

ARTICLE 100

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TEXT OF ARTICLE 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

INTRODUCTORY NOTE

1. As indicated in the General Explanatory Note (paragraph 11) to the Repertory of Practice of United Nations Organs, reference was made therein to decisions adopted after 31 August 1954 when necessary to complete the treatment of a particular point. Accordingly, certain decisions relating to Article 100 were included 1/ in the original study on that Article notwithstanding that such decisions were adopted after 31 August 1954. Although those decisions fall within the period covered by this Supplement, they are not discussed herein since they are adequately treated in the original study.

I. GENERAL SURVEY

2. In addition to the decisions which have been treated in the earlier study, the General Assembly, during the period covered by this Supplement, adopted resolution 957 (X) by which it established a procedure for review of the judgements of the Administrative Tribunal of the United Nations. Specific reference was made to the provisions of Article 100 of the Charter in the discussion preceding the adoption of this resolution. The discussion on this point is summarized below. 2/

II. ANALYTICAL SUMMARY OF PRACTICE

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

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

C. The obligations of Member States

**** 1. *Privileges and immunities of the Secretariat***

**** 2. *The question of Governments providing the Secretary-General with information relating to staff members: compatibility with the obligation of Member States not to instruct the Secretary-General***

**** 3. *The question of the investigation by a Member Government of its nationals on the staff***

**** 4. *The question of special rights of a host country in determining the employment of its nationals***

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

**** 6. *Refusal to grant passports to nationals on the staff***

7. *The question of compatibility between Article 100 and the establishment of a procedure giving Member States the right to initiate judicial review of judgements of the Administrative Tribunal*

1/ See in the Repertory, under Article 100, paras. 37-40.

2/ For a discussion of questions raised by other parts of the proposals adopted in resolution 957 (X), see in this Supplement, under Article 96.

3. During the tenth session of the General Assembly, the Fifth Committee had before it the report 3/ of the Special Committee established by resolution 888 (IX) 4/ to study the question of the establishment of a procedure for judicial review of decisions of the Administrative Tribunal of the United Nations. In this report the Special Committee recommended to the General Assembly draft amendments to the Statute of the Administrative Tribunal, which amendments would provide that a Member State which objected to a judgement of the Administrative Tribunal and whose objection was based on specified grounds might make an application to a special committee to request an advisory opinion of the International Court of Justice on the matter. This latter special committee would decide whether there was a substantial basis for the application. If such a basis existed, this special committee would request an advisory opinion of the Court.

4. In addition to the report of the Special Committee referred to in paragraph 3, the Fifth Committee also had before it the following: a draft resolution 5/ which proposed that the General Assembly should decide to amend the Statute of the Administrative Tribunal in accordance with the recommendations of the Special Committee; and proposed amendments 6/ to the foregoing draft resolution which would eliminate the provision giving Member States the right to request the judicial review under discussion.

5. In the course of the discussion in the Fifth Committee, the question arose as to whether a Member State could properly be given the right to initiate such a judicial review. 7/ Two main reasons were given in support of the position that the proposal could not be reconciled with Article 100 of the Charter. It was pointed out that Member States had no direct interest in disputes referred to the Administrative Tribunal, and to give a Member State the right to interfere therewith would contravene the principle that the Secretary-General and the staff must be completely independent of Member States. Moreover, if a particular State applied for review of a judgement which favoured a staff member, the latter and his colleagues might feel aggrieved and might become prejudiced against the Member State concerned in the day-to-day discharge of their functions. The proposal if adopted could thus present occasion for conflict between Member States and the staff, and this would impair the objectivity of the staff and the exclusively international character of the Secretariat.

6. On the other hand, some delegations found it difficult to see how a proposal to request a review by a judicial body of a point of law arising out of an Administrative Tribunal judgement could be viewed as an impairment of Article 100. Acceptance of that argument would constitute an admission that a Member State would be seeking to influence the Secretariat if it proposed to refer to the International Court a point of law concerning the manner in which the Secretary-General or the staff discharged

3/ G A (X), annexes, a.i. 49, p. 1, A/2909.

4/ For steps leading to the establishment of the Special Committee and the adoption of resolution 888 (IX), see in the Repertory, under Article 101, paras. 161-163.

5/ The substance of this draft resolution is embodied in the report of the Fifth Committee to the General Assembly on this question (G A (IX), annexes, a.i. 49, p. 38, A/3016, para. 11).

6/ The amendments are reproduced in the report of the Fifth Committee to the General Assembly on this question (ibid., para. 32).

7/ For texts of relevant statements, see G A (X), 5th Com., 493rd mtg.: Egypt, para. 64; 495th mtg.: Syria, para. 6; USSR, para. 36; Yugoslavia, para. 22; 496th mtg.: Czechoslovakia, para. 56; India, para. 28; Mexico, para. 64; 497th mtg.: Iraq, para. 13; United States, paras. 23 and 24. See also G A (X), annexes, a.i. 49, p. 1, A/2909, paras. 33-41.

their responsibilities, and would preclude any request for an opinion on the meaning of Article 100 or 101. It would have barred the submission to the Court of at least one case, that of reparation for injuries suffered in the service of the United Nations. It clearly was not the purpose of Article 100 to prevent such requests for advisory opinions. Concerning the possibility of conflicts between the views of Member States and staff members, it was stated that acceptance of this argument would render most of the Fifth Committee's usual discussions contrary to the Charter, for the Committee constantly discussed and adopted proposals submitted by Member States affecting the status of the Secretary-General and the staff. A Member State had the right to submit a proposal to a duly constituted organ of the General Assembly, which would then publicly consider the proposal and take a majority decision on it, and this right was in no way incompatible with the provisions of the Charter.

7. At the conclusion of its discussion, the Fifth Committee voted on the draft resolution and proposed amendments thereto mentioned above in paragraph 4. The proposed amendment which would eliminate the provision giving Member States the right to request judicial review of Administrative Tribunal judgements was rejected by a roll-call vote of 27 to 25, with 5 abstentions. Operative paragraph 1 of the draft resolution, incorporating the draft amendment to the Statute of the Administrative Tribunal giving Member States the right to request judicial review, was approved by a roll-call vote of 27 to 19, with 11 abstentions. The draft resolution as a whole was approved in the Fifth Committee by a roll-call vote of 27 to 18, with 12 abstentions, and was adopted in turn by the General Assembly as resolution 957 (X). 8/

**** D. The question of the relationship between the international loyalty of a staff member and his loyalty to the State of which he is a national**

8/ For a complete record of voting in the Fifth Committee, see G A (X), annexes, a.i. 49, p. 38, A/3016, paras. 43-49.