

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 continuing responsibility of staff members as international officials to discharge their duties independently of outside influence or control, and the obligation on the part of Member States as a corollary to respect that independence.¹ In this regard, Article 100 provides for the international character of the Secretariat, responsible only to the Organization.² The present study deals with the steps that have been taken in the period under review to protect the constitutional position of the Secretariat, as well as the particular problems and questions that have arisen in connection with those steps.

2. Certain changes have been introduced to the format of this study to better illustrate the broader conceptual questions or problems arising with respect to Article 100 as a result of the expanded international responsibilities that the United Nations and the staff comprising the Secretariat have assumed. To this end, several sub-headings have been merged where they reflect issues of similar rationale or concern. In addition, the heading of the final section on the question of loyalty of staff members has been changed to reflect the concern that has appeared under this heading in recent *Supplements* with the implications of a staff member's relationship to the State of which he/she is a national, as opposed to specific concerns over conflicts of loyalty between the United Nations and that State.

3. The general survey provides a synoptic overview of the application of Article 100 and the trends in the definition of the international character of the Secretariat and the responsibilities of Member States. The analytical summary of practice provides a more specific elaboration of actions or developments during the period under review.

4. Certain aspects of the discussion of the international character of the Secretariat and actions taken with regard to it, notably with respect to geographical distribution, are related to Article 101 and may be found under the study of that Article. Additionally, the principles of Article 100 are also interrelated with Article 105, which discusses privileges and immunities. Further reference may be made to the study of Article 8 in connection with the overall composition of the Secretariat and the representation of women therein.

¹ For a history of the negotiation of this Article and its purpose, reference may be made to the negotiations of the San Francisco Conference. See *Documents of the United Nations Conference on International Organization*.

² See *Repertory*, under this Article.

I. GENERAL SURVEY

5. The period under review saw significant emphasis on Article 100. The General Assembly continued to invoke both Article 100 and Article 101 in the context of decisions on the composition of the Secretariat³ and with respect to the privileges and immunities of officials.⁴ Additional consideration of issues related to the application and interpretation of Article 100 was given in an advisory opinion ren-

dered by the International Court of Justice on a judgement of the United Nations Administrative Tribunal (UNAT).⁵ In addition, a number of decisions of UNAT considered the application and interpretation of Article 100.⁶

⁵ See *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*, I.C.J. Reports 1987, p. 18 (hereinafter *Advisory Opinion*). See also discussion of the judgement of the Tribunal under the study of this Article in *Supplement No. 6*, vol. VI, paras. 15-17.

⁶ See, e.g., AT/DEC/377.

³ See, e.g., G A resolutions 42/220 A and C and 43/224 A and C.

⁴ See, e.g., G A resolutions 40/258 C, 41/205 and 42/219.

6. During the period under review, the issue of the character of the international civil service was addressed in the context of the structure of the Secretariat. The recommendations of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group of 18),⁷ which were endorsed by the General Assembly,⁸ gave renewed attention to the Secretary-General's authority over, and his responsibility to, the international civil service.⁹

7. While attention was given to the obligations of staff as international officials, much of the focus in respect to Article 100 concerned the obligations of Member States. This attention was prompted by what was identified by the Secretary-General as a deterioration in respect for the privi-

⁷ G A (41), Suppl. No. 49.

⁸ See G A resolution 41/213.

⁹ G A (41) Suppl. No. 49, recommendation 41. See also discussion in paras. 24-28 below in the context of respect for the privileges and immunities of the international civil service.

leges and immunities of officials of the Organization, as well as of the specialized agencies and related organizations.¹⁰ In addition, the Secretary-General cited the emergence of other measures, in addition to the arrest and detention of officials, that constituted interference by States in the contractual relationship between officials and their international organizations.¹¹ The General Assembly repeatedly called upon the Secretary-General to act personally to promote and ensure respect for the privileges and immunities of United Nations officials.¹² In that context, the need for greater authority and respect for the Secretary-General in protecting the independence of the international civil service was also expressed.¹³

¹⁰ See A/C.5/41/12, A/C.5/42/14 and A/C.5/43/18.

¹¹ A/C.5/41/12 and A/C.5/43/18, para. 9.

¹² See, e.g., G A resolutions 40/258 C, para. 5; 41/205, para. 8; and 42/219, para. 11.

¹³ See G A (41), Suppl. No. 49, recommendation 41. See also G A (41), 5th Comm., 32nd mtg., para. 15, and 39th mtg., paras. 5 and 6.

II. ANALYTICAL SUMMARY OF PRACTICE

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

8. During the period under review, specific attention continued to be given to the definition of the international civil service in the context of geographical distribution.¹⁴ In the course of discussion in the Fifth Committee of personnel matters, a number of Member States stressed the need for the international civil service to be truly representative of the political, national, cultural and linguistic variety in the world.¹⁵ Citing Article 100, many delegations also reiterated the need for recruiting nationals of unrepresented and underrepresented countries.¹⁶ Additional emphasis was placed on the recruitment of women in the Secretariat. The General Assembly repeatedly recalled Article 100 in its resolutions on personnel matters addressing issues of both geographical distribution and the status of women.¹⁷

9. Increased violations of privileges and immunities of officials was another issue identified as having a significant impact on the Secretariat and the overall character of the civil service.¹⁸ In a statement to the Fifth Committee, the Secretary-General identified the basic concept of the international civil service as an item of "primordial importance", citing Article 100 in this context in defining the reciprocal

¹⁴ See *Repertory, Supplement No. 6*, vol. VI, under Article 100, paras. 3 and 4. See also the present *Supplement* under Article 101, paras. 10-23.

¹⁵ See, e.g., G A (42), 5th Comm., 67th mtg., para. 33, and 30th mtg., para. 1.

¹⁶ *Ibid.* See also *ibid.*, paras. 6 and 12.

¹⁷ See, e.g., G A resolutions 42/220 A and C and 43/224 A and C.

¹⁸ See also paras. 24-28 below.

obligations of staff and Member States arising therefrom.¹⁹ The Secretary-General further linked the issue of the security of the international civil service to its independence and international character.²⁰ Identifying the independence of the international civil servant as based not necessarily on the concept of permanence of appointment but on his/her sole responsibility to the Secretary-General and, through the Secretary-General, to the international community, the Secretary-General stated that the staff member would remain independent as long as he knew that, in the performance of his official duties, he would be protected not only from interference but also from prosecution, loss of freedom or death.²¹

10. Specific consideration of the role and function of the Secretariat was undertaken following the fortieth session of the General Assembly, in which the Assembly called for the establishment of a group of high-level experts to review the administrative and financial functioning of the United Nations.²² In its report, submitted to the General Assembly at its forty-first session, the Group of 18 underscored the importance of the staff of the Secretariat observing that, "the efficiency of the United Nations depends to a large extent on the performance of its Secretariat and other organs; the quality and usefulness of the Secretariat are, in turn, dependent upon the quality and dedication of its staff."²³ Referring to Article 100 as well as Article 101, the Group of 18 went on to observe that personnel policy and manage-

¹⁹ G A (41), 5th Comm., 27th mtg., paras. 6-9.

