>243</sup>

#### **f. Integrity in the performance of official duties**

123. The revised standards of conduct of the international civil service, which were approved by the General Assembly resolution 67/257, state that:

“The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of an international civil servant's behaviour, including such qualities as honesty, truthfulness, impartiality and incorruptibility. These qualities are as basic as those of competence and efficiency, also enshrined in the Charter.”<sup>244</sup>

124. Recalling Article 100 in its resolutions, the General Assembly repeatedly reaffirmed its support for the integrity and independence of the international civil service.<sup>245</sup> The General Assembly consistently reiterated that the Secretary-General must ensure that the paramount consideration in the employment of staff was the highest standards of efficiency, competence and integrity, while giving due regard to the principle of equitable geographical distribution, in accordance with Article 101, paragraph 3, of the Charter of the United Nations.<sup>246</sup> The Assembly also reiterated its request that the Secretary-General ensure that the Office of Human Resources Management continued strengthening its monitoring of delegated authority for human resources management (including compliance with geographical and gender targets).<sup>247</sup>

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<sup>241</sup>GA resolution 68/254, para. 38.

<sup>242</sup>GA resolution 69/203, para. 44.

<sup>243</sup>A/70/187, para. 139.

<sup>244</sup>A/67/30, Annex IV, para. 5.

<sup>245</sup>See GA resolutions 65/247; 66/234; 67/255; and 68/252.

<sup>246</sup>See GA resolutions 65/247; 66/234; 67/255; 69/151; and 70/133.

<sup>247</sup>GA resolution 65/247.

125. During the period under review, the General Assembly also noted with appreciation the contributions of the Ethics Office to “promoting the highest standards of ethics and integrity among staff members of the Organization.”<sup>248</sup> The General Assembly commended the efforts of the Office to increase awareness of ethics-related issues through outreach, training, and education.<sup>249</sup>

126. The Ethics Office administers the Organization’s financial disclosure programme. The Secretary-General defined the financial disclosure programme as “an essential means to identify, manage and mitigate the risk of personal conflicts of interest for the purpose of protecting the integrity of the Organization.”<sup>250</sup> Further, the Secretary-General, in his report on the activities of the Ethics Office, (A/68/348) explained that within the programme, designated staff members (which includes all staff at the D-1 level or higher, and all staff who engage in procurement and investment as part of their principle duties) must file annual disclosure statements, and that the review of such statements would be outsourced to a third-party vendor.<sup>251</sup> The Secretary-General also noted that this financial disclosure programme had significantly contributed to the raising of staff awareness and adherence to the integrity standards. He further explained that staff members were more aware of personal conflicts of interest, as well as more inclined to avoid situations that give rise to such conflicts, and that because staff (senior officials in particular) had become more conscious of conflict of interest risks, ethical risks were better managed.<sup>252</sup>

127. In its report on the same topic, the ACABQ also commended the Ethics Office for its efforts to ensure full compliance with the requirements of the financial disclosure programme. The Committee stressed the importance of taking timely action to impose appropriate measures in all cases of proven non-compliance with the programme.<sup>253</sup>

128. Additionally, in connection with integrity in procurement, the Secretary-General, in his report on United Nations procurement activities, indicated that all procurement practitioners were required to complete mandatory training in ethics and integrity; and

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<sup>248</sup>GA resolution 67/255, para. 73. *See also* GA resolution 68/252.

<sup>249</sup>*See* GA resolution 68/252.

<sup>250</sup>A/68/348, para. 23.

<sup>251</sup>*Ibid.*

<sup>252</sup>*Ibid.*, para. 38.

<sup>253</sup>A/68/523, para. 32.

must continue to comply with the mandatory financial disclosure programme managed by the Ethics Office, filing annual disclosures for review by independent experts in order to mitigate the risk of conflicts of interest or other improprieties.<sup>254</sup>

129. Also during the period under review, the Secretary-General continued to submit his report entitled “Special measures for protection from sexual exploitation and sexual abuse.”<sup>255</sup> In this report, the Secretary-General indicated that the implementation of the zero-tolerance policy towards all forms of sexual exploitation and abuse by United Nations and related personnel remained a priority.<sup>256</sup> The Secretary-General expressed his commitment to making sure that all allegations which were reported, and for which sufficient information existed to call for an investigation, would be fully and promptly investigated.<sup>257</sup> The Secretary-General stated that “[w]hen allegations of sexual exploitation and abuse are substantiated through investigations, the Secretary-General will continue to take measures within his authority and request that Member States also ensure that those responsible are held accountable through disciplinary actions or criminal accountability measures when so warranted.”<sup>258</sup> The Secretary-General noted that this was, “the fundamental basis of the zero tolerance policy on sexual exploitation and sexual abuse.”<sup>259</sup>

130. During the period under review, the General Assembly reaffirmed the need for full implementation of the United Nations policy of zero tolerance of sexual exploitation and abuse in peacekeeping operations.<sup>260</sup> In its resolution 66/264, the General Assembly emphasized that all acts of sexual exploitation and abuse should, without delay and in accordance with due process of law and the relevant memorandums of understanding between Member States and the United Nations, be investigated and punished.<sup>261</sup> In its resolution 69/307, the General Assembly encouraged the Secretary-General to continue his efforts to strengthen accountability in all sectors of field missions, and to this end urged the Secretary-General and Member States to undertake all relevant actions within their respective areas of

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<sup>254</sup> A/69/710, para. 42.

<sup>255</sup> See A/66/699; A/67/766; A/68/756; A/69/779; and A/70/729.

<sup>256</sup> *Ibid.*

<sup>257</sup> A/68/756.

<sup>258</sup> *Ibid.*

<sup>259</sup> *Ibid.*

<sup>260</sup> See GA resolution 66/264; 69/307; and 70/255. See also GA resolutions 64/269 and 70/114.

<sup>261</sup> GA resolutions 66/264.

competence, including holding perpetrators accountable.<sup>262</sup> Subsequently, during the seventieth session of the General Assembly, in its resolution 70/114, the Assembly urged the Secretary-General to continue to ensure that his zero-tolerance policy for sexual exploitation and abuse was made known to all United Nations officials and experts on mission at all levels, especially those in managerial positions.<sup>263</sup> Further, in its resolution 70/255, the General Assembly recognized the responsibility of troop- and police-contributing countries to hold accountable those against whom allegations of sexual exploitation and abuse had been substantiated, in accordance with their national legislation.<sup>264</sup>

131. During the period under review, a new subparagraph (e) was added to Staff Rule 1.2 to reflect the provisions of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13).<sup>265</sup> The text of the amendment to Staff Rule 1.2 (e) reads as follow:

“(e) Sexual exploitation and abuse is prohibited. Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or the age of consent locally, except where a staff member is legally married to a person who is under the age of 18 but over the age of majority or consent in his or her country of citizenship. Mistaken belief in the age of a child is not a defence. The exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. United Nations staff members are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse.”<sup>266</sup>

132. In a case brought before the United Nations Dispute Tribunal (UNDT or the Dispute Tribunal), the Applicant contested a decision not to take action on his harassment complaint against the Administration on the grounds that the matter did not amount to harassment, but rather fell into the category of disagreements on work performance or on other work-related issues.<sup>267</sup> The Dispute Tribunal determined from the outset that

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<sup>262</sup>GA resolution 69/307.

<sup>263</sup>GA resolution 70/114, para. 5.

<sup>264</sup>GA resolution 70/255, para. 27.

<sup>265</sup>A/68/129.

<sup>266</sup>ST/SGB/2014/1.

<sup>267</sup>Judgment No.UNDT/2011/050.

it had jurisdiction to examine the Administration's actions and omissions following a request for investigation submitted pursuant to ST/SGB/2008/5 (Secretary-General's bulletin entitled "Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority").<sup>268</sup> The Tribunal then considered the scope of ST/SGB/2008/5 and that a literal interpretation of section 1.2 left no room for excluding systematically "[d]isagreement on work performance or on other work-related issues" from the scope of ST/SGB/2008/5.<sup>269</sup> The Tribunal stated that "[t]he right to submit a harassment complaint and to have it promptly reviewed is a key element of the policy set out in ST/SGB/2008/5 and a fundamental procedural safeguard for staff members."<sup>270</sup> The Tribunal held that the impact of the policy (section 5.14) would be defeated:

"if the duty to conduct a formal fact-finding investigation were reduced to cases where prohibited conduct has already been proven. On the contrary, the very purpose of a fact-finding investigation is to establish whether or not the alleged prohibited conduct took place. Therefore, the requirement that there should be "sufficient grounds to warrant a formal fact-finding investigation" may not be too narrowly interpreted. Although pure disagreement on work performance or on other work-related issues "normally" excludes the application of the procedures foreseen in ST/SGB/2008/5, a fact-finding investigation ought to be initiated if the overall circumstances of the particular case offer at least a reasonable chance that the alleged facts may amount to prohibited conduct within the meaning of the bulletin."<sup>271</sup>

133. Accordingly, the Dispute Tribunal found that the Administration erred in finding that the Applicant's complaint did not provide sufficient grounds to warrant a formal fact-finding investigation.<sup>272</sup>

134. During the period under review, the United Nations Appeals Tribunal (UNAT or the Appeals Tribunal) heard several cases concerning integrity in the performance of

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<sup>268</sup> *Ibid.*, para. 22.

<sup>269</sup> *Ibid.*, para. 24.

<sup>270</sup> *Ibid.*, para. 28.

<sup>271</sup> *Ibid.*, para.30.

<sup>272</sup> *Ibid.*, para.32.

official duties,<sup>273</sup> including a case brought before the Appeals Tribunal (Judgment No. 2015-UNAT-586), in which the Secretary-General appealed against UNDT Judgment No. UNDT/2014/120. In the underlying case, the UNDT found that both the fact-finding panel and the responsible official had misinterpreted the definition of harassment, as set forth in ST/SGB/2008/5, by: (i) finding that a one-off action, such as the one-off action presented in the immediate case, did not amount to harassment; and (ii) focusing on mitigating circumstances of the alleged offender, rather than the effect of the misconduct on the victim.<sup>274</sup> The UNDT further found that it was the above misinterpretations that led to the finding of no prohibited conduct, as well as to the fundamentally erroneous decision to close the case.<sup>275</sup>

135. The Appeals Tribunal cited Section 1.2 of ST/SGB/2008/5, which defines harassment as follows:

“Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.”<sup>276</sup>

136. Furthermore, the Appeals Tribunal also cited Section 5.18(b) of ST/SGB/2008/5:

“If the report [of the fact-finding panel] indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial

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<sup>273</sup> See also Judgment No. 2010-UNAT-084; Judgment No. 2010-UNAT-098; Judgment No. 2013-UNAT-302; Judgment No. 2014-UNAT-403; Judgment No. 2015-UNAT-535; Judgment No. 2015-UNAT-549; and Judgment No. 2015-UNAT-550.

<sup>274</sup> Judgment No. 2015-UNAT-586, para. 4.

