

ARTICLE 101

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TEXT OF ARTICLE 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.
3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

INTRODUCTORY NOTE

1. By vesting in the General Assembly the power to make regulations concerning the appointment of the staff and the basic conditions of service with the Organization and by constituting the Secretary-General the chief administrative officer of the Organization, 1/ the Charter has divided along broad lines the responsibility for the staffing and the administration of the Secretariat and of maintaining it at a level adequate to cope with the needs of the Organization. In discharging that responsibility, the General Assembly and the Secretary-General have had to deal not only with the usual problems of an employer, but also with problems peculiar to an establishment staffed by individuals of different nationalities, a substantial number of whom are in an expatriate status during the period of their service with the Organization.
2. The present study deals with some of the questions which have arisen in connexion with the application of Article 101. A brief account of those questions is presented in the General Survey, while a more detailed treatment of specific questions is contained in the Analytical Summary of Practice.
3. The Analytical Summary of Practice begins with a description of the principles embodied in Article 101 (3), since they are equally applicable to the selection of the staff and to the determination of their conditions of service. The Analytical Summary then deals with the appointment of the staff (Article 101 (1)), their conditions of service (Article 101 (3)), the sanctions established for the enforcement of the Staff Regulations and the Staff Rules, the remedies available to the staff for the protection of their rights, and the administrative organization of the Secretariat (Article 101 (2)).

1/ For a discussion of the functions of the Secretary-General as chief administrative officer, see in this Repertory under Article 97.

I. GENERAL SURVEY

4. The basic pattern for the determination of the future staffing, organization and administration of the Secretariat was set forth by the General Assembly at its first session under resolution 13 (I).

5. Under that resolution, the General Assembly, after deciding that the Secretariat should be composed of eight principal units, ^{2/} authorized the Secretary-General to establish an initial administrative structure and to make such changes as he considered necessary within the broad lines it had laid down. In an annex to the resolution, the General Assembly set forth the Provisional Staff Regulations it had adopted, under which it prescribed the fundamental conditions of service, including the rights and obligations of the staff, and authorized the Secretary-General to promulgate staff rules to implement those Regulations. The General Assembly also fixed the salaries of the Assistant Secretaries-General and Principal Directors, and authorized the Secretary-General to develop a classification plan for all other posts in the Secretariat and to determine the salaries to be assigned to such posts within a specific range. The General Assembly thus considered the organization and the administration of the Secretariat in broad terms, leaving matters of detail to the Secretary-General. That pattern has been adhered to up to the present.

6. The General Assembly has adopted two sets of Staff Regulations ^{3/} while the Secretary-General has promulgated a total of six sets of Staff Rules ^{4/} up to and including the eighth session of the General Assembly and the time of the subsequent implementation of decisions taken at that session. In addition, other conditions of

^{2/} These units were: (a) The Department of Security Council Affairs; (b) The Department of Economic Affairs; (c) The Department of Social Affairs; (d) The Department of Trusteeship and Information from Non-Self-Governing Territories; (e) The Department of Public Information; (f) The Legal Department; (g) Conference and General Services; (h) Administrative and Financial Services.

^{3/} G A resolutions 13 (I) and 590 (VI).

^{4/} SGB/3 (9 March 1946); SGB/81 (25 June 1948); ST/AFS/SGB/81/Rev.1 (16 June 1950); ST/AFS/SGB/81/Rev.3 and Corr.1 (1 Jan. 1951); ST/AFS/SGB/81/Rev.3 (6 July 1951) and ST/AFS/SGB/94 (1 Dec. 1952).

service have been laid down through amendments to those Regulations 5/ and Rules 6/ and under specific resolutions 7/ of the General Assembly. All the decisions thus taken by the General Assembly have constituted basic decisions of personnel policy, matters of detail and implementation being left to the Secretary-General.

7. A similar division of responsibilities has emerged in the course of the development of the administrative organization of the Secretariat. While the Secretary-General has exercised substantial responsibilities in this respect, he has submitted questions requiring decisions of policy or principle to the General Assembly; this has often been done by means of the annual budget estimates which the Secretary-General submits to the General Assembly. The respective responsibilities of the Secretary-General and the General Assembly with regard to the administrative organization of the Secretariat have been re-affirmed on various occasions, for instance, under resolution 297 (IV), concerning the United Nations Field Service, 8/ and resolution 886 (IX), concerning the reorganization 9/ of the Secretariat.