²⁰ *Ibid.*, paras. 6 and 8.

²¹ *Ibid.*, para. 8.

²² G A resolution 40/237.

²³ G A (41), Suppl. No. 49, para. 45.

ment in the United Nations had suffered as a result of the considerable political and other pressures, recommending that the Secretary-General exercise greater leadership in personnel matters and ensure that staff selection was done in accordance with the principles of the Charter.²⁴ In particular, the Group recommended that the Secretary-General protect the authority of the official and the office in charge of personnel, especially from influence by other senior officials.²⁵ The Group further made recommendations in a number of areas related to the character and composition of the Secretariat. They called, for example, for substantial reductions in staff size with proportional increase in junior professionals.²⁶ Additional recommendations concerned the representation of women and nationals of developing countries at senior levels, the creation of clear criteria for promotion as well as measures to implement the principle endorsed by the General Assembly that no position should be considered the exclusive preserve of any Member State.²⁷

11. In its consideration of the recommendations of the Group of 18, the Fifth Committee noted the intent of the Secretary-General to proceed with staff reductions with flexibility,²⁸ further noting the emphasis on leadership by the Secretary-General in management of the civil service in line with General Assembly resolutions as well as the Secretary-General's aim, expressed to the Fifth Committee, to review all delegations of authority.²⁹ The General Assembly at its forty-first session endorsed the recommendations of the Group of 18 contained in its report in the light of the findings of the Fifth Committee,³⁰ subject to certain modifications.³¹

12. Pursuant to the request of the General Assembly, the Secretary-General subsequently reported on the implementation of the G18 recommendations of the Group of 18.³² In his report to the Assembly at its forty-second session, the Secretary-General underscored the importance of his authority under the Charter with respect to the organization and composition of the Secretariat:

“The Secretariat is a principal organ of the United Nations and the Secretary-General, as its Chief Administrative Officer, has, under the Charter, the responsibility to manage its financial and human re-

²⁴ Ibid., recommendation 41.

²⁵ Ibid.

²⁶ Ibid., recommendation 15.

²⁷ Ibid., recommendations 46, 47, 51 and 57. The specific recommendations in respect to implementing the principle that no position should be considered the exclusive preserve of any Member State did not command a consensus. See also G A resolution 35/210 establishing this principle.

²⁸ A/41/795, paras 27-34 and 51.

²⁹ Ibid., para. 51.

³⁰ G A resolution 41/213, sect. I, para. 1.

³¹ See G A resolutions 41/213, 42/211 and 43/213.

³² See A/42/234 and A/43/286.

sources. This responsibility must not be eroded or diminished if the Secretary-General is to organize the internal structures of the house and make the necessary personnel decisions in a manner that enhances the efficiency and the effectiveness of the Organization.”³³

13. Regarding the implementation of specific measures, the Secretary-General reported on staff reductions, particularly of higher-level professionals. With reference to other staff, the Secretary-General stated that while he agreed on the necessity of injecting new blood into the Organization, owing to financial circumstances, he could not lift the current recruitment freeze to recruit new junior professional officers.³⁴ At the same time, the Secretary-General reported on the establishment of clear criteria for selecting candidates – especially the implementation of competitive selection for junior professionals.³⁵ As regards women, the Secretary-General cited measures taken in accordance with the action programme approved by the General Assembly at its fortieth session, noting however that the recruitment freeze would similarly prevent major improvements in the proportion of women.³⁶ As regards representation from developing countries, the Secretary-General reported that indicative planning figures would be established to measure progress.³⁷

14. It may be recalled that the exclusively international character of the responsibilities of the Secretary-General and the staff under Article 100 had been linked with measures for their protection.³⁸ In his report to the General Assembly at its forty-third session, the Secretary-General described further efforts in the management and protection of personnel. These included strengthening the role and authority of the Office of Personnel Services, renamed the Office of Human Resources Management in part to reflect additional responsibilities in providing, inter alia, policy

³³ A/42/234, para. 4(4).

³⁴ Ibid., para. 55. It should be noted that in its resolution, the General Assembly observed that the implementation, by the Secretary-General, of certain of the G18 recommendations endorsed by the General Assembly was not in accordance with the decisions of the General Assembly. G A resolution 42/211, para. 9.

³⁵ A/42/234, annex, paras. 34 and 35.

³⁶ Ibid., paras. 39-42. See also A/43/286, para. 75. The report on the status of women containing the action programme endorsed by the General Assembly cited the conclusion that political, economic and social development was inherently limited by the absence of women in the decision-making process and that women rarely participated in the formulation and execution of Organization programmes. Consequently, “if the United Nations efforts to promote the goals of the Charter are to be fully effective, the challenge ahead is to ensure that women assume their role in all aspects of these critical areas of the Organization's work”. (A/C.5/40/30, para. 1)

³⁷ A/42/234, annex, para. 43. See also A/43/286, para. 76.

³⁸ See para. 9 above. See also *Repertory*, vol. VI, under Article 100, *Supplement No. 6*, paras. 10 and 11.

guidelines in staff management and worldwide protection of staff under the Assistant Secretary-General of the Office.³⁹

B. The obligations of members of the Secretariat

1. RESPONSIBILITIES OF THE SECRETARY-GENERAL

15. In recalling Article 100 of the Charter and the responsibility of the Secretary-General as the Chief Administrative Officer for selecting and managing staff,⁴⁰ the Group of 18 in its report observed that personnel policy and management in the United Nations had suffered as a result of considerable political and other pressures influencing the selection of staff. The Group recommended that the Secretary-General exercise greater leadership in personnel matters and ensure that the selection of staff was carried out strictly in accordance with the principles of the Charter.⁴¹ In subsequent resolutions recalling Article 100,⁴² the General Assembly reiterated its support for the Secretary-General and his prerogatives and responsibilities under the Charter.⁴³

16. Emphasis on the responsibilities of the Secretary-General was particularly notable in the context of protecting international civil servants in the course of their duties. During the period under review, the General Assembly repeatedly called upon the Secretary-General to act personally as the focal point in promoting and ensuring the privileges and immunities of United Nations officials and officials of the specialized agencies and related organizations by using all such measures as were available to him.⁴⁴ Citing Articles 100 and 105 of the Charter, the Assembly at its forty-second and forty-third sessions identified, *inter alia*, the responsibility of the Secretary-General to safeguard the functional immunity of all United Nations officials and the wider considerations of the Secretary-General in guaranteeing minimum standards of justice and due process to United Nations officials.⁴⁵

³⁹ A/43/286, para. 69.