<sup>275</sup> *Ibid.*

<sup>276</sup> See *Ibid.*, para. 31.

action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken[.]”<sup>277</sup>

137. The Appeals Tribunal concluded that “the Dispute Tribunal erred in law and exceeded its jurisdiction in substituting its own opinion for that of the ICTR Registrar regarding the contested conduct. The UNDT held that the panel should have focused on the effect of the misconduct on the victim. However, the adverse effect on [the staff member was] not supported by evidence.”<sup>278</sup>

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

138. In its revised standards of conduct (A/67/30, Annex IV), the International Civil Service Commission makes frequent references to the necessity for all international civil servants to respect the equal rights of all. Specifically, the standards of conduct noted that:

“Freedom from discrimination is a basic human right. International civil servants are expected to respect the dignity, worth and equality of all people without any distinction whatsoever. Assumptions based on stereotypes must be assiduously avoided. One of the main tenets of the Charter is the equality of men and women, and organizations should therefore do their utmost to promote gender equality.”<sup>279</sup>

139. During the period under review, the General Assembly also expressed serious concern regarding the unmet 50/50 gender balance goal in the United Nations system.<sup>280</sup> The General Assembly expressed specific concern regarding the goal at the senior and policymaking levels, while giving full respect to the principle of equitable geographical distribution in conformity with Article 101, paragraph 3, of the Charter of

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<sup>277</sup> See *Ibid.*, para. 33.

<sup>278</sup> *Ibid.*, para. 35.

<sup>279</sup> A/67/30, Annex IV, para. 15.

<sup>280</sup> GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151, and 70/133.

the United Nations.<sup>281</sup> Particularly, in General Assembly resolutions 64/141, 65/191, 66/132, 67/148, 68/140, 69/151, and 70/133, the Assembly stated, with concern, that the representation of women in the United Nations system had remained almost static, with negligible improvement in some parts of the system, and in some cases had even decreased, as reflected in the reports of the Secretary-General on the improvement of the status of women in the United Nations system.<sup>282</sup>

140. In these resolutions, the General Assembly requested the Secretary-General to review and redouble his efforts to make progress towards achieving the goal of 50/50 gender balance, at all levels throughout the United Nations, including the Secretariat, and fully respecting the principle of equitable geographical distribution, in conformity with Article 101, paragraph 3, of the Charter of the United Nations.<sup>283</sup> Particularly, the General Assembly requested that the Secretary-General consider women from developing and least developed countries, countries with economies in transition, and unrepresented or largely underrepresented Member States.<sup>284</sup> The General Assembly also tasked the Secretary-General with ensuring managerial and departmental accountability with respect to gender balance targets.<sup>285</sup>

141. During the period under review, the Secretary-General issued several reports on the improvement in the status of women in the United Nations system, which included statistics, information on progress made and obstacles encountered in achieving gender balance, and recommendations for accelerating the progress.<sup>286</sup> In his report on improvement in the status of women in the United Nations system,<sup>287</sup> the Secretary-General stated that, as a principal instrument for establishing international norms, the United Nations bore a special responsibility to lead by example, and therefore, the United Nations must act as the standard bearer, demonstrating its own commitment to the doctrine of gender equality it advocates.<sup>288</sup> The Secretary-General further explained that the pace of progress towards gender parity in the United Nations system had not

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<sup>281</sup> *Ibid.*

<sup>282</sup> A/63/364; A/65/334; A/65/334; A/67/347; and A/69/346. *See also* GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>283</sup> GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> A/65/334; A/65/334; A/67/347; and A/69/346.

<sup>287</sup> A/69/346.

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



met expectations, evident from the findings of his immediate and previous reports.<sup>289</sup> Specifically, The Secretary-General highlighted the fact that the goals set by the Beijing Declaration and repeatedly endorsed by the General Assembly since, were not being realized within a reasonable time frame.<sup>290</sup> One of the recommendations the Secretary-General made in his report was the following:

“All entities should give special priority to strengthening the implementation of work-life policies and measures, including by clearly specifying the application of such measures, implementing a performance accountability (or honour) system and training managers and staff in effective implementation, including the need to encourage trust and discourage stigma. Furthermore, data on the request, approval, use and satisfaction rates with respect to work-life policies and practices should be disaggregated by sex at all stages and complemented by qualitative data collected through staff surveys.”<sup>291</sup>

142. During the period under review, the General Assembly also continued to grant considerable attention to the principle of equitable geographical distribution in regards to the composition of the Secretariat. The General Assembly repeatedly requested that the Secretary-General ensure that due regard was given to the principle of equitable geographical distribution in the employment of staff, in accordance with Article 101, paragraph 3 of the Charter of the United Nations.<sup>292</sup>

143. In its sixty-seventh session, the General Assembly reaffirmed the principle of non-discrimination against external recruitment, and stressed how important it was to ensure opportunities for external candidates to be considered for selection and recruitment, thus avoiding the placement of limitations on the Organization’s ability to select the best candidates on as wide a geographical basis as possible.<sup>293</sup> The General Assembly explained that such action should not preclude any additional measures that were deemed necessary for the effective mobility of existing staff (while accounting for the above-referenced principle).<sup>294</sup> At its sixty-eight session, the General Assembly

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<sup>289</sup> *Ibid.*

<sup>290</sup> *Ibid.*

<sup>291</sup> *Ibid.*, para. 157.

<sup>292</sup> GA resolutions 65/247; 66/234; 67/255; 69/151 and 70/133.

<sup>293</sup> GA resolution 67/255, para 54.

<sup>294</sup> *Ibid.*

requested that the Secretary-General give equal treatment to internal and external candidates when considering applicants for vacancies.<sup>295</sup>

144. In regards to use of consultants, the General Assembly, in its resolution 67/255, stressed that the use of consultants should be governed by the relevant resolutions of the General Assembly and that they should be drawn from the widest possible geographical basis.<sup>296</sup> In this resolution, the General Assembly reiterated that, in areas where consultants were frequently hired or rehired for a period of more than one year, the Secretary-General should submit proposals, where necessary, for the establishment of posts.<sup>297</sup> In December 2013, the Under-Secretary-General for Management promulgated an administrative instruction on consultants and individual contractors.<sup>298</sup>

145. During the period under review, the Appeals Tribunal held, in multiple decisions, that the burden of proving improper motivation lies with the staff member contesting the decision.<sup>299</sup> For instance, in *Asaad*, the Appellant submitted an application contesting the decision of the Agency upholding, contrary to the recommendation of the Joint Appeals Board, the previous decision to terminate his probationary appointment. The decision to terminate the Appellant's appointment took effect while he was on probation. The Appeals Tribunal stated that:

“[t]he Staff Rules applicable to staff members on probation provide that the Administration has broad discretionary authority to terminate the appointments of such staff during the probationary period. They provide that a probationary appointment may be terminated without advance notice at any time. They also provide that, in the case of an appeal by a staff member against a decision based on his or her professional shortcomings, the Joint Appeals Board shall not assess the staff member's performance but shall consider only whether the contested decision was motivated by prejudice towards the staff member or some other extraneous factor. The burden of proving improper motivation lies with the staff member contesting the decision.”<sup>300</sup>

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<sup>295</sup>GA resolution 68/265.

<sup>296</sup>GA resolution 67/255, para. 67.

<sup>297</sup>*Ibid.*, para. 68.

<sup>298</sup>ST/AI/2013/4.

<sup>299</sup>See Judgment No. 2010-UNAT-021; Judgment No. 2010-UNAT-081, and Judgment No. 2010-UNAT-089.

<sup>300</sup>Judgment No. 2010-UNAT-021, para. 10.

146. Further, the Appeals Tribunal indicated that, “as the former United Nations Administrative Tribunal ruled on many occasions, the Administration’s discretionary authority is not unfettered. The jurisprudence of the former Tribunal provides that the Administration must act in good faith and respect procedural rules. Its decisions must not be arbitrary or motivated by factors inconsistent with proper administration (see, for example, [Administrative Tribunal] Judgement No. 952, Hamad (2000)).”<sup>301</sup> The Appeals Tribunal added that the Administration’s decisions must not be based on erroneous, fallacious or improper motivation.<sup>302</sup> In conclusion, in *Asaad*, the Tribunal held that the Appellant had provided proof of the erroneous, inconsistent or fallacious nature of the contested decision and rescinded the decision and set a compensation amount.<sup>303</sup>

147. In *Azzouni*, another case brought before the Appeals Tribunal, the Appellant argued that the United Nations Dispute Tribunal (UNDT) based its decision to reject the staff member’s claim on mistakes and omissions of fact. The Appellant also argued that the UNDT failed to consider, ignored, or mischaracterized facts presented by the Appellant, which supported her allegations of religious discrimination and professional harassment.<sup>304</sup> The Appeals Tribunal found that the UNDT erred in failing to adequately consider the Appellant’s evidence.<sup>305</sup> The Appeals Tribunal held that:

“[w]hen a staff member alleges discrimination, he or she bears the burden of proving on a preponderance of evidence that discrimination occurred. In the instant case, [Appellant] was not given the opportunity she required to establish her allegations at the UNDT hearing, which included the opportunity to call evidence and to effectively challenge the Administration’s evidence. [...] The Dispute Tribunal must take care to admit credible and reliable evidence that will then be weighed by the Tribunal Judge.”<sup>306</sup>

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<sup>301</sup> *Ibid.*, para. 11.

<sup>302</sup> *Ibid.*

<sup>303</sup> *Ibid.*

<sup>304</sup> Judgment No. 2010-UNAT-081, para. 18.

<sup>305</sup> *Ibid.*, para. 35.

<sup>306</sup> *Ibid.*, paras. 35-6.

### 3. Obligations regarding personal conduct

#### a. Conduct in the interests of the United Nations

148. On 24 December 2010, the General Assembly adopted resolution 65/247, in which the Assembly requested the Secretary-General to provide a comprehensive report on conflict of interest, including a contemporary analysis of what constitutes personal conflict of interest, as well as legal, management and mitigation aspects.<sup>307</sup>

149. In response to the request of the General Assembly, the Secretary-General issued report A/66/98, that presented an overview of the main types of conflict of interest faced by staff of the Organization and the regulatory framework applicable to United Nations staff members, including current definitions, legal implications, and the mechanism established to manage and mitigate existing or potential conflicts of interest.<sup>308</sup> The report stated the following:

“Staff members’ obligations as impartial and independent international civil servants require them to exercise their functions with the best interests of the Organization only in view. Modern organizational life, with its multifaceted working experiences and personal and professional networks, however, can bring with it situations where United Nations staff are faced with conflicting or competing interests that may have an impact on their impartiality. Such conflicts of interest can, if not appropriately addressed, have a significant and detrimental effect on the reputation and assets of the Organization.”<sup>309</sup>

150. The report (A/66/98) also indicated that conflict of interest risk can generally be found at two levels: (a) organizational conflict of interest; and (b) personal conflict of interest. The report focused on personal conflicts of interest. The report emphasized that the current regulatory framework includes provisions governing actual or potential conflicts of interest, including Staff Regulation 1.2 (m) and Staff Rule (p).<sup>310</sup>

151. Previously, in his report on amendments to the Staff Regulations (A/65/213), the Secretary-General requested that the General Assembly approve an amendment to

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<sup>307</sup>GA resolution 65/247, para. 79.