8. During the period between the first and ninth session of the General Assembly, no major changes were made in the organization of the Secretariat as determined by the General Assembly under resolution 13 (I). Although various units were established within the eight departments, and a new department, the Technical Assistance Administration, was established in 1950, it was not until the ninth session of the

- 5/ The Provisional Staff Regulations adopted under General Assembly resolution 13 (I) were amended by General Assembly resolutions 82 (I), annex II, 161 (II), 249 (III), 352 (IV) and 470 (V). The Staff Regulations adopted under General Assembly resolution 590 (VI) were amended by General Assembly resolutions 781 (VIII) and 782 (VIII).
- 6/ The Staff Rules set forth in SGB/3 of 9 March 1946 were amended by the following Bulletins of the Secretary-General: SGB/3/Add.1 (1 July 1946), SGB/3/Add.2 (19 July 1946), SGB/3/Rev.1 (25 July 1946), SGB/3/Add.3 (15 Oct. 1946), SGB/3/Rev.2 (8 May 1947), SGB/3/Add.2/Rev.1 (19 July 1947), SGB/3/Rev.3 (21 July 1947), SGB/3/Rev.4 (16 April 1948), and SGB/3/Rev.6 (16 Aug. 1948). The Staff Rules set forth in SGB/81/Rev.1 of 16 June 1950 were amended by: ST/AFS/SGB/81/Rev.1/Corr.1 and Corr.2 (17 Aug. 1950), ST/AFS/SGB/81/Add.1 (3 Oct. 1950). The Staff Rules set forth in ST/AFS/SGB/81/Rev.3 and Corr.1 of 1 Jan. 1951 were amended by: ST/AFS/SGB/81/Rev.2/Add.1 (23 Feb. 1951). The Staff Rules set forth in ST/AFS/SGB/81/Rev.3 of 6 July 1951 were amended by: ST/AFS/SGB/81/Rev.4 (Oct. 1951), ST/AFS/SGB/81/Rev.5 (14 Feb. 1952), ST/AFS/SGB/81/Rev.7 (26 May 1952), ST/AFS/SGB/81/Rev.8 (18 Aug. 1953). The Staff Rules set forth in ST/AFS/SGB/94 of 1 Dec. 1952 were amended by: ST/AFS/SGB/94/Add.1 (May 1953), ST/AFS/SGB/94/Add.2 (June 1953), ST/AFS/SGB/94/Rev.1 (29 June 1953), ST/AFS/SGB/94/Add.3 (1 Jan. 1954), ST/AFS/SGB/94/Rev.2 (19 Jan. 1954), ST/AFS/SGB/94/Rev.3 (29 Jan. 1954), ST/SGB/94/Amend.1 (8 March 1954).
- 7/ G A resolutions 82 (I), concerning the establishment of a provisional staff retirement scheme and provident fund and medical care for staff members; 160 (II), concerning taxes on salaries of staff members; 162 (II), continuing the Joint Staff Pension Scheme; 239 (III) and 359 (IV), concerning the Staff Assessment Plan; 248 (III), concerning the Joint Staff Pension Fund; 351 (IV), establishing the Administrative Tribunal; 680 (VII) and 772 (VIII), amending the regulations for the Joint Staff Pension Fund, and 782 (VIII), amending the Statute of the Administrative Tribunal.
- 8/ See para. 171 below.
- 9/ See para. 180 below.

General Assembly that the Secretariat was reorganized. 10/ However, in the period mentioned, special forms of organization were established 11/ to serve special organs or activities. The United Nations Relief and Works Agency for Palestine Refugees in the Near East, the United Nations Korean Reconstruction Agency, and the Office of the United Nations High Commissioner for Refugees, were established by the General Assembly under resolutions 302 (IV), 410 (V) and 421 (V) respectively and are headed by officials directly responsible to the General Assembly and expressly authorized to appoint their own staff.