⁴⁰ G A (41), Suppl. No. 49, sect. IV, para. 45. Reference was also made to Articles 97 and 101 of the Charter

⁴¹ *Ibid.*, recommendation 41. The Group of 18 further recommended that the Secretary-General improve the management of human resources, protect the authority of the official in charge of personnel and instruct senior officials to refrain from influencing the selection of staff. *Ibid.*

⁴² See, e.g., G A resolutions 42/220 A sect. I, and 43/224 A.

⁴³ *Ibid.* See also G A resolution 43/224 C on the improvement of the status of women. Particular consideration was given to the issue of obligations to staff members in the context of Article 100 in the *Advisory Opinion*, in particular pp. 125-126 (Diss. Op. Schwebel). See also p. 170 (Diss. Op. Evensen).

⁴⁴ See, e.g., G A resolutions 40/258 C, para. 5; 41/205, para. 8; 42/219, para. 11; and 43/225, para. 11. See also the present study, paras. 24-28.

⁴⁵ See G A resolutions 42/219 and 43/225.

2. OBLIGATIONS OF STAFF MEMBERS REGARDING THE PERFORMANCE OF DUTIES

(a) Overall professional responsibility of staff

17. In the context of the continuing emphasis on respect for the privileges and immunities of officials, the General Assembly also repeatedly stressed the obligations of staff members to comply with the relevant staff regulations and rules on impartiality and the duty to respect the laws and customs of Member States.⁴⁶ In a statement to the Fifth Committee during the forty-first session of the Assembly, the Secretary-General emphasized that he would not tolerate any failure on the part of the staff to respect their duty to be impartial.⁴⁷

18. As in the past, the ethical conduct of staff continued to be a matter of concern.⁴⁸ Several judgements of the United Nations Administrative Tribunal addressed the overall responsibility of the staff to the Organization. United Nations Administrative Tribunal Judgement No. 410 concerned the appeal of the Applicant against a decision to recover overpayments of dependency benefits received by the Applicant as her spouse was already receiving benefits from the International Telecommunication Union.⁴⁹ Rejecting the claims of the Applicant regarding the interpretation of the Staff Rules, the Tribunal indicated that the Applicant could not have been unaware that she was not entitled to benefits, and of the inappropriateness of her submitted claims for them. The Tribunal further rejected the Applicant's apparent theory that if there was impropriety in seeking and obtaining benefits, it was the responsibility of the Administration to discover it and notify her thereof. In that regard, the Tribunal held that the Organization was entitled to a higher standard of conduct from its staff, particularly attorneys.

19. In Judgement No. 424 concerning an appeal against a summary dismissal for serious misconduct where the Applicant had filed tax returns with the United States Internal Revenue Service and the New York State Tax Department that differed from the returns submitted to the United Nations for reimbursement,⁵⁰ the Applicant asserted that since his spouse had handled all aspects of their joint return, he had no knowledge of the affair. While the Joint Appeals Board declined to reach the merits of the case as it concluded that the Director of Personnel had not established the culpability of the Applicant, the Tribunal found that the matter rested on whether the Secretary-General had exercised his reasonable discretion that the Applicant's conduct amounted to serious misconduct warranting summary dis-

⁴⁶ See, e.g., G A resolutions 41/205, para. 7; 42/219, para. 9; and 43/225, para. 9.

⁴⁷ G A (41), 5th Comm., 27th mtg., para. 7.

⁴⁸ See *Repertory, Supplement No. 3*, vol. IV, under Article 100, paras. 21-24.

⁴⁹ AT/DEC/410.

⁵⁰ AT/DEC/424.

missal. The Tribunal further found that even if the Secretary-General had believed the Applicant's contention of ignorance, the Secretary-General could have reasonably concluded that the Applicant was guilty of serious misconduct warranting summary dismissal. The Tribunal asserted that every staff member had an absolute personal and non-transferable responsibility to see to it that every certification to the United Nations in connection with taxes was accurate. In the view of the Tribunal, it was no answer that the staff member had acted in good faith by trusting another, no matter what the apparent justification for the trust might have been.

*** (b) Responsibility to the Secretary-General with regard to the exercise of functions of staff members*

(c) Non-acceptance of instructions from external authorities

20. In UNAT Judgement No. 377 relating to the appeal by the Applicant to rescind a written censure imposed by the Secretary-General and the awarding of damages for mistreatment and misapplication of rules and regulations damaging his career,⁵¹ the Secretary-General had imposed a written censure on the Applicant as a disciplinary measure pursuant to Staff Rules and Regulations as a result of a finding that the Applicant had distributed to colleagues an unofficial preliminary version of a governmental proposal, without mentioning its provenance and without authorization from superiors. The Secretary-General therefore found that the Applicant had allowed himself to become an instrument of unauthorized communication between a delegation and the Secretariat which he had sufficient grounds to believe might materially differ from the proposal of the Secretary-General. The Tribunal considered that the facts established by the Panel of Investigation and the Joint Disciplinary Committee – and the admission by the Applicant that he had distributed the plan – sustained the finding of the Secretary-General. In that context, the Tribunal recalled the basic obligations of Article 100 and determined that the Applicant's conduct had been unsatisfactory, permitting the Secretary-General to apply disciplinary measures. Noting that the disciplinary measure was the least serious that could be applied, the Tribunal found that the measure imposed indicated that the Administration was not prepared to allow the basic obligations of international civil servants to be disregarded, and that it constituted a warning to others.