<sup>308</sup>A/66/98, para. 2.

<sup>309</sup>*Ibid.*

<sup>310</sup>*Ibid.*

Staff Regulation 1.2(m). The proposed amendment expanded the scope of the definition of conflict of interest to provide a definition that is not limited to financial interest.<sup>311</sup>

152. Subsequently, the ACABQ, in its report A/65/537, recommended approval of the amendments to Staff Regulation 1.2(m);<sup>312</sup> and, in its report A/66/511, reiterated its previous recommendation in support of the proposed amendment to Staff Regulation 1.2(m).<sup>313</sup>

153. On 24 December 2011, the General Assembly adopted resolution 66/234, in which the Assembly decided to amend Staff Regulation 1.2(m) to read as follows:

“A conflict of interest occurs when, by act or omission, a staff member’s personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member’s status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization”<sup>314</sup>

154. Additionally, the Ethics Office continued to offer advice to staff members on various concerns, including actual or perceived personal conflicts of interest, engagement in outside activities, the acceptance of gifts and honours, and other employment-related issues during the period under review.<sup>315</sup> In his report on “Activities of Ethics Office” (A/68/348), the Secretary-General noted that, during 2012-2013, the Ethics Office had begun developing a new training programme which would reinforce the application of ethics standards, as well as cover outside activities and employment, conflicts of interest, gifts and favours, confidentiality, reporting concerns, and prevention of retaliation.<sup>316</sup>

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<sup>311</sup> See A/65/213, Annex; and A/65/537.

<sup>312</sup> A/65/537, para. 87.

<sup>313</sup> A/66/511.

<sup>314</sup> GA resolution 66/234, para. 12.

<sup>315</sup> A/68/348.

<sup>316</sup> *Ibid.*

155. As previously noted above, details on reporting, retaining, and disposing of honours, decorations, favours, gifts and remuneration from governmental and non-governmental sources were addressed in administrative instruction ST/AI/2010/1, which was issued by the Under-Secretary-General for Management in January 2010.<sup>317</sup>

156. In 2012, the Secretary-General submitted the proposed amendments to the Financial Regulations and Rules of the United Nations.<sup>318</sup> In its resolution 67/246, the General Assembly adopted the revised Financial Regulations of the United Nations, as set forth in the report of the Secretary-General,<sup>319</sup> with the exception of regulation 4.19.<sup>320</sup> In 2013, the Secretary-General promulgated a revised edition of the Financial Rules and Regulations.<sup>321</sup>

157. Additionally, in a case brought before the United Nations Appeals Tribunal on this topic, the Tribunal held that:

“staff members exercising procurement functions are required to conduct themselves, from an objective standpoint, in an impartial and honest way and act in the interests of the United Nations only. To comply with this duty, staff members must be seen to act with integrity, obtain no personal benefit from third parties and not engage in any conduct which could create the impression of favouring third parties, that is to say, they must be and appear to be above reproach, particularly when interacting with persons or entities who could potentially become involved in supplying goods or services to the Organization, or are currently in such a relationship, like vendors.”<sup>322</sup>

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<sup>317</sup> “Administrative issuance ST/AI/2010/1, which abolished ST/IC/2006/31, implemented the prohibition contained in staff regulation 1.2 and staff rule 1.2 against the receipt by staff of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources.” A/66/692. para. 74.

<sup>318</sup> A/67/345. The United Nations Financial Regulations and Rules govern the broad financial management of the United Nations.

<sup>319</sup> A/67/345, Annex I.

<sup>320</sup> Regulation 4.19 reads that “[i]ncome derived from investments of the Working Capital Fund shall be credited to miscellaneous income.”

<sup>321</sup> ST/SGB/2013/4.

<sup>322</sup> Judgment No. 2010-UNAT-098, para. 37.

**b. Outside professional or financial activities**

158. In regards to outside activity, the revised standards of conduct of the international civil service, which were approved by the General Assembly resolution 67/257, state that:

“The primary obligation of international civil servants is to devote their energies to the work of their organizations. Therefore, international civil servants should not engage, without prior authorization, in any outside activity, whether remunerated or not, that interferes with that obligation or is incompatible with their status or conflicts with the interests of the organization. Any questions about this should be referred to the executive head [.]”<sup>323</sup>

159. During the period under review, the reports of the Secretary-General on “Activities of the Ethics Office” (A/67/306, A/68/348, A/69/332, A/70/307) indicated that the largest number of advice requests received annually focused upon outside activities.<sup>324</sup> The Secretary-General explained that he believed that this demonstrated a strong awareness by staff of the requirement to seek prior approval for certain types of outside activities in order to avoid an adverse impact on the United Nations, or their status as an international civil servants.<sup>325</sup>

160. During the period under review, the Ethics Office continued to administer the financial disclosure programme of the Organization. The General Assembly, in its resolution 66/234, adopted on 24 December 2011, welcomed “the significant efforts made by the Ethics Office towards the implementation of the financial disclosure programme, and [requested] the Secretary-General to ensure full compliance by staff in fulfilling their financial disclosure requirements[.]”<sup>326</sup>

161. In his report on “Activities of the Ethics Office” (A/67/306), the Secretary-General reported that the voluntary public disclosure initiative of the United Nations continued through the 2011 filing cycle, with further advancements. The Secretary-General

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<sup>323</sup> A/67/30, Annex IV, paras.45-7.

<sup>324</sup> A/68/348, para. 15.

<sup>325</sup> *Ibid.*, para. 16.

<sup>326</sup> GA resolution 68/252, para. 13.

further reported that, while 111 (81 per cent) of senior United Nations officials at or above the level of Assistant Secretary-General had participated in the initiative in 2010, a total of 129 senior officials participated in the 2011 cycle, representing a participation rate of 93.5 per cent.<sup>327</sup>

162. The General Assembly, in its resolution 67/255 adopted on 12 April 2013, noted, with satisfaction, the positive participation trend in the above initiative, particularly for staff at the senior leadership level. The General Assembly also urged the Secretary-General to encourage senior officials who had not yet publicly disclosed a summary of their assets to do so as soon as possible.<sup>328</sup>

163. In regards to the future of financial disclosure programme, the Secretary-General in paragraphs 69 to 84 of his report on “Activities of the Ethics Office” (A/66/319) laid out proposed future arrangements for the programme. In paragraph 87 of his report, the Secretary-General summarized his recommendation with regard to the programme’s future and the actions to be taken by the General Assembly. The Secretary-General recommended that the existing external review arrangement for the financial disclosure programme be maintained,<sup>329</sup> and that a new information technology platform be created for the programme, which would allow it to leverage newer technologies, enhance system capacity and programme performance, and ensure robust data security protection.<sup>330</sup>

164. After reviewing the comments of the Secretary-General, the ACABQ, in A/66/511, expressed its support for the Secretary-General’s recommendations to “maintain the existing arrangements whereby the review function of the financial disclosure programme is administered by an external vendor and to develop a new information technology platform.”<sup>331</sup>

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<sup>327</sup>A/67/306, para. 30. The Secretary-General further reported that: “[o]f those participants, 87 officials (or 67 per cent) opted to publicly disclose a summary of their assets, liabilities and outside interests, demonstrating their commitment to transparency and their recognition of the need to assure the general public and Member States that in the discharge of their official duties they were not influenced by personal considerations. The remaining 42 officials (or 33 per cent) publicly affirmed that they had duly completed their confidential financial disclosure statements as required by the Organization. The voluntary public disclosures of senior officials are posted on the website of the Secretary-General.” A/67/306, para. 30.

<sup>328</sup>GA resolution 67/255, para. 74.

<sup>329</sup>A/66/319, para. 87.

<sup>330</sup>*Ibid.*

<sup>331</sup>A/66/511, para. 38.



165. In his report A/68/348, the Secretary-General stated that the Secretariat had procured external review services and certain information technology services from another vendor in accordance with established procurement procedures, after the contract with the programme's initial external review vendor expired in January 2013.<sup>332</sup> As such, the Secretary-General reported that a lower unit cost has been obtained, and that the overall cost of the programme had been contained by contractual agreements.<sup>333</sup>

166. The General Assembly, in its resolution 68/252 adopted on 27 December 2013, welcomed the reduced implementation costs of the initiative, and stated that it was looking forward to the outcome of the review of the financial disclosure initiative's regulatory framework.<sup>334</sup>

167. In a case brought before the United Nations Dispute Tribunal, an Applicant contended that he was unaware of the rules and regulations regarding outside activities, and that they were not applicable to him because he was not properly notified of them.<sup>335</sup> In this case, the Tribunal held that "[i]gnorance of rules and regulations in an employment relationship or even of the law is not a defense to non-compliance with the employment rules and regulations under which a person is recruited."<sup>336</sup> Further, in regards to outside activities or employment, the Tribunal stated the following:

“[o]utside activities or employment consists of two strands. First, under section 3.1 of ST/AI/2000/13 a staff member cannot undertake any outside activities or employment without the authorization of the Secretary-General. Secondly, the Secretary-General may authorize a staff member to take up outside activities or employment. But this is subject to an important condition: that outside activity or employment must not conflict with the duties of the staff member and the interest of the Organization. A reading of section 1.2(p) makes it clear that a staff member who has been granted authorization by the Secretary-General does not have a free license. He/she must be careful not to put him/herself in a situation of conflict. If the staff member is found to be in a situation of conflict notwithstanding the authorization of the Secretary-

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<sup>332</sup> A/68/348, para. 35.

<sup>333</sup> *Ibid.*, para. 35.

<sup>334</sup> GA resolution 68/252, para. 27.

<sup>335</sup> Judgment No. UNDT/2014/015.

<sup>336</sup> *Ibid.*

General, the latter would be at liberty to revoke the authorization and even start disciplinary action against that staff member.”<sup>337</sup>

### c. Acceptance of gifts, honours or favours

168. In regards to gifts, honours and remuneration, the revised standards of conduct of the international civil service, which were approved by General Assembly resolution 67/257, state that:

“[t]o protect the international civil service from any appearance of impropriety, international civil servants must not accept, without authorization from the executive head, any honour, decoration, gift, remuneration, favour or economic benefit of more than nominal value from any source external to their organizations; it is understood that this includes Governments as well as commercial firms and other entities.

[...] International civil servants should not accept supplementary payments or other subsidies from a Government or any other source prior to, during or after their assignment with an organization of the United Nations system if the payment is related to that assignment. Balancing this requirement, it is understood that Governments or other entities, recognizing that they are at variance with the spirit of the Charter and the constitutions of the organizations of the United Nations system, should not make or offer such payments.”<sup>338</sup>

169. During the period under review, administrative issuance ST/AI/2010/1, which abolished ST/IC/2006/31, implemented the prohibition contained in Staff Regulation 1.2 and Staff Rule 1.2 against the receipt by staff of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources.<sup>339</sup> The

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<sup>337</sup> *Ibid.*

<sup>338</sup> A/67/30, Annex IV, paras. 50-1.