9. During the same period, the Secretariat developed from a skeleton staff at the time the Organization was established to the fully staffed organ that it is today. In the course of its evolution, such questions as that of the need to ensure that the staff met the highest standards of efficiency, competence and integrity while achieving a balanced geographical distribution had required attention. Steps were also taken to provide staff members with such benefits as home leave and assistance in educating their children in their home countries, as well as other benefits to minimize their expatriate status, in addition to the usual benefits of employment, such as salaries, leave, security of tenure and a social security scheme. 12/

10. The first question of the type mentioned above which arose, and which was later to give rise to other problems, was that of the initial recruitment of the staff. In his report 13/ on personnel policy to the General Assembly at its seventh session, the Secretary-General referred to the problem as follows:

"10. When the Secretary-General took office in February 1946 one of his most urgent tasks was the recruitment of the staff. With some 1,600 meetings during the year 1946 resulting from decisions of the principal organs of the United Nations, the initial recruitment task was an emergency one. From the time the temporary headquarters were set up in Hunter College until staff had been assembled to service the second part of the first session of the General Assembly - that is, during the last nine months of 1946 - some 2,500 staff members were given appointments. Stated differently, the staff totalled approximately 400 in March 1946, and had grown to about 2,800 in December of that year. Of necessity, this staff was appointed on a temporary basis, predominantly from areas of the world where available persons of the necessary qualifications could be quickly found."

11. At its second session, the General Assembly expressed 14/ its concern at the lack of balance then apparent in the geographical distribution of the staff. The General Assembly urged the Secretary-General to take steps to rectify the situation, and the latter intensified his efforts to recruit staff from Member States not adequately represented, and to replace temporary personnel of nationalities heavily over-represented. 15/

12. At the sixth session of the General Assembly, dealing with another matter, the discussions 16/ in the Fifth Committee preceding the adoption of the permanent Staff Regulations reflected the concern that too many staff members still held temporary appointments. The consensus was that sufficient experience had been gained to achieve

10/ G A resolution 886 (IX).

11/ See paras. 187-189 below.

12/ See paras. 13-46 below.

13/ G A (VII), Annexes, a.i. 75, p. 3, A/2364.

14/ G A resolution 153 (II); see also para. 21 below.

15/ G A (VII), Annexes, a.i. 75, p. 3, A/2364, para. 33.

16/ G A (VI), 5th Com., 330-336th mtgs.

stability in the staffing of the Secretariat, and that staff members serving under temporary appointments should, therefore, either be granted permanent appointments or be separated from the service. The Secretary-General informed 17/ the Fifth Committee of the steps he had taken along those lines, and explained that the necessity of maintaining the highest standards of efficiency, competence and integrity and a balanced geographical distribution warranted caution in the granting of permanent contracts.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Principles governing selection of staff, conditions of service, and organization of the Secretariat

1. Necessity of securing highest standards of efficiency, competence and integrity

a. IN GENERAL

13. In determining the conditions of appointment and service and the administrative organization of the Secretariat, the competent organs of the United Nations 18/ have expressly acted on the basis of the requirement, under the Charter, that the staff should meet the highest standards of efficiency, competence and integrity. The Preparatory Commission of the United Nations, the recommendations of which provided the broad outlines of the present Staff Regulations and of the administrative organization of the Secretariat, 19/ had stated in its report that:

"The paramount consideration in the employment of the staff and in the determination of the conditions of service, as laid down in Article 101 of the Charter, is the necessity of securing the highest standards of efficiency, competence and integrity. Due regard is also to be paid to the importance of recruiting the staff on as wide a geographical basis as possible. How best to ensure the fulfilment of these two principles - which, as experience has shown, can in large measure be reconciled - has been one of the major preoccupations of the Preparatory Commission."

14. A constant awareness of the necessity of securing the highest standards of efficiency, competence and integrity has been manifested on many occasions by other organs of the United Nations. Thus, regulation 4.2 of the Staff Regulations adopted by the General Assembly under resolution 590 (VI) provides that:

"The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

17/ Ibid., 332nd mtg.

18/ See paras. 104-106 below.

19/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, section 2, para. 7.

b. THE CONCEPT OF INTEGRITY

15. At the eighth session of the General Assembly, the Secretary-General proposed 20/ that the text of regulation 1.⁴ of the Staff Regulations adopted under resolution 590 (VI) be amended to read as follows:

"Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status."