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

(e) Impartiality in the performance of official duties

21. In the context of addressing the Fifth Committee, the Secretary-General had occasion to emphasize in particular the value of independence as an attribute of impartiality in

the responsibilities of staff under Article 100.⁵² In that regard, the Secretary-General noted that the international character of the responsibilities of the Secretary-General and the staff meant that the independence of staff must be preserved by every civil servant and respected by every Member State.⁵³ The Secretary-General, inter alia, stated that independence was not an end in itself but an essential and basic condition which enabled the international civil servant to maintain his impartiality. Through that impartiality, he won the trust of Member States, and through that trust became an efficient tool in the service of the international community. Clearly, the idea of independence implied reciprocal rights and duties between staff members and Member States. In asking Member States to help him to maintain and strengthen that concept, the Secretary-General also required each member of the Secretariat to demonstrate absolute respect for the duty to be impartial and for the laws and customs of every Member State, especially those of the countries in which the staff member performed his duties. He would not tolerate any failure on the part of the staff to respect their duty to be impartial.⁵⁴

3. OBLIGATIONS REGARDING PERSONAL CONDUCT

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

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

(c) Acceptance of gifts, honours, or favours

22. In 1987, the Office of the Legal Counsel addressed a memorandum to the Chef de Cabinet, Under-Secretary-General in the Executive Office of the Secretary-General, in answer to a request for advice concerning the nomination of a staff member as "Chevalier de la Légion d'Honneur" for his previous service with his Government.⁵⁵ The Legal Counsel observed that the acceptance of such honours was regulated by regulation 1.6 of the Staff Regulations, which stated:

"No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government, excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift, or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 of the Staff Regulations and with the individual's status as an international civil servant."⁵⁶

Citing Article 100, paragraph 2, of the Charter as the basis for the regulation, the Legal Counsel stated that the regula-

⁵¹ AT/DEC/377.

⁵² G A (41), 5th Comm., 27th mtg., paras. 6-9.

⁵³ Ibid., para. 6.

⁵⁴ Ibid.

⁵⁵ *United Nations Juridical Yearbook, 1987*, p. 194.

⁵⁶ ST/SGB/Staff Regulations/Rev.18.

tion laid down a categorical injunction against acceptance by a staff member of any honour, decoration, favour, gift or remuneration “*accorded by a Government(sic)*.”⁵⁷ He observed that the regulation had been consistently and strictly enforced in practice, and that it left absolutely no discretion to the Secretary-General for approval. Accordingly, the Legal Counsel concluded that a staff member could only accept the nomination of “Chevalier de la Légion d’Honneur” after leaving the Organization.

(d) *Activities connected with the information media*

23. In response to a request from the Special Assistant to the Secretary-General regarding the proposed publication by an outside publisher of a book by a United Nations official, the Office of the Legal Counsel addressed questions of ownership and publication of speeches and lectures of United Nations officials. Regarding the question of ownership of speeches and lectures, the Legal Counsel first identified the need to distinguish between lectures and speeches given by a staff member in his official capacity, which would include a conference or seminar prepared by the United Nations or its specialized agencies, and those given in his private capacity outside the framework of the United Nations. In respect of the former, the Legal Counsel asserted that proprietary rights were automatically vested in the United Nations pursuant to staff rule 112.7 which stated: “All rights, including title, copyright and patent rights, in any work performed by a staff member as part of his or her official duties shall be vested in the United Nations.”⁵⁸ As regards the latter, the Legal Counsel stated that speeches or lectures delivered by an official in his/her private capacity at non-United Nations conferences and seminars belonged to him/her. Such speeches or lectures might be submitted for publication to an external publisher, but it was the view of the Legal Counsel that prior approval was necessary from the Secretary-General pursuant to staff rule 101.6(e)(iv).⁵⁹ He noted, however, that administrative instructions indicated that:

“the approval of the Secretary-General required in staff rule 101.6(e) for such publication will normally be accorded, if the article or other material includes, where and when appropriate, the following disclaimer:

⁵⁷ *United Nations Juridical Yearbook, 1987*, p.194.

⁵⁸ The Legal Counsel also cited administrative instructions to the effect that “Articles or papers prepared by staff members for inclusion in a United Nations publication, or as a contribution to a conference or seminar, are covered by the terms of staff rule 112.7.” See ST/AI/189/Add.9/Rev.1, para. 14(c).

⁵⁹ “(e) Staff members shall not, except in the normal course of official duties or with the prior approval of the Secretary-General, perform any one of the following acts, if such act relates to the purpose, activities or interests of the United Nations:

“...
“(iv) submit articles, books, or other material for publication.”

“The views expressed herein are those of the author(s) and do not necessarily reflect the views of the United Nations.”⁶⁰

***(e) Political activities*

***(f) Criminal activities*

C. The obligations of Member States

1. PRIVILEGES AND IMMUNITIES OF THE SECRETARIAT

24. The obligation of States under Article 100 to respect the international character of the international civil service became a matter of increasing concern during the period under review in the context of respect for the privileges and immunities of officials.⁶¹ In his annual reports on privileges and immunities following the fortieth session of the General Assembly, the Secretary-General noted a continuing deterioration of respect by Member States for the privileges and immunities of United Nations officials, notably through arrest and detention as well as through other measures that interfered with the performance by staff members of their official duties and impaired their physical safety.⁶² Taking note of the situation with concern, the General Assembly repeatedly called upon States to respect the privileges and immunities of officials, specifically recalling Article 100 in the process.⁶³ Consideration of the matter was undertaken by several bodies of the United Nations system, including the Administrative Committee on Coordination, which held an ad hoc meeting on security in 1987, the first since 1983,⁶⁴ as well as the International Civil Service Commission.⁶⁵

25. A consequence of this attention and concern was the renewed consideration given to the scope and character of obligations of States and the concomitant responsibility of the Secretary-General to ensure respect for the privileges and immunities of officials. Speaking before the Fifth Committee of the General Assembly at its forty-first session, the Legal Counsel reiterated that the Convention on the Privileges and Immunities of the United Nations drew no distinction between locally recruited staff members and those recruited internationally.⁶⁶ The issue of respect for the

⁶⁰ ST/AI/190/Rev.1, para. 8.

⁶¹ See also the present *Supplement*, under Articles 104 and 105, paras. 71-88.

⁶² A/C.5/41/12, A/C.5/42/14 and A/C.5/43/18. In an address to the Fifth Committee during the forty-third session of the General Assembly, the Secretary-General referred to the continuing rise in new cases as “totally unacceptable”. A/C.5/43/SR.30, para. 33.

⁶³ See G A resolutions 40/258 C, 41/205, 42/219 and 43/225.

⁶⁴ ACC/1987/13.

⁶⁵ G A (42), Suppl. No. 30, paras. 345-349. The Commission considered the matter to be within its jurisdiction. *Ibid.*, para. 349. See also the present *Supplement*, vol. IV, under Article 58, para. 27.