<sup>339</sup> Staff regulation 1.2, under its subsections (j), (k) and (l), addresses the prohibition against staff receiving any honour, decoration, favour, gift or remuneration from governmental and non-governmental sources. Subsection (j) and (k) of Staff Regulation 1.2 deal with the prohibition on acceptance from governmental sources, and subsection (l) deals with the necessity of prior approval by the Secretary-General for acceptance from non-governmental sources. Staff Rule 1.2 (l) through (p) address the same matters. The text of the relevant section of staff regulation 1.2 reads as follows:

“(j) No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government;

administrative instruction stated that the relevant staff regulation's intended purpose (as explained by ST/AI/2010/1), was to ensure staff member's independence and impartiality. It was further explained that the only latitude allowed is when the prior approval of the Secretary-General is obtained.<sup>340</sup>

170. The Secretary-General, in his report on "Activities of Ethics Office" (A/66/319), addressed the issuance of this new policy, stating that it created a mechanism for staff, as well as management, to dispose of gifts in accordance with staff regulations and rules.<sup>341</sup> The Secretary-General also reported that the new policy had subsequently reduced the number of requests for guidance made to the Ethics Office.<sup>342</sup> The Secretary-General added the following:

"These regulations, rules and the implementing administrative instruction aim to ensure that staff do not receive any gifts or other incentives that may contribute to the staff member taking — or being perceived as taking — actions due to improper motives. They further ensure that staff members maintain their independence and impartiality in the performance of official duties and responsibilities. Pursuant to the "Oath of Office", staff members must, in the performance of their functions, consider the interests of the Organization only. Therefore, receiving gifts, honours or other tokens of appreciation may, depending on the circumstances, have an impact on the staff member's independence and impartiality, as they can create a conflict of loyalties or raise expectations from the donor of the gift."<sup>343</sup>

171. In connection with the acceptance and purpose of voluntary contributions, gifts and donations, Regulation 3.12 and 3.13 of the revised Financial Regulations and Rules of the United Nations (ST/SGB/2013/4) state the following:

"Voluntary contributions, whether or not in cash, may be accepted by the Secretary-General provided that the purposes for which the contributions are

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(k) 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;

(l) 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>340</sup> ST/AI/2010/1.

<sup>341</sup> A/66/319, para. 48.

<sup>342</sup> *Ibid.*

<sup>343</sup> A/66/98, para. 17.

made are consistent with the policies, aims and activities of the Organization and provided further that the acceptance of voluntary contributions that directly or indirectly involve additional financial liability for the Organization shall require the consent of the appropriate authority.

[...] Moneys accepted for purposes specified by the donor shall be treated as trust funds or special accounts under regulations 4.13 and 4.14.”<sup>344</sup>

172. In connection with the authority and liability of voluntary contributions, gifts and donations, Rule 103.4 of the revised Financial Regulations and Rules of the United Nations (ST/SGB/2013/4) states the following:

“(a) In cases other than those approved by the General Assembly, the receipt of any voluntary contribution, gift or donation to be administered by the United Nations requires the approval of the Under-Secretary-General for Management.

(b) Voluntary contributions, gifts or donations that directly or indirectly involve additional financial liability for the Organization may be accepted only with the approval of the General Assembly.

(c) Gifts or donations are to be defined and administered as voluntary contributions.”<sup>345</sup>

173. Additionally, in a case brought before the United Nations Appeals Tribunal (UNAT), the Secretary-General argued that the UNDT erred on a question of law in characterizing the actions of a staff member, who was a Procurement Officer with a United Nations Organization Mission and entered into a currency exchange transaction with a vendor which was in business with the Mission, in order to buy a car. Based on this transaction, the staff member was summarily dismissed for serious misconduct. The UNDT found that the staff member’s acts, “did not amount to serious misconduct and that the penalty of summary dismissal was disproportionate to the misconduct.”<sup>346</sup> The Tribunal further stated that, in its view, the staff member “deserved a much milder disciplinary sanction.”<sup>347</sup> While exercising appellate jurisdiction, UNAT held that the UNDT erred in finding that staff member’s actions did not amount to serious

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<sup>344</sup>ST/SGB/2013/4, regulations 3.12 and 3.13.

<sup>345</sup> Rule 103.4 of the revised Financial Regulations of the United Nations (ST/SGB/2013/4).

<sup>346</sup>Judgment No. 2010-UNAT-084, para. 2.

<sup>347</sup>*Ibid.*

misconduct or misconduct deserving of summary dismissal.<sup>348</sup> UNAT stated that that staff member was a Procurement Officer who occupied a senior position in the Procurement Section, and was aware that the Mission did a lot of business with the vendor. By accepting benefit from a vendor, he gave the impression that the vendor may receive favourable treatment during the procurement process.<sup>349</sup> The Tribunal added that:

“[e]ntering into the currency exchange transaction with a [Mission] vendor was a serious breach of the Staff Regulations and the Procurement Manual. Under Staff Regulation 1.2(g), staff members are prohibited from using their office for private gain, financial or otherwise. [Respondent/Applicant] personally negotiated the exchange of currency with [the vendor]. [...] Under Staff Regulation 1.2(b), [Respondent/Applicant] was required to uphold the highest standards of efficiency, competence and integrity.”<sup>350</sup>

174. Particularly, UNAT found that the staff member:

“was required to maintain a very high standard of integrity, objectivity, and aloofness in the conduct of his duties, in order not to appear to be influenced or exploited by those vendors. [...] He was not to be seen conducting himself in such a way that may give the impression that he was working against the interests of [Mission] and favouring one of its vendors. [Respondent/Applicant] did not meet the standards expected of a staff member involved in procurement.”<sup>351</sup>

175. The Tribunal subsequently found that the staff member’s misconduct was serious and that the disciplinary measure of summary dismissal was proportionate. Accordingly, UNAT overruled the UNDT judgment.<sup>352</sup>

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<sup>348</sup> *Ibid.*, para. 3.

<sup>349</sup> *Ibid.*

<sup>350</sup> *Ibid.*, paras. 51-2.

<sup>351</sup> *Ibid.*, para. 53.

<sup>352</sup> *Ibid.*, para. 3.

**d. Activities connected with the information media**

176. The guiding provision for international civil servants when dealing with the media was set out in the revised standards of conduct for international civil service, contained in Annex IV to the ICSC report (A/67/30), and states that:

“Openness and transparency in relations with the media are effective means of communicating the organizations’ messages. The organizations should have guidelines and procedures in place for which the following principles should apply: international civil servants should regard themselves as speaking in the name of their organizations and avoid personal references and views; in no circumstances should they use the media to further their own interests, to air their own grievances, to reveal unauthorized information or attempt to influence their organizations’ policy decisions.”<sup>353</sup>

177. During the period under review, the General Assembly repeatedly requested the Secretary-General to continue to exert all efforts to ensure that the information services of the Secretariat, including publications, the United Nations website, and the United Nations News Service, were maintained for editorial independence, impartiality, accuracy and full consistency with resolutions and decisions of the General Assembly, and contained comprehensive, balanced, objective and equitable information in all official languages concerning the issues before the Organization.<sup>354</sup>

178. Moreover, in the report of the Secretary-General on “Activities of the Ethics Office” (A/69/332), the Secretary-General reported that the Ethics Office was participating in the development of a social media policy in recognition of the speedy growth and application of social media, upon the Department of Public Information’s request.<sup>355</sup> The Secretary-General reported that this initiative would help ensure that staff members using social media -- whether in their official or personal capacity -- receive guidance on the Organization’s expectations concerning their conduct online.<sup>356</sup>

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<sup>353</sup> A/67/30 Annex IV, para. 38.

<sup>354</sup> GA resolution 65/107B, para. 16. *See also* GA resolutions 66/81 A-B; 67/124 A-B; 68/86 A-B; 69/96 A-B; 69/324; and 70/93 A-B.

<sup>355</sup> A/69/332, para. 62.

<sup>356</sup> *Ibid.*

#### **e. Political activities**

179. The revised standards of conduct for international civil service contained in Annex IV of the ICSC report (A/67/30), in paragraphs 48 and 49, state the following:

“In view of the independence and impartiality that they must maintain, international civil servants, while retaining the right to vote, should not participate in political activities, such as standing for or holding local or national political office. This does not, however, preclude participation in local community or civic activities, provided that such participation is consistent with the oath of service in the United Nations system. It is necessary for international civil servants to exercise discretion in their support for a political party or campaign, and they should not accept or solicit funds, write articles or make public speeches or statements to the press. These cases require the exercise of judgement and, in case of doubt, should be referred to the executive head. [...]

The significance of membership in a political party varies from country to country and it is difficult to formulate standards that will apply in all cases. In general, international civil servants may be members of a political party, provided its prevailing views and the obligations imposed on its members are consistent with the oath of service in the United Nations system.”<sup>357</sup>

180. In his report on personal conflicts of interest, (A/66/98) the Secretary-General stated that political activities, by definition, were incompatible with an international civil servant’s status, and noted that an international civil servant was expected to be objective, impartial, and not accept instructions from governmental or other sources. As such, the Secretary-General noted that political activities were more strictly regulated than activities for social or charitable purposes.<sup>358</sup>

#### **f. Criminal activities**

181. The revised standards of conduct for international civil service contained in Annex IV to the ICSC report (A/67/30), in paragraphs 43 and 44, state that:

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<sup>357</sup>A/67/30, Annex IV, paras. 48-9.

<sup>358</sup>A/66/98, para. 26.

“[...] The privileges and immunities that international civil servants enjoy are conferred upon them solely in the interests of the organizations. They do not exempt international civil servants from observing local laws, nor do they provide an excuse for ignoring private legal or financial obligations. It should be remembered that only the executive head is competent to waive the immunity accorded to international civil servants or to determine its scope. [...]

Violations of the law can range from serious criminal activities to trivial offences, and organizations may be called upon to exercise judgement depending on the nature and circumstances of individual cases. A conviction by a national court will usually, although not always, be persuasive evidence of the act for which an international civil servant was prosecuted; acts that are generally recognized as offences by national criminal laws will normally also be considered violations of the standards of conduct for the international civil service.”<sup>359</sup>

182. During the period under review, in its resolutions on criminal accountability of United Nations officials and experts on mission, the General Assembly repeatedly expressed deep concern regarding reports of criminal conduct, and was conscious that such actions, if not investigated and appropriately prosecuted, would give rise to the negative impression that officials and experts of the United Nations that were on mission operated with impunity.<sup>360</sup> Also in its resolutions, the General Assembly strongly urged States to take all appropriate measures to make sure that United Nations officials and experts on mission who committed crimes were brought to justice, without prejudice to the privileges and immunities of such persons and the United Nations under international law, and in accordance with international human rights standards, including the right to due process.<sup>361</sup> Further, the General Assembly strongly urged “all States to consider establishing, to the extent that they ha[d] not yet done so, jurisdiction over crimes, particularly those of a serious nature, as known in their existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of

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<sup>359</sup> A/67/30, Annex IV, paras. 43-4.