16. In proposing the insertion of the words underlined in the above-quoted text, the Secretary-General referred 21/ to the fact that the Charter specified "integrity" as one of the basic conditions for employment. He went on to discuss 22/ the concept of integrity as follows:

"59. It is difficult to give any precise definition to the term integrity, but there are generally accepted moral standards which should apply. Integrity must be judged on the basis of the whole conduct of the person concerned. A lack of integrity can be shown by acts of various types, for example, offences against the law which involve dishonesty or untruthfulness, or acts which, though not criminal, show a lack of probity or fidelity. Examples of acts of the latter type would be acts by a staff member involving a violation of the oath which he has taken to the United Nations, such as the act of receiving or soliciting favours to influence him in his duties. On the other hand, the term integrity and the term loyalty, as often applied in the political sphere, do not cover the same set of considerations, although of course, in a case of contested 'loyalty', acts might come to light which would indicate a lack of integrity as an independent fact."

17. The Secretary-General then explained 23/ that his proposed amendment was not intended to modify the meaning of the text of regulation 1.⁴, but only to make it more explicit and to give further clarification concerning the types of action by staff members which might reflect adversely on their status.

18. When the proposal of the Secretary-General was considered 24/ by the Fifth Committee at the eighth session of the General Assembly, the view was expressed that it might, in some cases, lead to injustice. However, a majority of the Committee voiced support for the proposal and concurred in the opinion expressed by the Secretary-General with respect to the concept of integrity. In the latter connexion, some representatives specifically stressed the distinction between integrity and loyalty and added that the standard of integrity which should be adopted should be a generally accepted international standard and not merely a local or national one.

20/ G A (VIII), Annexes, a.i. 51, A/2533, para. 68.

21/ *Ibid.*, para. 29.

22/ *Ibid.*, para. 59.

23/ *Ibid.*, para. 69.

24/ G A (VIII), 5th Com., 406th-422nd mtgs.

19. The proposal of the Secretary-General was unanimously approved 25/ by the Fifth Committee. In recommending its adoption to the General Assembly, the Fifth Committee stated in its report 26/ that the amendment was considered to be a clarification of the regulation then in existence and an express recognition of the principles of the Charter. The draft resolution containing the amendment was adopted by the General Assembly and became resolution 782 (VIII).

2. *The principle of geographical distribution*

a. IN GENERAL

20. The texts cited in paragraphs 13 and 14 above exemplify the attention which has been given to the principle of geographical distribution together with the necessity of securing the highest standards of efficiency, competence and integrity within the Secretariat at the outset of the work of the United Nations. In addition, specific consideration was given to the principle of geographical distribution at the second and third sessions of the General Assembly.

21. At the second session, in the course of the discussion 27/ of the subject in the Fifth Committee, a number of representatives voiced their concern that the Secretariat had not become effectively representative of different cultures and nationalities, and expressed the hope that considerable progress would be made in that direction. In an oral statement, the Secretary-General indicated that he was not satisfied in that respect, but drew attention to the difficulties he had had to face during the initial period.

22. Upon the recommendation of the Fifth Committee, the General Assembly adopted a draft resolution which became resolution 153 (II). The text reads as follows:

"Whereas it is desirable to attain a balanced geographical distribution in the composition of the Secretariat, thus improving the present distribution, which results from unavoidable difficulties encountered in the initial stages of organization;

"Whereas the above consideration does not conflict with the paramount consideration of employment of the staff, as laid down in Article 101, paragraph 3, of the Charter, namely, the necessity of securing the highest standard of efficiency, competence and integrity;

"Whereas, in view of its international character and in order to avoid undue predominance of national practices, the policies and administrative methods of the Secretariat should reflect, and profit to the highest degree from, assets of the various cultures and the technical competence of all Member nations,

"The General Assembly

"1. Reaffirms the principle of securing the highest standard of efficiency, competence and integrity in the staff of the Secretariat, as well as the importance of recruiting the staff on as wide a geographical basis as possible, and

25/ G A (VIII), Annexes, a.i. 51, A/2615, para. 13.

26/ Ibid.

27/ G A (II), 5th Com., 82nd mtg., pp. 287-295; 91st and 92nd mtgs., pp. 364-373.