⁶⁶ See A/C.5/40/SR.43, para. 3. The General Assembly continued to recall its resolution 76 (I) granting privileges and immunities to all staff members. See, e.g., G A resolutions 42/219 and 43/225.

status and functions of staff members was further defined to include both legal and humanitarian considerations in the arrest and detention of officials.⁶⁷ While the former could be said to include the observation by States of relevant international instruments, the Secretary-General also identified a responsibility on the part of States and the administrations of international organizations alike to ensure the observance of certain principles of justice and fairness in the treatment of staff, over and above respect for their functional immunity.⁶⁸ A further aspect of those principles was concern for the physical condition of arrested officials. In that connection, staff representatives had repeatedly urged the establishment of an independent medical group under the United Nations Medical Service to visit imprisoned staff on a humanitarian basis.⁶⁹ However, broader due process requirements were also identified. Thus, the General Assembly at its forty-third session specifically recalled its decision approving the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in the context of its annual resolution on respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations.⁷⁰ It also called upon Member States holding officials under arrest or in detention to enable the Secretary-General to exercise the Organization's right of functional protection in respect of those officials, in particular by providing him with immediate access to them.⁷¹ More particularly, the Secretary-General sought the agreement of States for a proposal of the United Nations Development Programme that States allow access to arrested and detained staff by the designated official for security within 24 hours of an arrest or detention, and that they provide a formal explanation within 48 hours.⁷² Support for that proposal was expressed by a number of delegations in the Fifth Committee.⁷³

26. Concern over what was considered to be a deterioration of respect on the part of States for the privileges and immunities of officials during the period under review extended beyond cases of arrest and detention. In his report to the General Assembly at its forty-first session, the Secretary-General observed that interference by States in the contractual relationship between officials and the Organization might have the same result as arrest and detention in terms of infringing upon their privileges and immunities.⁷⁴ The Secretary-General cited several actions on the part of States constituting such interference, including taxation and fees imposed on nationals,⁷⁵ restrictions on travel, in which

connection limitations imposed by the host country were a significant issue,⁷⁶ as well as restrictions on local recruitment.⁷⁷ Following its consideration of the Secretary-General's report, the General Assembly called upon States "scrupulously" to respect the privileges and immunities of officials and to refrain from any acts that would impede such officials in the performance of their functions.⁷⁸

27. Following its earlier request,⁷⁹ the General Assembly at its fortieth session called upon the Secretary-General to implement the mandate of its previous resolution by which the Secretary-General as Chairman of the Administrative Committee on Coordination would review and appraise measures to enhance the safety of international civil servants, modifying such measures where necessary and suggesting further steps.⁸⁰ In that regard, at the ad hoc meeting on security, the Committee adopted a decision to amend the United Nations Security Handbook to provide that where the arrest and detention of an official constituted a clear violation of the privileges and immunities of the official concerned and the employing organization had not been able to fulfil its obligations towards the official, the Secretary-General should request the heads of the organizations with programmes in the country to suspend all operations, except purely humanitarian ones, and cancel future missions until the situation was resolved.⁸¹ The Economic and Social Council took note of the action in its decision 1988/167.

28. Further emphasis on the authority of the Secretary-General was given in the repeated calls by the General Assembly upon the Secretary-General as Chief Administrative Officer to act as focal point in promoting and ensuring the observance of the privileges and immunities of officials of the Organization and the specialized agencies and related organizations by using "all such means as are available to him for that purpose".⁸² Following his report to the Assem-

⁶⁷ See A/C.5/42/14, paras. 6 and 7.

⁶⁸ *Ibid.*

⁶⁹ A/C.5/41/39, para. 23, and A/C.5/43/27, para. 30.

⁷⁰ G A resolution 43/225, see also G A resolution 43/173.

⁷¹ G A resolutions 42/219, para. 7, and 43/225, para. 7.

⁷² A/C.5/43/18, para. 34. See also A/C.5/43/SR.30, paras. 35-36.

⁷³ G A (43), 5th Comm., 35th mtg., paras. 38 and 48.

⁷⁴ A/C.5/41/12, para. 3.

⁷⁵ See A/C.5/41/12 and A/C.5/43/18, para. 9.

⁷⁶ A/C.5/41/12, para. 8.

⁷⁷ See A/C.5/43/18, paras. 23-26.

⁷⁸ G A resolution 41/205, para. 5. See also G A resolution 42/219, para. 6.

⁷⁹ G A resolution 39/244.

⁸⁰ G A resolution 40/258 C, para. 5. See also G A resolution 39/244, paras. 7 and 8. This call was repeated by the General Assembly at its forty-first session; G A resolution 41/205, para. 10.

⁸¹ ACC/DEC/1987/20. The determination whether to invoke the terms of the new provision was to be made on the advice of the designated official on security through appropriate UNDP field security and the concurrence of the United Nations Security Coordinator and the Legal Counsel. Some concern was registered in the General Assembly as to whether such a decision empowered ACC to suspend General Assembly mandated operations, but it was the view of the Legal Counsel that the action was within the competence of ACC. See G A (43), 5th Comm., 50th mtg., paras. 11-13. A written explanation of the legal conditions governing this view was requested. *Ibid.*

⁸² See G A resolutions 41/205, para. 8; 42/219, para. 11; and 43/225, para. 11.

bly at its forty-second session identifying an increase in cases involving apparent violations of the privileges and immunities of such officials, the Secretary-General was specifically called upon by the General Assembly to use all means available to resolve those cases that were still pending.⁸³ The Assembly reiterated its request at its forty-third session.⁸⁴

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

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

29. The question of regulation by States of their own nationals was identified by the Secretary-General as interference by States in the contractual relationship between officials and the organizations and a potential breach of privileges and immunities with potentially the same consequences for the independence of the international civil service as arrest and detention.⁸⁵ It was the position of the Secretary-General that particular actions of some Governments in taxing or imposing other financial requirements on their nationals were “designed to invade the salaries of officials” and were inconsistent with international instruments exempting United Nations officials from national taxation, thereby undermining the functional immunity and independence of officials.⁸⁶ The Secretary-General also noted the adverse financial implications that would flow from such taxation as a result of the obligation of the United Nations to refund such levies consistently with its obligation to establish uniform salary scales.⁸⁷ The General Assembly specifically took note with concern of these developments and called upon States to fully respect the functional immunity of officials.⁸⁸

30. In 1987, the Office of the Legal Counsel addressed a memorandum to the Assistant Secretary-General in the Office of Human Resources Management on the question of conscription by a Member State of one of its nationals holding a fixed-term staff appointment with the Economic and

⁸³ G A resolution 42/219, para 10. The more comprehensive approach to resolving the problem of respect for privileges and immunities and the dynamic approach to the mandate of the Secretary-General in that regard were specifically identified by the sponsoring delegations in the Fifth Committee. See A/C.5/42/SR.47, paras. 74 and 75.

⁸⁴ G A resolution 43/225, para. 10. The Assembly deplored the increase in the number of cases in which the functioning, safety and well-being of officials had been adversely affected. *Ibid.*, para. 4.