<sup>360</sup> See GA resolution 69/114. See also GA resolutions 64/110; 66/93; 67/88; 68/105 and 70/114.

<sup>361</sup> See GA resolution 70/114, para. 6. See also GA resolutions 64/110; 66/93; 67/88; 68/105; and 69/114.



the host State[.]”<sup>362</sup> The Assembly also requested that the Secretariat continue ensuring that requests to Member States seeking personnel to serve as experts on mission made those States aware of the expectation that those who would serve in that capacity should meet high standards in their behaviour and conduct, and be aware that certain conduct could amount to a crime for which they could be held accountable.<sup>363</sup> Moreover, in its resolution 70/114, the General Assembly requested the Secretariat to take all appropriate measures to continue to ensure that all such personnel, as well as United Nations officials, were properly vetted by the States contributing personnel and by the Organization for any prior misconduct while serving the United Nations.<sup>364</sup> Further, the General Assembly urged the Secretary-General to make Member States contributing personnel to serve as experts on mission aware of the necessity of providing appropriate conduct-related training prior to deployment.<sup>365</sup> In this same resolution, the General Assembly recalled its request in its resolution 69/114 for Governments to provide specific details on the measures taken, as necessary, for the implementation of its previous resolutions on the criminal accountability of United Nations officials and experts on mission,<sup>366</sup> and requested the Secretary-General to “prepare a compilation, based on information which should be received from all Member States, of national provisions regarding the establishment of jurisdiction over their nationals, whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature[.]”<sup>367</sup>

183. Throughout the period under review, as requested by the General Assembly, the Secretary-General continued to submit his reports on criminal accountability of United Nations officials and experts on mission.<sup>368</sup> In these reports, the Secretary-General provided information that he had received from Governments, which concerned the extent to which the Government’s national laws establish jurisdiction, particularly over serious crimes committed by their nationals during service as a United Nations official or expert on mission. The Secretary-General also included information on cooperation

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<sup>362</sup> See GA resolution 70/114, para. 7. See also GA resolutions 64/110; 66/93; 67/88; 68/105; and 69/114.

<sup>363</sup> See GA resolution 70/114, para. 10. See also GA resolutions 64/110; 66/93; 67/88; 68/105; and 69/114.

<sup>364</sup> *Ibid.*

<sup>365</sup> See GA resolution 70/114, para. 11.

<sup>366</sup> See GA resolutions 62/63, 63/119, 64/110, 65/20, 66/93, 67/88, 68/105 and 69/114.

<sup>367</sup> *Ibid.*, para. 23.

<sup>368</sup> See A/65/185; A/66/174; A/67/213; A/68/173; A/69/210; and A/70/208.

among member states, as well as cooperation with the United Nations, in the exchange of information and the facilitation of investigations and prosecutions.<sup>369</sup>

184. Also throughout the period under review, the Secretary-General continued to present his reports entitled “Practice of the Secretary-General in disciplinary matters and possible criminal behaviour,” in response to paragraph 16 of resolution 59/287, in which the General Assembly requested that member States be informed, annually, about all actions taken in cases of established criminal behaviour or misconduct, as well as the disciplinary action and (where appropriate) legal action, taken in accordance with the established procedures and regulations.<sup>370</sup>

185. Additionally, the Under-Secretary-General for Management continued to issue information circulars to inform staff members of the Secretary-General’s practice in exercising his disciplinary authority under Article X of the United Nations Staff Regulations. The information circulars also served to implement paragraph 17 of resolution 59/287, whereby the General Assembly requested that the Secretary-General ensured that all of the Organization’s staff were informed of the most common examples of misconduct and criminal behaviour, as well as their disciplinary consequences, which included legal action (with due regard to the protection of the privacy of the staff member(s) concerned).<sup>371</sup>

186. In 2010, the Under-Secretary-General for Management, pursuant to paragraph 4.2 of Secretary-General’s bulletin ST/SGB/2009/4, and for the purpose of implementing General Assembly resolutions 61/261, 62/228 and 63/253, Staff Regulation 10.1 and chapter X of the Staff Rules, amended administrative instruction ST/AI/371, entitled “Revised disciplinary measures and procedures[.]”<sup>372</sup>

187. In Secretary-General report A/70/253, the Secretary-General explained that a new administrative instruction concerning investigations and the disciplinary process

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<sup>369</sup> *Ibid.*

<sup>370</sup> A/68/130. *See also* A/65/180; A/66/135; A/67/171; A/67/171/Corr.1; and A/69/283.

<sup>371</sup> ST/IC/2010/26. *See also* ST/IC/2011/20; ST/IC/2012/19; ST/IC/2013/29; ST/IC/2014/26; and ST/IC/2015/22.

<sup>372</sup> ST/AI/371/Amend.1.

continued to be developed, and remained the subject of ongoing discussion and consultation between management and other stakeholders.<sup>373</sup>

## C. The obligations of Member States

### 1. Privileges and Immunities of the Secretariat

188. During the period under review, threats and violent attacks against United Nations personnel continued to rise.<sup>374</sup> In his reports entitled “Safety and security of humanitarian personnel and protection of United Nations personnel” the Secretary-General presented an overview of the global security environment, associated security threats and challenges facing the United Nations personnel, and the response of the Organization to those threats and challenges.<sup>375</sup> In his latest report on the issue, A/70/383, the Secretary-General highlighted that 128 civilian personnel were arrested in 2014, of which a total of 110 were since released, while 15 remained in detention and 3 had been convicted of crimes in national courts at the time of the report.<sup>376</sup> Further, the Secretary-General noted that, while some (a minority) of the arrests had involved legitimate national criminal charges, the majority of the detentions and arrests could be connected to misunderstandings or misperceptions of the mandate of the United Nations, as well as the failure to uphold the privileges and immunities of the United Nations (as recognized under international law), or poor coordination between the United Nations and local authorities (among other challenges).<sup>377</sup> The Secretary-General also highlighted that most arrests occurred in South Sudan, the Sudan and the Syrian Arab Republic.<sup>378</sup>

189. During the period under review, the General Assembly urged all States to make every effort to ensure the full and effective implementation of the relevant principles and rules of international law, including international humanitarian law and human rights law and refugee law, as applicable, related to the safety and security of humanitarian

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<sup>373</sup> A/70/253.

<sup>374</sup> A/67/492.

<sup>375</sup> A/65/344; A/66/345; A/67/492; A/68/489; A/69/406; and A/70/383.

<sup>376</sup> A/70/383, para. 20.

<sup>377</sup> *Ibid.*, para. 20.

<sup>378</sup> *Ibid.*

personnel and United Nations personnel.<sup>379</sup> In its resolutions, the General Assembly strongly condemned: (i) all threats against humanitarian personnel and United Nations and associated personnel; (ii) all acts of violence against humanitarian personnel and United Nations and associated personnel; and (iii) attacks intentionally directed against those involved in a peacekeeping mission.<sup>380</sup> The General Assembly also reaffirmed the need for those responsible for such to be prosecuted, penalized and punished, so long as they were entitled to protection from attack under international humanitarian law, and strongly urged all States to take stronger actions in order to ensure that such crimes are investigated fully and punished. The General Assembly further affirmed the need for States, as provided by national laws and international law obligations, to ensure that perpetrators of any such acts committed on their territory did not operate with impunity.<sup>381</sup>

190. Moreover, the General Assembly also called upon every State to provide adequate and prompt information in the event of the arrest or detention of humanitarian personnel or United Nations and associated personnel, so as to provide them with the necessary medical assistance and allow independent medical teams to visit and examine the health of those detained, as well as to ensure their right to legal counsel.<sup>382</sup> The General Assembly further urged States to take the necessary measures in order to ensure the speedy release of those who, in violation of the relevant conventions and applicable international humanitarian law, had been arrested or detained.<sup>383</sup>

191. Furthermore, during the period under review, General Assembly repeatedly requested the Secretary-General to take the necessary measures to “promote full respect for the human rights, privileges and immunities of United Nations and associated personnel,” as well as to seek inclusion of the applicable conditions contained in the Convention on the Privileges and Immunities of the United Nations,<sup>384</sup> the Convention on the

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<sup>379</sup>GA resolutions 65/132, para. 2; 66/117, para.2; 67/85, para.2; 68/101, para.2; 69/133, para.2; and 70/104, para. 2.

<sup>380</sup> See GA resolutions 65/132; 66/117; 67/85; 68/101; 69/133; and 70/104.

<sup>381</sup>GA resolution 69/133, para. 11. See also GA resolutions 65/132, para. 11; 66/117, para.11; 67/85, para.11; 68/101, para. 11; and 70/104.

<sup>382</sup> See GA resolutions 65/132; 66/117; 67/85; 68/101; 69/133; and 70/104.

<sup>383</sup>GA resolution 68/101, para. 15. See also GA resolutions 65/132, para. 13; 66/117, para.13; 67/85, para.14; 69/133, para. 15; and 70/104, para. 16.

<sup>384</sup>United Nations, *Treaty Series*, vol. I, no. I-4.

Safety of United Nations and Associated Personnel,<sup>385</sup> and the Convention on the Privileges and Immunities of the Specialized Agencies<sup>386</sup> in the negotiation of headquarters and other mission agreements.<sup>387</sup>

192. In its resolutions, the General Assembly highlighted the importance of reinforcing close collaboration between the United Nations and the host country on contingency planning, information exchange, and risk assessment in the context of good mutual cooperation on issues relating to the security of United Nations and associated personnel.<sup>388</sup>

193. In his 2010 report on the safety and security of United Nations and associated personnel (A/65/344), the Secretary-General reported that:

“[t]he Under-Secretary-General for Safety and Security increased contact with the authorities of Member States, at both the country level and headquarters locations, to reaffirm the fundamental principle of host Government primacy for the responsibility for the safety and security of United Nations personnel and premises and to examine ways to facilitate cooperation between host Governments and the United Nations on security issues, including increased information-sharing. These meetings included advocating for strengthened security measures and adequate funding for security. Member States were thus informed about the strategic direction of the United Nations security management system, which includes a strong emphasis on enabling programme delivery through security risk management and building modern, transparent and information-based security systems in support of security management.”<sup>389</sup>

194. In his 2011 report (A/66/345), the Secretary-General stated that the Under-Secretary-General for Safety and Security continued to increase contact and dialogue with the relevant authorities of Member States.<sup>390</sup> The Secretary-General further noted that the

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<sup>385</sup>United Nations, *Treaty Series*, vol. 2051, no. I-35457.

<sup>386</sup>United Nations, *Treaty Series*, vol. 33, p. 261.

<sup>387</sup>GA resolution 69/133, para. 17. *See also* GA resolutions 65/132, para. 15; 66/117, para. 15; 67/85, para. 16; 68/101, para. 17; and 70/104, para. 18.

<sup>388</sup>GA resolutions 65/132; 66/117; 67/85; 68/101; 69/133; and 70/104.

<sup>389</sup>A/65/344, para. 37.