"2. Requests the Secretary-General:

- (a) To examine the recruitment policy that has been followed to date with a view to improving the present geographical distribution of the posts within the various Departments;
- (b) To take, as soon as possible, the necessary steps with a view to engaging staff members from those countries which have not yet any of their nationals in the Secretariat;
- (c) To review, in accordance with the recommendations of the Advisory Committee on Administrative and Budgetary Questions, the qualifications, background and experience of the present members of the staff, with a view to replacing those who do not reach the high standards fixed by the Charter;
- (d) To take all practicable steps to ensure the improvement of the present geographical distribution of the staff, including the issuance of such rules and regulations as may be necessary to comply with the principles of the Charter as elaborated in this resolution;
- (e) To present to the next regular session of the General Assembly a report of the action taken under this resolution."

23. Pursuant to the last paragraph of the resolution, the Secretary-General presented a detailed report 28/ to the General Assembly at its third session on the steps which he had taken to ensure an improvement in the geographical distribution of the staff. The report was considered 29/ by the Fifth Committee, which reported 30/ to the General Assembly as follows:

"2. Representatives who commented on the question of the geographical distribution of the staff of the Secretariat were unanimous in commending the Secretary-General for the progress he had made in this regard during the past year. It was recognized that the Secretary-General has the authority and responsibility for implementing the principles set forth in paragraph 3 of Article 101 of the Charter.

"During the discussion the representative of Argentina put forward verbally a draft resolution, which, together with several suggested amendments, became the basis for the discussion.

"In accepting, by a vote of 42 to none, with one abstention, the text of a resolution on this subject for submission to the General Assembly, the Committee took note of the fact that the figures presented by the Secretary-General revealed more progress in the numerical distribution of the various nationalities than in the nationality distribution in the higher posts. Consequently, it was the sense of the Committee that the resolution, and particularly paragraph 2, should be interpreted as commending to the Secretary-General that continued efforts should be made to improve the geographical distribution of the staff throughout the internationally recruited categories, and particularly in the higher grades."

28/ See G A (III/1), Plen., Annexes, p. 155, A/652.

29/ G A (III/1), 5th Com., 115th and 116th mtgs.

30/ G A (III/1), Plen., Annexes, p. 218, A/672.

24. The draft resolution recommended by the Committee was adopted by the General Assembly and became resolution 233 (III). The text reads as follows:

"The General Assembly

"1. Notes with approval the progress made by the Secretary-General in the field of geographical distribution of the staff;

"2. Recommends that, with due regard to the other principles embodied in paragraph 3 of Article 101 of the Charter, he continue his efforts toward the objective of staffing on as wide a geographical basis as possible all posts and grades internationally recruited;

"3. Reaffirms for this purpose General Assembly resolution 153 (II) of 15 November 1947."

b. INTERPRETATION OF THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION

25. In his report on the composition of the Secretariat and the principle of geographical distribution to the General Assembly at its third session, the Secretary-General expressed 31/ the following opinion on the meaning which should be given to the principle of geographical distribution:

"7. Rightly understood, the cardinal principle of geographical distribution is not that nationals of a particular nation should have a specified number of posts at a particular grade or grades, or that they should receive in salary as a group a particular percentage of the total outlay in salaries, but that, in the first place, the administration should be satisfied that the Secretariat is enriched by the experience and culture which each Member nation can furnish and that each Member nation should, in its turn, be satisfied that its own culture and philosophy make a full contribution to the Secretariat."

c. CRITERIA FOR THE APPLICATION OF THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION

26. At the second and third sessions of the General Assembly, consideration was given to the question of the criteria that should be adopted as the basis for the application of the principle of geographical distribution. Particular attention was paid in this connexion to the desirability of basing geographical distribution within the Secretariat on the financial contribution of each Member State.

27. There was support, on the one hand, for the adoption of the rate of contribution as the criterion in the absence of a more satisfactory formula. On the other hand, the view was expressed that such a standard would place undue emphasis upon the wealth or poverty of Member States. It was also pointed out that the assessments of war-devastated countries had been set at a relatively low figure.