⁸⁵ A/C.5/41/12, para. 3.

⁸⁶ See A/C.5/41/12, para. 10, A/C.5/42/14, para. 4, and A/C.5/43/18, para. 19. Several types of measures were identified in this context, including exit taxes, fees for work permits or contributions for emergency relief.

⁸⁷ *Ibid.*

⁸⁸ See, e.g., G A resolutions 41/205 and 43/225.

Social Commission for Western Asia (ESCWA).⁸⁹ The Legal Counsel considered two questions: firstly, whether the staff member could be conscripted, and secondly, the status of a conscripted staff member if conscription were valid. As regards the first issue, the Legal Counsel noted that, while the Headquarters Agreement of ESCWA provided that nationals of the host country were not exempt from military or other obligatory service,⁹⁰ the Convention on the Privileges and Immunities of United Nations provided that United Nations officials were immune from national service obligations. To reconcile those provisions, the Legal Counsel noted that the ESCWA Headquarters Agreement defined its provisions as being complementary to the Convention on the Privileges and Immunities of the United Nations, with neither instrument restricting the other. The Legal Counsel also stated:

“In respect of the present problem it might be argued that as the basic provisions on conscription in the Convention and in the ESCWA Headquarters Agreement are substantially equivalent, but as the Headquarters Agreement contains an exception in respect of nationals of the host State, that exception, which is *lex specialis* and was negotiated later than the Convention, should prevail over the earlier and more general provision of the Convention. Though this would clearly be a conclusive argument if the Convention is treated primarily as equivalent to a series of bilateral agreements between the Organization and each Member State party to the Convention, the fact that the Convention is a multilateral instrument casts some doubt on this interpretation. Nevertheless, it could still be viewed as the best possible interpretation, and consequently there would appear to be no legal ground to oppose against the proposed conscription.”⁹¹

31. The Legal Counsel then considered the second issue of the legal status of such a conscripted staff member. It was his opinion that, unless the staff member resigned voluntarily, then paragraph (c) of Appendix C of the Staff Rules would apply and require that the staff member be separated from service according to the terms of his or her appointment. Where no special termination provision existed, paragraph (c) of Appendix C suggested that a staff member holding a permanent or regular appointment should be placed on special leave without pay for the duration of the military service or until the expiry date of the contract, whichever came first.⁹²

⁸⁹ *United Nations Juridical Yearbook, 1987*, p. 211.

⁹⁰ United Nations, *Treaty Series*, vol. 1144, p. 213. This was a special exception to the general rule under the agreement that staff members were exempt from national service.

⁹¹ *United Nations Juridical Yearbook, 1987*, p. 212.

⁹² The Legal Counsel did question whether the staff member would then be entitled to re-employment. *Ibid.*, p. 213.

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

32. The enactment of other measures by a Member State with a direct or indirect impact on United Nations officials who were not necessarily nationals was also a matter of consideration and concern during the period under review. The imposition of restrictions on staff members of certain nationalities was considered by the Secretary-General to constitute an interference in the contractual relationship between the official and the Organization.⁹³ A significant area of concern in that context was restrictions imposed on the travel of officials, particularly by the host country.⁹⁴ The Secretary-General raised the issue before the General Assembly at its forty-first session, noting circumstances restricting the travel of officials of certain nationalities by the host country.⁹⁵ In a statement to the Fifth Committee, the Legal Counsel stated that the Secretary-General could not accept differential treatment of international civil servants by nationality and that the United Nations would continue to make arrangements for the official travel by all staff regardless of nationality.⁹⁶ The Secretary-General continued to raise the issue in subsequent sessions,⁹⁷ with support and concern being expressed by a number of affected delegations.⁹⁸ The General Assembly took note with concern of the restrictions on duty travel of officials of certain nationalities imposed by the host country.⁹⁹ It also requested the Secretary-General to remain actively engaged in all aspects of relations with the host country and to stress to it the need for its legislation to be in accordance with its international obligations.¹⁰⁰

33. The Office of the Legal Counsel also addressed other forms of restriction on the travel of United Nations officials. In several memoranda, the Legal Counsel reiterated the position that the requirement of travel permits alone would not give rise to objection as long as it was a formality and the permits were issued free of charge and without

⁹³ A/C.5/41/12, paras. 3 and 8. See also A/C.5/43/18, paras. 23-26.

⁹⁴ A/C.5/41/12, para. 8. Under the restrictions, the travel of officials of certain nationalities was limited to a 25-mile radius from Columbus Circle in New York City. See ST/IC/85/48, annex, containing the text of a note verbale from the United States of America providing details to staff members of the requirements. Additional travel restrictions imposed by other States were also identified.

⁹⁵ Ibid.

⁹⁶ G A (41), 5th Comm., 27th mtg., para. 21. As regards private travel, the Legal Counsel stated that the Secretary-General had reluctantly concluded that he had no alternative but to advise staff to conform to the restrictions. Ibid.

⁹⁷ A/C.5/42/14, para. 16, and A/C.5/43/18, para. 18.

⁹⁸ G A (41), 5th Comm., 30th mtg., para. 41, and *ibid.*, 39th mtg., para. 9. See also G A (43), Suppl. No. 26, and A/C.5/43/SR.35, para. 49.

⁹⁹ G A resolutions 42/219, para. 3, and 43/225, para. 2.

¹⁰⁰ G A resolution 43/172, para. 7. See also G A (43), Suppl. No. 26, para. 81.

restriction. However, charges and restrictions would be a matter of concern, implicating the Charter obligations of Member States. A requirement that a staff member submit a birth or baptismal certificate in order to be able to obtain a transit visa was cited as an example.¹⁰¹ In a note verbale to the Permanent Representative of a Member State that had refused to issue a visa to a staff member because of her nationality,¹⁰² the Legal Counsel noted, *inter alia*, that members of the Secretariat were international civil servants whose responsibilities were not national but exclusively international in character and that the Secretary-General could make no distinction among staff members based on their nationality. Such distinctions would be contrary to the concept of the international civil service and would impede the effective functioning of the Organization. For that and for other reasons deriving from the obligations of the State concerned under the Convention on the Privileges and Immunities of the United Nations, the Organization could not accept the refusal of that State to issue a visa to the staff member because of her nationality. At the same time, the Legal Counsel noted that it also followed from the status of the staff member as an international civil servant that for the State in question to issue her a visa would not affect or alter in any way the position of that State with respect to the country of which the staff member was a national.¹⁰³

34. Additional issues concerned measures enacted by some States affecting conditions of employment and residence. The Secretary-General was prompted to comment on instances of States instituting measures affecting the local recruitment of staff, including the local recruitment of non-nationals.¹⁰⁴ The Legal Counsel addressed a note verbale regarding the requirement imposed by a State that local recruits obtain a work permit to work for international organizations, indicating that the recruitment and appointment of United Nations officials were governed by Articles 100 and 101 of the Charter, which provided the Secretary-General with exclusive authority in the appointment of staff.¹⁰⁵ Further, all staff, including local recruits, with the exception of local recruits paid hourly, were to be deemed officials of the United Nations under the Convention on Privileges and Immunities.¹⁰⁶ Thus, the Legal Counsel concluded that the State laws and measures in question would not be in conformity with the obligations of the State under the Charter insofar as the issuance of work permits might impede the exercise of the Secretary-General's exclusive authority to appoint his staff.