<sup>390</sup>A/66/345, para. 43.

Under-Secretary-General for Safety and Security had also held multiple bilateral meetings with the relevant authorities of Member States, in order to impress upon them the need to fully investigate attacks on United Nations and associated personnel, and to bring the perpetrators of such acts to justice.<sup>391</sup>

195. In his 2012 report, A/67/492, the Secretary-General explained that a United Nations security management system policy outlining areas of collaboration between the United Nations and host Governments on the security and safety of United Nations personnel was established.<sup>392</sup> The Secretary-General stated that:

“[i]n April 2012, the Organization promulgated the policy,<sup>393</sup> which requires regular reviews of host Government collaboration on the security of the United Nations. The policy is intended to assist United Nations designated officials for security, security management teams and security professionals in maintaining close liaison with host Government authorities, building an effective information-sharing mechanism and jointly analysing the security threats against the United Nations.”<sup>394</sup>

196. The Secretary-General, in his next report on safety and security of humanitarian personnel and protection of United Nations personnel (A/68/489), reported that the Under-Secretary-General for Safety and Security and the Acting Head of the Department of Safety and Security (as of 11 January 2013) continued to maintain dialogue with Member States’ relevant authorities to strengthen the collaboration between host Governments.<sup>395</sup>

197. Additionally, the Secretary-General, in his 2014 report on safety and security of humanitarian personnel and protection of United Nations personnel, reported that United Nations officials continued to maintain constructive engagement with Member States on issues relating to privileges and immunities and the safety and security of United Nations personnel.<sup>396</sup> Further, the Secretary-General stated that one critical

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<sup>391</sup> *Ibid.*, para. 45.

<sup>392</sup> A/67/492.

<sup>393</sup> All United Nations security management system policies are applicable to all organizations participating in the system.

<sup>394</sup> A/67/492, para. 44.

<sup>395</sup> A/68/489, para. 35.

<sup>396</sup> A/69/406, para. 38.

aspect of collaboration with the host Government was the effort to address impunity.<sup>397</sup> He further noted that, in an attempt to hold those responsible for acts of violence and threats against United Nations personnel accountable, the department and designated officials continued working closely with Member States in order to ensure that attacks against the United Nations were investigated fully.<sup>398</sup>

198. Finally, the Secretary-General, in his 2015 report on safety and security of humanitarian personnel and protection of United Nations personnel, stated that collaboration with host Governments on security was a vital part of the multidimensional strategy of the United Nations to protect its personnel, premises and assets.<sup>399</sup> Furthermore, the Secretary-General reported that:

“[t]he Department of Safety and Security has been working to develop a centralized database that will register all serious crimes and acts of violence that result in the death of or serious injury to United Nations personnel. The data will be used to follow up with relevant host Governments so that perpetrators can be brought to justice, and to maintain contact with injured survivors or the families of deceased victims. An initial stocktaking exercise was recently completed in which more than 800 victims in more than 500 incidents that occurred between January 1992 and June 2014 were identified.”<sup>400</sup>

199. Also during the period under review, the Committee on Relations with the Host Country<sup>401</sup> continued to issue its reports.<sup>402</sup> Topics in the reports included the question of privileges and immunities. In its resolutions on the report of the Committee on Relations with the Host Country, the General Assembly requested that the host country continue to solve problems that may arise through negotiations, and to take all necessary measures to prevent interference with the functioning of missions.<sup>403</sup> The

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<sup>397</sup> *Ibid.*, para. 45.

<sup>398</sup> *Ibid.*

<sup>399</sup> A/70/383, para. 38.

<sup>400</sup> *Ibid.*, para. 40.

<sup>401</sup> The Committee on Relations with the Host Country was established in 1971 by General Assembly Resolution 2819 (XXVI), initially composed of 14 Member States and the host country (the United States), in order to address issues of mutual concern relating to the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and the Convention on the Privileges and Immunities of the United Nations.

<sup>402</sup> See A/65/26; A/66/26; A/67/26; A/68/26; A/69/26; and A/70/26.

<sup>403</sup> GA resolution 69/128. See also GA resolutions 64/120; 66/108; 67/100; 68/120; and 70/121.

General Assembly further urged the host country to continue to take appropriate actions, including the training of police, security, customs and border control officers, with a view towards the maintenance of respect for diplomatic privileges and immunities.<sup>404</sup> The General Assembly also urged the host country to properly investigate and remedy any violations that occur, in accordance with applicable law.<sup>405</sup>

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

200. In regards to criminal accountability of United Nations Officials and experts on mission, in its resolutions 65/20, 66/93, 67/88, 68/105, 69/114, and 70/114 the General Assembly urged States to take every appropriate measure to ensure that crimes by United Nations officials and experts on mission were punished, and the perpetrators of such crimes brought to justice in accordance with international human rights standards (including due process), and without prejudice to their privileges and immunities, as well as the privileges and immunities of the United Nations under international law.<sup>406</sup> In these resolutions, the General Assembly encouraged all States to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations, as well as, as appropriate, the prosecution of United Nations officials and experts on mission alleged to have committed serious crimes.<sup>407</sup>

201. Further, the General Assembly, in its resolutions,<sup>408</sup> encouraged all States:

- (a) To afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials and experts on mission, including assistance in obtaining evidence at their disposal, in accordance with their domestic law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them;

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<sup>404</sup> *Ibid.*

<sup>405</sup> *Ibid.*

<sup>406</sup> GA resolutions 65/20; 66/93; 67/88; 68/105; 69/114; and 70/114.

<sup>407</sup> *Ibid.*

<sup>408</sup> *Ibid.*



- (b) In accordance with their domestic law,<sup>409</sup> to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations;
- (c) In accordance with their domestic law,<sup>410</sup> to provide effective protection for victims of, witnesses to, and others who provide information in relation to, crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access by victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process;
- (d) In accordance with their domestic law,<sup>411</sup> to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission.<sup>412</sup>

202. The General Assembly also took note, with appreciation, of the information provided by Governments in response to its previous resolutions, and urged Governments to continue to take the measures necessary for the implementation of those resolutions.<sup>413</sup>

203. Pursuant to General Assembly resolutions 65/20, 66/93, 67/88, 68/105 and 69/114, the Secretary-General issued reports that provided information received from Governments on the extent to which their national laws establish jurisdiction over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. The reports of the Secretary-General also included information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and the prosecution of such individuals.<sup>414</sup>

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<sup>409</sup> The General Assembly in its resolutions 67/88; 68/105; 69/114, and 70/114 used “national law” instead of “domestic law”.

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.*

<sup>412</sup> GA resolutions 65/20; 66/93; 67/88; 68/105; 69/114; and 70/114.

<sup>413</sup> *Ibid.*

<sup>414</sup> See A/65/185; A/66/174 and A/66/174/ADD.1; A/67/213; A/68/173; A/69/210; and A/70/208.

204. During the period under review, another development concerning information required from the Member States was the Secretary-General's bulletin on personal status for the purposes of United Nations entitlements, which was issued on June 2014, and superseded ST/SGB/2004/13.<sup>415</sup> Per this issuance, promulgated by the Secretary-General, requests related to the determination of a staff member's personal status in connection with their entitlements could be submitted for verification to the Permanent Mission to the United Nations of the country of that competent authority by the Secretariat. The issuance further stated that, once the Permanent Mission verified that the status in question was recognized, legally, for the purposes of granting benefits and entitlements, the Secretariat would take such action consistent with that verification.<sup>416</sup>

205. Furthermore, in order to identify potential conflicts between national legislation and the Staff Regulation and Rules regarding the secondment of active-duty military and police personnel, the Secretariat circulated to all Member States a note verbale, dated 20 June 2014, requesting Member States to provide information on any potential conflicts between their national legislation and the Staff Regulations and Rules that might have an impact on the contractual obligations of active-duty military and police officers holding a United Nations staff appointment.<sup>417</sup> Details on this issue are discussed below, under the section of this Supplement entitled "Question of secondment."

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

206. During the period under review, a case brought before the United Nations Appeals Tribunal raised the question of "whether a staff member who is a national of the United States of America is entitled to claim reimbursement of a staff assessment on salaries and emoluments when she utilized foreign tax credits accrued prior to the tax year in dispute while working abroad in a private company to discharge her income tax obligation for the year in dispute."<sup>418</sup>

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<sup>415</sup> ST/SGB/2004/13/Rev.1.

<sup>416</sup> *Ibid.*, para. 2.

<sup>417</sup> A/70/229, para. 6.

<sup>418</sup> Judgment No. 2012-UNAT-240.

207. The Appeals Tribunal recalled that Section 18 (article V) of the Convention on the privileges and immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, provides that United Nations officials shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations,<sup>419</sup> and that the United States of America had acceded to the Convention with the reservation that nationals and permanent residents of the United States should not be exempt from taxation. The Appeals Tribunal also recalled its Judgment No. 237 (Powell), which noted that:

“under General Assembly resolution 973(X), a Tax Equalization Fund had been established to which assessments on staff members’ salaries and emoluments were to be credited in lieu of a national income tax. The amounts credited to the Fund are entered in the accounts for each Member State’s assessment. Conversely, when a staff member paid from the budget of the Organization is subject to both a staff assessment and national income tax on salaries and emoluments earned at the United Nations, that staff member is reimbursed for the national tax paid and payable on salaries and emoluments in order to relieve the effect of double taxation. The refund is deducted from the account of the State that has levied the tax.”<sup>420</sup>

208. As such, the Appeals Tribunal found that:

“[a] foreign tax credit corresponds to income tax paid by a national or permanent resident of the United States to another State. For the purpose of relieving the effects of double taxation, the payment to settle the United States income tax obligation is made by means of a foreign tax credit. In that connection, neither the fact that such a tax credit is not refundable under the Internal Revenue Service Code and must be utilized within a certain time period to pay taxes nor the fact that the 1040 tax return does not mention foreign tax credits in the lines of the section entitled “Payments” cannot change the nature of

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<sup>419</sup>*Ibid.*, para. 31.

<sup>420</sup>*Ibid.*, para. 32.

these tax credits as a payment method for discharging tax liability in whole or in part.”<sup>421</sup>

209. The Tribunal also found that:

“...[t]o include foreign tax credits would not only contravene the principle of equality of treatment among staff members if staff members from the United States were deprived of the benefit of reimbursement for using such tax credits not associated with income earned at the United Nations to relieve the effects of double taxation, but also the principle of equity among Member States irrespective of whether they choose to grant, or not to grant, an income tax exemption to their nationals, as these two principles form the basis for the staff assessment system in respect of taxation.”<sup>422</sup>

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

210. Prior to the period under review, the General Assembly, in its resolution 60/238, requested the Secretary-General to report to the Assembly at its sixty-first session on the practice of United Nations staff members having to renounce permanent residence status in a country outside the country of their nationality.<sup>423</sup> The Secretary-General submitted the requested report (A/61/228 and Corr.1) to the General Assembly at its sixty-first session, as requested, and invited the General Assembly to reconsider the policy requiring staff members to renounce permanent residence status. Subsequently, during the sixty-fourth session of the General Assembly, the Secretary-General had highlighted the issue of renouncing permanent residence status as an outstanding matter, and reiterated his invitation to the General Assembly to reconsider the issue of that requirement.<sup>424</sup>

211. During the period under review, the ACABQ discussed this matter in its report A/65/537, stating the following:

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<sup>421</sup> *Ibid.*, para. 4.

<sup>422</sup> *Ibid.*, para. 45.

<sup>423</sup> GA resolution 60/238, Section III, para. 1.

<sup>424</sup> A/64/230.

“The Committee believes that the time has come to revisit this policy in the light of changing circumstances, including the shift in family situations from national to international settings and the desirability of having a more mobile workforce. The Committee therefore reiterates its view, as expressed in its previous report,<sup>425</sup> that, with the increasing use of fixed-term appointments, it may not be entirely fair to require a candidate to give up permanent resident status, a decision that has long-term consequences, so that he or she can take up a position that may last only two or three years [...]. It therefore recommends that the General Assembly reconsider the requirement to renounce permanent residence status.”<sup>426</sup>

212. On 24 December 2010, the General Assembly adopted resolution 65/247, in which the Assembly took note of the report of the ACABQ on reconsidering the requirement to renounce permanent residence status.<sup>427</sup>

213. During the sixty-sixth session, the General Assembly considered the various reports before it, but took no action regarding the issue of renouncement of permanent residence status.<sup>428</sup>

214. At the sixty-ninth session of the General Assembly, the Secretary-General stated, in his report A/69/190, that even though the former United Nations Administrative Tribunal had upheld the requirement to renounce permanent resident status,<sup>429</sup> the United Nations Appeals Tribunal had, in recent judgements, concluded that the policy has no legal basis, as it was not reflected in any administrative issuance.<sup>430</sup>

215. In United Nations Appeals Tribunal Judgment No. 2012-UNAT-276 (*Valimaki-Erk*), the Tribunal considered the issue of the legality of the policy requiring individuals to renounce their permanent resident status, which they may have acquired in a country not of their nationality, before they can be recruited at the professional level. The Tribunal held that:

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<sup>425</sup>A/64/518, para. 45.

<sup>426</sup>A/65/537, para. 84.

<sup>427</sup>GA resolution 65/247, para. 73.

<sup>428</sup>See GA resolution 66/234.

<sup>429</sup>Fischman, judgement No. 326 (1984), and Moawad, judgement No. 819 (1997).

<sup>430</sup>A/69/190, para 104. See also Judgement No. 2012-UNAT-276 (*Valimaki-Erk*) and Judgement No. 2013-UNAT-342 (*Manco*).

“[t]o date, no administrative issuance has been promulgated that reflects this contested policy of requiring an individual to renounce his or her permanent resident status in a country not of his or her nationality as a condition for becoming a staff member of the Organization at the professional level.”<sup>431</sup>

216. The Tribunal also held that:

“[t]here is nothing in the United Nations Charter to suggest that geographical distribution is based on resident status. All along, recruitment into the Organization has been based on nationality and not on residence.”<sup>432</sup>

217. The Tribunal further found that:

“[t]he contested policy therefore cannot be justified under the pretext of ensuring geographical distribution of staff members. Bearing in mind the human rights principles and the modern law of employment, this policy has no place in a modern international organization.”<sup>433</sup>

218. In his report A/69/190, the Secretary General noted that, due to the Appeals Tribunal judgments, the Secretariat had granted staff members in the professional category permission to retain permanent resident status in a country other than their country of nationality on an exceptional basis since November 2013, subject to the General Assembly’s reconsideration of the issue.<sup>434</sup> The Secretary-General also added that:

“[t]he acquisition or retention of permanent resident status in the United States has a further procedural step whereby staff members are required to sign a waiver of the rights, privileges, exemptions and immunities that would accrue to them as staff members. In order to sign the waiver, staff members must request the Organization’s permission. As the same concerns apply to this procedural step, staff members have been exceptionally granted permission to sign the waiver. Staff members who have been exceptionally granted permission to retain or acquire permanent resident status have been informed that, following the General Assembly’s consideration of the issues outlined in the present report, they may be required to renounce their permanent resident

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<sup>431</sup>Judgment No. 2012-UNAT-276 para. 43.

<sup>432</sup>*Ibid.*, para. 44.

<sup>433</sup>*Ibid.*, para. 45.

<sup>434</sup>A/69/190, para. 106.

status as a condition of any extension, renewal or other form of subsequent appointment.<sup>435</sup>

219. Moreover, in his report A/69/190, the Secretary-General reiterated his invitation for the General Assembly to review the policy that requires staff members to renounce permanent residence status, in the light of the Secretary-General's recommendations and recent judgments of the United Nations Appeals Tribunal.<sup>436</sup>

220. Likewise, the ACABQ, in A/69/572, recommended that the General Assembly reconsider the requirement for staff members to renounce permanent resident status in a country other than the country of their nationality.<sup>437</sup> No further action was taken by the General Assembly on the matter.

## **5. Requests to appoint or replace officials**

221. As discussed in previous sections, Member States have repeatedly recalled Article 100 of the UN Charter and reaffirmed their support for the independence of the international civil service.<sup>438</sup>

222. In its resolutions 64/141, 65/191, 66/132, 67/148, 68/140, 69/151, and 70/133, the General Assembly stated, with concern, that the representation of women in the United Nations system remained almost static, with negligible improvement in some parts of the system, and in some cases had even decreased, as reflected in the report of the Secretary-General on the improvement of the status of women in the United Nations system.<sup>439</sup> In these resolutions, the General Assembly strongly encouraged Member States to identify and regularly submit more women candidates for appointment to positions in the United Nations system, especially at more senior and policymaking levels, including in peacekeeping operations.<sup>440</sup>

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<sup>435</sup> *Ibid.*, para. 106.

<sup>436</sup> *Ibid.*, para. 114.

<sup>437</sup> A/69/572, para. 53.

<sup>438</sup> See GA resolutions 65/247; 66/234; 67/255; and 68/252.

<sup>439</sup> A/63/364; A/65/334; A/65/334; A/67/347; and A/69/346. See also GA resolutions 64/141; 65/191; 66/132; 67/148; 68/140; 69/151; and 70/133.

<sup>440</sup> GA resolutions 64/141, para.19; 65/191, para.21; 66/132, para.22; 67/148, para.23; 68/140, para.23; 69/151, para. 26; and 70/133, para. 27.

## 6. The question of special rights and obligations of the host country

223. The Committee on Relations with the Host Country was established in 1971 by General Assembly Resolution 2819 (XXVI), initially composed of 14 Member States and the host country (the United States),<sup>441</sup> in order to address issues of mutual concern relating to the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and the Convention on the Privileges and Immunities of the United Nations.<sup>442</sup> During the period under review, the Committee on Relations with the Host Country continued to issue its annual reports.<sup>443</sup> Topics dealt with in the reports included: entry visas issued by the host country; questions of privileges and immunities; host country activities to assist members of the United Nations community; and use of motor vehicles, parking and related matters.<sup>444</sup> Concerning the issuance of entry visas by the host country, the Committee repeatedly expressed its anticipation that the host country would continue enhancing efforts to ensure the issuance of entry visas to Member State representatives, pursuant to article IV, section 11, of the Headquarters Agreement, in order to enable travel to New York on official United Nations business. The Committee noted that official business included attendance of official United Nations meetings, and that it remained seized of the matter of the host country's failure to issue a visa to a designated permanent representative of a Member State. The Committee further noted the position of the affected Member State, other Member States and the Host Country.<sup>445</sup>

224. In its resolutions, the General Assembly requested the host country to continue to solve, through negotiations, problems that might arise, and to take all measures necessary to prevent any interference with the functioning of missions. The Assembly further requested that the host country consider removing the remaining travel restrictions imposed by it on staff of certain missions and staff members of the Secretariat of certain nationalities. The Assembly noted the concerns expressed by some delegations concerning the denial and delay of entry visas to representatives of Member States, and requested that the Committee on Relations with the Host Country

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<sup>441</sup> GA resolution 2819 (XXVI), para. 5.

<sup>442</sup> *Ibid.*, para. 11.

<sup>443</sup> A/65/26; A/66/26; A/67/26; A/68/26; A/69/26; and A/70/26.

<sup>444</sup> A/69/26.

<sup>445</sup> A/69/26, para. 55. *See also* A/66/26; A/67/26; A/68/26; and A/70/26.



continue its work in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971.<sup>446</sup>

## 7. The question of secondment

225. In his report on overview of the financing of the United Nations peacekeeping operations (A/67/723), the Secretary-General brought to the attention of the General Assembly the conflict between the national legislation of some Member States and the Staff Regulations and Rules of the United Nations regarding active-duty military and police personnel seconded to the Secretariat.<sup>447</sup> In its resolution 67/287, the General Assembly noted the difficulties related to the secondment of active-duty military and police officers against posts and requested the Secretary-General to report on proposals for its consideration.

226. Pursuant to this resolution, the Secretary-General submitted report A/68/495, which provided background on the difficulties and suggested possible ways forward to address the conflicts between the Staff Regulations and Staff Rules of the United Nations and such national legislation.<sup>448</sup>

227. In his report entitled “Seconded active-duty military and police personnel,”<sup>449</sup> the Secretary-General stated the following:

“Under the existing arrangements, seconded military and police personnel recruited against posts remain in active-duty status with their national Governments while at the same time serving as United Nations staff members appointed under a letter of appointment signed by them and by, or on behalf of, the Secretary-General. By remaining in active duty with both the national Government and the United Nations, and thereby being subject to the regulations and rules that govern their service with both entities, seconded personnel have a dual loyalty and/or existing legal obligations, which can give rise to a conflict of loyalty. In addition, the national legislation of some Member States prohibits Government personnel on secondment to an outside

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<sup>446</sup>GA resolutions 69/128, para. 4. *See also* GA resolutions 65/35; 66/108; 67/100; 68/120; and 70/121.

<sup>447</sup>A/68/495. *See also* A/67/723.

<sup>448</sup>A/68/495.

<sup>449</sup>*Ibid.*

organization from accepting financial remuneration and benefits directly from that organization. In such cases, the seconded personnel come into conflict with staff regulation 1.2 (j), whereby “[n]o staff member shall accept any honour, decoration, favour, gift or remuneration from any Government.”<sup>450</sup>

228. In this report, the Secretary-General made a number of suggestions, including amendments to certain staff regulations and rules (Staff Regulation 1.1 (b) —written declaration; Staff Regulation 1.2 (j) and Staff Rule 1.2 (l) —honours, gifts or remuneration; and staff rule 4.15 (h) —functions of the central review bodies) in an effort to address potential conflicts between national legislation and the Staff Regulations and Rules concerning seconded military and police personnel.<sup>451</sup>

229. In its report A/68/615, the ACABQ reviewed the suggested amendments to the Staff Regulations and Rules and stated that:

“the implementation of the suggested amendments to staff regulations and rules may prove to be cumbersome and present certain operational challenges. Among these could be the practical difficulty of keeping track, on an ongoing basis, of the remuneration/benefits/allowances received by each seconded active-duty officer, of adjusting the corresponding United Nations remuneration/benefits/allowances accordingly, of continuously monitoring the changes made to the relevant provisions of the national legislation of several

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<sup>450</sup> *Ibid.*, para. 2.