¹⁰¹ See *United Nations Juridical Yearbook 1985*, p. 153.

¹⁰² *Ibid.*, p. 152.

¹⁰³ *Ibid.*

¹⁰⁴ A/C.5/43/18, paras. 23-27.

¹⁰⁵ *United Nations Juridical Yearbook, 1987*, pp. 209-210.

¹⁰⁶ See G A resolution 76 (I).

**5. REQUESTS TO APPOINT OR REPLACE OFFICIALS

6. THE QUESTION OF SPECIAL RIGHTS OF THE
HOST COUNTRY

35. As indicated above, restrictions imposed by the host country on the travel of staff of certain nationalities were a matter of concern to the Secretariat during the period under review.¹⁰⁷ Asserting that the measures did not restrict official travel or impede the work of staff, the host country reserved the right to restrict the private travel of officials of certain nationalities, stating that the Headquarters Agreement did not guarantee privileges in that respect.¹⁰⁸ The Secretary-General continued to raise the issue at subsequent sessions,¹⁰⁹ which was noted along with the position of affected States and the host country by the Committee on Relations with the Host Country in calling for the host country to continue to honour its obligations to facilitate the functioning of the United Nations.¹¹⁰

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

36. In May 1987, the International Court of Justice delivered an advisory opinion on Judgement No. 333 of the United Nations Administrative Tribunal.¹¹¹ In that case, the Tribunal had considered the case of a national, seconded from a Member State on a fixed-term contract, who had applied for asylum in another Member State and resigned from his government position in the Member State of nationality. He thereafter sought and was denied a career appointment with the United Nations. Contending that there had been no impediment to continued employment following his resignation from the Government of the Member State, the Applicant cited in support of his appeal the denial of his "acquired rights" under General Assembly resolution 37/126 to be given every reasonable consideration of a career appointment after five years of continuing good service. Finding for the Respondent, the Administrative Tribunal had decided that it was left to the Secretary-General to decide how "every reasonable consideration" should be given and that, absent evidence that the Secretary-General

¹⁰⁷ See A/C.5/41/12, para. 9, and paras. 32-33. See also G A (43), Suppl. No. 26, paras. 21-47 and 81(e).

¹⁰⁸ G A (41), 5th Comm., 33rd mtg., para. 14. The Legal Counsel stated that the Secretary-General had reluctantly concluded that he had no alternative but to advise staff to conform to the restrictions on private travel. *Ibid.*, 27th mtg., para. 21. The United States clarified the application of the restriction at the forty-third session as applicable only to private travel. G A (43), 5th Comm., 35th mtg., para. 49.

¹⁰⁹ A/C.5/42/14, para. 16, and A/C.5/43/18, para. 18.

¹¹⁰ G A (43), Suppl. No. 26, para. 81(e). The conclusions and recommendations of the Committee were endorsed by the General Assembly in its resolution 43/172, para. 1.

¹¹¹ *Advisory Opinion, I.C.J. Reports 1987*, p.18. See also AT/DEC/333. Further discussion of the case can be found in *Repertory, Supplement No. 6*, vol. VI, under Article 100, paras. 15-17.

had sought instructions or let the wishes of a Member State prevail, the Secretary-General had not violated Article 100. Further to the request of the Committee on Applications for Review of Administrative Tribunal Judgements following the established procedure,¹¹² the Court was requested to give its opinion on two questions: (a) Whether the Tribunal had failed to exercise jurisdiction in not responding to the question whether a legal impediment existed to the further employment in the United Nations of the Applicant after the expiry of his contract on 26 December 1983; and (b) whether the Tribunal had erred on questions of law related to provisions of the Charter of the United Nations.¹¹³ In support of his appeal, the Applicant raised, and the Court considered, a number of issues related to the interpretation of several Articles of the Charter, including Article 100.¹¹⁴

37. Of significance were the questions of whether any impediment existed to the continuing employment of staff members who changed their nationality in such circumstances,¹¹⁵ and whether the Tribunal had committed an error in either failing to address the question or in answering it incorrectly. The Court observed that the Tribunal's handling of the first question as the existence of a legal impediment to continued employment was "not entirely clear" since the Tribunal had had to deal first with other contentions made by the Applicant.¹¹⁶ Consequently, it considered it essential to examine not only whether the Tribunal had failed to examine the question of the legal impediment to the Applicant's further employment, as had been requested, but also whether the Tribunal had omitted to examine the Secretary-General's belief in that regard, and the possible impact of that belief on his ability to give "every reasonable consideration" to a career appointment.¹¹⁷ Thus the Court concluded:

"[I]t follows from this that the Tribunal was clearly deciding, though by implication, that there was no absolute impediment, in the sense of an impediment to further employment, which the Applicant thought had inspired the decision not to give him a career appointment. In so doing the Tribunal therefore responded to the Applicant's plea that it should be adjudged that there was no legal impediment to the continuation of his service."¹¹⁸

¹¹² See *Repertory, Supplement No. 5*, vol. V, under Article 101, paras. 97-100.

¹¹³ *Advisory Opinion, 1987*, p. 19.

¹¹⁴ *Ibid.*, pp. 59 and 60. Additional issues were raised under Articles 2, 8 and 101.

¹¹⁵ The fact of the Applicant's secondment and subsequent asylum and its implications were commented on by members of the Administration and in communications with the Applicant. *Ibid.*, pp. 23-24.

¹¹⁶ *Ibid.*, pp. 36-37.

¹¹⁷ *Ibid.*, p. 45.

¹¹⁸ *Ibid.*

It was therefore the unanimous decision of the Court that the Tribunal had not failed to exercise jurisdiction.¹¹⁹ The Court noted further that, in the view of the Tribunal, the Secretary-General was not obliged by binding rules to take any particular action or to take it in a particular way; and that the Secretary-General could take the decision to offer the Applicant a career appointment, but was not bound to do so.¹²⁰ Thus, in the opinion of the Court, the Tribunal must have drawn its own conclusions on those issues, even if those conclusions were not spelt out as clearly in the judgement as they ought to have been.¹²¹ Consequently, the Court determined that the Tribunal had not failed to exercise jurisdiction vested in it by not responding to the question whether a legal impediment existed to the further employment in the United Nations of the Applicant after the expiry of his contract on 26 December 1983.¹²²

38. With regard to the question of whether the Tribunal had erred on matters of law related to provisions of the Charter, a majority of the Court found that the Applicant's contentions related to Article 100 appeared to rest on the premise that: the Secretary-General believed that further employment of the Applicant was impossible without the consent of the Member State; the Tribunal found this to be the Secretary-General's belief; the belief was wrong as a matter of law; and the Tribunal had failed to find that it was wrong as a matter of law.¹²³ The Court was of the opinion that the Tribunal had neither found the existence of such a belief, nor found that such a belief was or would have been correct.¹²⁴

39. Concerning parts of the complaint that a certain Member State might have brought pressure to bear on the Secretary-General contrary to Article 100, paragraph 2, the Court found that it could not see any possibility of an error of law by the Tribunal since, even if there had been evidence that a Member State had behaved in violation of that Article of the Charter, the Tribunal would not have been justified in making any finding in that respect, and could not therefore be criticized for not doing so. Moreover, the Tribunal did not have competence to rule on the legality or propriety of the actions of a Member State. The Court rejected the argument that special treatment had been accorded the Applicant's former Member State in barring the Applicant from United Nations Headquarters, since that

¹¹⁹ *Ibid.*, pp. 50 and 72. As to the Applicant's "real complaint" whether the Tribunal had paid little or no attention to indications that the Secretary-General thought there was such an impediment, and therefore "reasonable consideration" never took place, the Court considered that that question was one for the Tribunal to decide. *Ibid.*, pp. 48-49.

¹²⁰ *Ibid.*, p. 45.

¹²¹ *Ibid.*, p. 47.

¹²² *Ibid.*, p. 50.

¹²³ *Ibid.*, p. 60.

¹²⁴ *Ibid.* Consequently, the majority opinion was that it was unnecessary to take the matter further. *Ibid.*

was a matter on which the Tribunal in the first instance had been called upon to rule.¹²⁵ A further question related to both Article 2 and Article 100 of the Charter centred on the allegation that the Secretary-General had allowed the wishes of a Member State to prevail over the interests of the United Nations. However, the majority opinion concluded that the Tribunal had not found that the Secretary-General had let the interests of a Member State prevail, and consequently there had been no error of law.¹²⁶

40. In dissenting opinions, three judges found that the Secretary-General had not given reasonable consideration to the Applicant and that the failure of the Tribunal to recognize that omission and to accept it constituted an error of law.¹²⁷ In particular, the dissenting judges found the UNAT judgement, and the perceived failure to provide consideration of further appointment, to be a direct challenge to Article 100 and the independence and integrity of the international civil service.¹²⁸

41. The opinion and several dissenting opinions discussed other issues touching upon Article 100 with regard to the effect of a change in nationality, although the opinion itself discussed them specifically in terms of the Applicant's complaint regarding a violation of Article 101. The majority opinion corrected the Tribunal's judgement regarding the significance attributable to a change of nationality and the implications of such a change for the international civil service.¹²⁹ In a submission to the Tribunal, the Secretary-General had stated his view that he did not consider that "a continuing relationship with a national Government is a contractual obligation of any fixed-term member, seconded or not, nor would a break between a staff member and his Government constitute in itself grounds for terminating the fixed-term contract of a fixed-term staff member, seconded or not."¹³⁰ In the opinion of the Court, the Tribunal, in its judgement, had taken the view that the Secretary-General's submission was not consistent with the Tribunal's own previous decision and thought it appropriate to enter a "caaveat",¹³¹ citing a "widely held belief" that those who elected to break their ties with the country of which they were nationals could no longer claim to fulfil the conditions gov-

¹²⁵ *Ibid.*, pp. 60-61.

¹²⁶ *Ibid.*, pp. 71 and 72.

¹²⁷ *Ibid.*, p. 114 (Diss. Op. Schwebel) and p. 155 (Diss. Op. Jennings).

¹²⁸ *Ibid.*, pp. 128 (Diss. Op. Schwebel) and 172 (Diss. Op. Evensen).

¹²⁹ In that regard, the Court stated it was the duty of the Court to point out any error on a question of law relating to the provisions of the Charter in a judgement of the Tribunal referred to it on that ground "whether or not such error affected the disposal of the case". *Ibid.*, p. 66.

¹³⁰ The Secretary-General went on to comment that it was not for him to approve or disapprove of the Applicant's transfer of allegiance. See AT/DEC/333. See also *Advisory Opinion*, p. 64.

¹³¹ *Advisory Opinion*, p. 65.

erning employment in the United Nations.¹³² Pointing out that the “widely held belief” amounted to views expressed by some delegates to the Fifth Committee in 1953 that never materialized in a General Assembly resolution,¹³³ the Court nevertheless found that, since the Tribunal had upheld the Secretary-General’s position, the Tribunal’s views in that regard were an obiter dictum and not essential to its

¹³² AT/DEC/326. The Tribunal also recalled an information circular to which it had referred to in its previous judgement which stated, *inter alia*:

“The decision of a staff member to remain on or to acquire permanent residence status in ... [the] country [of his duty station] in no way represents an interest of the United Nations. On the contrary, this decision may adversely affect the interests of the United Nations in the case of internationally recruited staff members in the Professional category.” *Ibid.*, p. 65. See also ST/AFS/SER.A/238.

¹³³ *Ibid.*, p. 65

judgement.¹³⁴ In the view of the Court, the Secretary-General had contended that a change in nationality was an act having no specific legal or administrative consequences, and that the Tribunal had upheld the main contention of the Secretary-General.¹³⁵ The Court therefore concluded that the Tribunal had not concluded that a change in nationality was a factor outweighing the conditions for employment mandated under the Charter. In a separate opinion, one judge thought it necessary to go further and specifically state that such an opinion was not widely held, and “could not be deemed compatible with the requirement laid down in Article 100, paragraph 2, of the Charter, nor indeed with the very concept of an international civil service”.¹³⁶

¹³⁴ *Ibid.*, pp. 64-66.

¹³⁵ *Ibid.*, p. 66.

¹³⁶ *Ibid.*, p. 107 (Sep. Op. Ago). See also pp. 129, 171 and 173 (Diss. Ops. Schwebel and Evensen).