<sup>451</sup> To address potential conflicts of loyalty, the Secretary-General suggested that:

“the written declaration to be signed by all seconded active-duty military and police personnel under staff regulation 1.1 (b) be amended and that an additional undertaking be included in order for such personnel to inform the United Nations of any conflict between the declaration and the oath or affirmation of office made with their national authorities and to offer to resign in the event that such conflict arises.” (See A/68/495, para. 20.) In connection with conflicts related to remuneration, the Secretary-General stated that all seconded active-duty military and police personnel appointed by the United Nations should be remunerated in accordance with the Staff Regulations and Staff Rules in order to ensure equal pay for work of equal value. (See A/68/495) The Secretary-General added that “[i]n cases where the national legislation of seconded active-duty military and police personnel prohibits them from accepting financial remuneration and benefits from the Organization, or where national legislation requires that the officer continue to receive certain benefits from the Government such as pension contributions, the Secretary-General consider it most desirable for Member States to consider amending their national legislation in order to respect the exclusively international character of the responsibilities of United Nations staff, in accordance with Articles 100 to 102 of the Charter. If this is not feasible, an alternative could be to amend staff regulation 1.2 (j) and related staff rule 1.2 (k), in order to make an exception only for receipt of remuneration from a national Government that is required under national legislation[.]” (See A/68/495)

Member States and of reflecting those changes in the remuneration/benefits/allowances of seconded personnel.”<sup>452</sup>

230. The ACABQ added that the suggested approach that was outlined in the Secretary-General’s report to addressing conflict between United Nations regulations and rules and national legislation required further refinement. Specifically, the ACABQ stated that the approach needed to be based on a more in-depth analysis and assessment of the implications and possible ramifications of the proposed changes.<sup>453</sup>

231. In its resolution 68/252, the General Assembly took note of the report of the ACABQ and requested the Secretary-General to intensify his engagement with Members States, with a view towards the identification of alternative solutions to address conflicts between the United Nations Staff Regulations and Rules and national legislation regarding the secondment of active-duty military and police personnel.<sup>454</sup> Furthermore, in this resolution, the General Assembly requested that the Secretary-General submit a report and, if necessary, a new proposal, regarding developments on this issue at the main part of its seventieth session.<sup>455</sup>

232. Pursuant to above-mentioned resolution (68/252), the Secretary-General issued a report entitled “Seconded active-duty military and police personnel,”<sup>456</sup> which described the efforts made to identify potential conflicts between national legislation and the Staff Regulations and Rules. The Secretary-General explained that, in order to better understand such conflicts, the Secretariat had circulated a note verbale to all Member States, dated 20 June 2014, requesting Member States to provide information on any potential conflicts between their national legislation and the Staff Regulations and Rules which might have an impact on the contractual obligations of active-duty military and police officers holding a United Nations staff appointment.<sup>457</sup> Moreover, as part of the internal review process, all 128 active-duty seconded officers serving at Headquarters in October 2014 were requested to complete a survey reporting any payments, benefits and/or allowances that they might be receiving from their national

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<sup>452</sup>A/68/615, para. 13.

<sup>453</sup>*Ibid.*, para. 14.

<sup>454</sup>GA resolution 68/252, para. 31.

<sup>455</sup>*Ibid.*, para. 32.

<sup>456</sup>A/70/229.

<sup>457</sup>*Ibid.*, para. 6.

Governments as a result of their active-duty status.<sup>458</sup> In his report, the Secretary-General stated that, in reviewing the information provided by Member States, as well as the results of the survey of seconded active-duty military and police personnel, a number of Governments continued to make contributions to the seconded officer's pension scheme. The Secretary-General further noted that, under the tripartite secondment agreement, all parties agree to the secondment on the condition that the Government would protect all of the staff member's pension and promotion rights, and that the staff member would retain the right to return to Government service upon the expiration of the staff member's appointment on secondment.<sup>459</sup> The Secretary-General further stated that, because the protection of pension rights is provided for in section II of General Assembly resolution 45/239, the above-referenced contribution payments to a national pension scheme on behalf of a seconded active-duty military or police officer during service with the United Nations would not be considered to be in conflict with the Staff Regulations and Rules, and that such payments could continue.<sup>460</sup>

## 8. Supplementary payments to staff

233. The revised standards of conduct for the international civil service (A/67/30, Annex IV), approved by the General Assembly resolution 67/257, state that:

“International civil servants should not accept supplementary payments or other subsidies from a Government or any other source prior to, during or after their assignment with an organization of the United Nations system if the payment is related to that assignment. Balancing this requirement, it is understood that Governments or other entities, recognizing that they are at variance with the spirit of the Charter and the constitutions of the organizations of the United Nations system, should not make or offer such payments.”<sup>461</sup>

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<sup>458</sup> *Ibid.*

<sup>459</sup> *Ibid.*

<sup>460</sup> *Ibid.*, para. 9.

<sup>461</sup> A/67/30, Annex IV, para. 51.

234. In connection with the acceptance and purpose of voluntary contributions, gifts and donations, Regulations 3.12 and 3.13 of the revised Financial Regulations and Rules of the United Nations (ST/SGB/2013/4) state the following:

“Voluntary contributions, whether or not in cash, may be accepted by the Secretary-General provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the Organization and provided further that the acceptance of voluntary contributions that directly or indirectly involve additional financial liability for the Organization shall require the consent of the appropriate authority.

[...] Moneys accepted for purposes specified by the donor shall be treated as trust funds or special accounts under Regulations 4.13 and 4.14.”<sup>462</sup>

235. Further, regarding the authority and liability of voluntary contributions, gifts and donations, Rule 103.4 of the revised Financial Regulations and Rules of the United Nations (ST/SGB/2013/4) states the following:

“(a) In cases other than those approved by the General Assembly, the receipt of any voluntary contribution, gift or donation to be administered by the United Nations requires the approval of the Under-Secretary-General for Management.

(b) Voluntary contributions, gifts or donations that directly or indirectly involve additional financial liability for the Organization may be accepted only with the approval of the General Assembly.

(c) Gifts or donations are to be defined and administered as voluntary contributions.”<sup>463</sup>

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

236. In a judgment issued in 2010, the United Nations Appeals Tribunal considered the issue of whether a staff member’s marriage was legally valid at the time the staff

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<sup>462</sup>ST/SGB/2013/4, regulations 3.12 and 3.13.

<sup>463</sup> Rule 103.4 of the revised Financial Regulations of the United Nations (ST/SGB/2013/4).

member separated from the Organization.<sup>464</sup> In order to determine the validity of the marriage, the Tribunal had to resolve which law determined the marital status of a staff member. On this matter, the Tribunal concurred with a previous ruling of the United Nations Administrative Tribunal (its predecessor),<sup>465</sup> which stated:

“[T]he importance of the principle on which the Organization bases itself in the area of questions on marital status, which is to refer to the law of the staff member’s State of nationality: in this way it is possible to respect the various cultural and religious sensibilities existing in the world, as no general solution is imposed by the Organization, which simply tolerates and respects national choices... Reference to national law is the only method whereby the sovereignty of all States can be respected. UNAT Judgment No. 1183, Adrian (2004), para. II.”<sup>466</sup>

237. The Tribunal further held that:

“This long-standing principle has been reiterated and applied in the Secretary General’s circulars and bulletins and has been upheld by the former Administrative Tribunal in several judgments (i.e. Judgments Nos. 1063 (2002) and 1041 (2001)). Accordingly, for the purposes of the Pension Fund, the civil status of a staff member will be determined by the law of the staff member’s nationality. [...] However, this principle can only apply to a staff member who concludes a marriage or enters into another partnership relation under his or her national law and not to staff members who choose to enter into a marriage or partnership under a law other than the one of their nationality.”<sup>467</sup>

238. Additionally, in a case brought before the United Nations Dispute Tribunal in 2013, the Tribunal considered whether the Secretary-General’s discretion was properly exercised in deciding to ascertain the Applicant’s nationality for United Nations purposes.<sup>468</sup> The Tribunal recalled Rule 4.3 of the Staff Rules and Staff Regulations of the United Nations, which states:

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<sup>464</sup> See Judgment No. 2010-UNAT-007.

<sup>465</sup> UNAT Judgment No. 1183, Adrian (2004).

<sup>466</sup> Judgment No. 2010-UNAT-007, para. 22.

<sup>467</sup> *Ibid.*, paras. 23-4.

<sup>468</sup> Judgment No. UNDT/2013/171.

- “a. In the application of the Staff Regulations and Staff Rules, the United Nations shall not recognize more than one nationality for each staff member.
- b. When a staff member has been legally accorded nationality status by more than one state, the staff member’s nationality for purposes of the Staff Regulations and the Staff Rules shall be the nationality of the State to which the staff member is, in the opinion of the Secretary-General, most closely associated.”<sup>469</sup>

239. Subsequently, the Tribunal stated that the purpose of this rule was to avoid administrative problems created when a staff member possesses multiple nationalities. As such, in cases where a staff member possesses dual nationality, the Tribunal stated that it was up to the Secretary-General to exercise his discretion in determining which of the two nationalities a staff member was most closely associated with. Accordingly, the nationality that was determined to be closest to the staff member would then be deemed to be the staff member’s nationality for purposes of the Staff Rules and Regulations.<sup>470</sup>

240. As such, the Tribunal held that:

“[...] where a staff member possesses dual nationality, a number of criteria must go into the determination of which nationality a staff member is most closely associated with for United Nations purposes. These may include factors such as the nationality of birth, family ties, time spent in a country, the will of a staff member, investment’s made, education *et cetera* which all go to the making of this decision and all of which must be considered in comparison and in relation to each other.”<sup>471</sup>

241. The Tribunal further held that:

“[...] no single criterion forms the exclusive basis for making a determination of nationality for UN purposes but that all relevant factors have to be objectively considered in comparison to each other to determine which country a staff member is most closely associated with.”<sup>472</sup>

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<sup>469</sup> *Ibid.*, para. 33.

<sup>470</sup> *Ibid.*, para. 34.

<sup>471</sup> *Ibid.*, para. 37.

<sup>472</sup> *Ibid.*, para. 44.

242. Subsequently, the Tribunal noted that the Secretary-General's exercise of discretion would not be interfered with, as long as said discretion was not exercised in an arbitrary and abusive manner.<sup>473</sup> As such, the Tribunal found that the Administration was correct in determining the Applicant's nationality, citing Staff Rule 4.3, and noting the absence of any evidence that the discretion granted to the Secretary-General had been exercised arbitrarily or in an abusive manner, or was vitiated by improper motives.<sup>474</sup>

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<sup>473</sup>*Ibid.*, para. 49.

<sup>474</sup>*Ibid.*, para. 51.