28. In his report to the General Assembly at its third session, the Secretary-General informed the General Assembly in the following terms of the criterion which he had adopted:

"8. The whole problem, therefore, is that of establishing acceptable criteria which are administratively workable. Any rigid mathematical formula to whatever yardstick it may be related, whether to national income, literacy,

31/ G A (III/1), Plen., Annexes, A/652, p. 157.

financial contribution to the budget of the United Nations, or any other criterion, would restrict in an impracticable fashion the flexibility on which the success of any good administration must depend, and is therefore unacceptable.

"9. Accordingly, after a great deal of consideration, including discussion with the Staff Committee, the conclusion was reached that no single criterion would by itself be valid but that as financial contributions to the United Nations budget had been fixed in relation to a combination of pertinent criteria, it would be reasonable to take them as a basis for the flexible system.

"10. The next question was to determine the method and degree of flexibility to be introduced, since without some measure of deviation the criterion of budgetary contribution would be as restrictive as any other. It was finally decided to allow, as reasonable, any upward or downward variation within 25 per cent of the budgetary contribution. This arrangement has the advantage of providing a standard of comparison which is in line with the deliberations of the Assembly, and resilient enough to afford reasonable freedom and discretion to the administration. Equally, but not admitting an upward deviation in the number of nationals from countries contributing more than 10 per cent, it recognizes the undesirability of any nation or nations, by reason of prevailing economic conditions, having an undue proportion of staff in the Secretariat."

d. THE IMPORTANCE OF THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION IN
RELATION TO THE NECESSITY OF SECURING THE HIGHEST STANDARDS OF
EFFICIENCY, COMPETENCE AND INTEGRITY

29. During the discussions in the Fifth Committee at the second and third sessions of the General Assembly referred to above in paragraphs 20-23, the question was also raised as to the relative weight which should be given to each of the two principles embodied in Article 101 (3).

30. It was pointed out, on the one hand, that, under the terms of the provision of Article 101 (3), the necessity of securing the highest standards of efficiency, competence and integrity had been made the "paramount" consideration in the employment of staff members and in the determination of their conditions of service. It followed that the principle of geographical distribution was a secondary consideration. On the other hand, it was asserted that the two principles were fully compatible and that a proper balance could and should be attained in their application. 32/

31. At its second session, the General Assembly expressed itself on this question in the preamble to resolution 153 (II), the second paragraph of which stated that the desirability of attaining a balanced geographical distribution within the Secretariat.

"does not conflict with the paramount consideration of employment of the staff, as laid down in Article 101, paragraph 3, of the Charter, namely, the necessity of securing the highest standard of efficiency, competence and integrity;".

32/ See also G A (IX), Annexes, a.i. 53, A/2884, paras. 36 and 37.

e. POSTS TO WHICH THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION IS NOT APPLICABLE

32. The Charter does not specify to what extent the principle of geographical distribution should be applied in the recruitment of the staff. However, the practice has developed of excluding certain posts from the application of that principle. The posts excluded comprise three categories: (1) posts in the manual worker category and staff paid at hourly rates; (2) posts in the General Service category, except at the principal level at Headquarters; and (3) posts with language requirements.

33. The exclusion of the first two categories of posts from the application of the principle of geographical distribution is reflected in the Staff Rules which have been promulgated on various occasions by the Secretary-General. Thus, the Staff Rules 33/ contain the following provisions:

Rule 104.5Geographical Distribution

"Recruitment on as wide a geographical basis as possible, in accordance with the requirements of Staff Regulation 4.2, shall not apply to posts in the General Service category or in similar salary levels, except the principal level of that category at Headquarters."

Rule 104.6Local Recruitment

"(a) Staff members at Headquarters who have been recruited to serve in posts classified in the Manual Worker category or in the General Service category from the messenger through the senior level, shall be regarded as having been locally recruited unless:

(i) they have been recruited from outside the area of the duty station, or

(ii) their entitlement to one or more of the allowances or benefits indicated under Rule 104.7 has been duly established by the Secretary-General, or

(iii) the post for which the staff member has been recruited is one which, in the opinion of the Secretary-General, it would otherwise have been necessary to fill by recruitment from outside the area of the duty station."

34. The Staff Rules and Staff Regulations do not make any similar specific exception for posts with language requirements. However, the Secretary-General stated 34/ in his report to the General Assembly at its third session that full international recruitment did not apply to posts which required special language ability.

33/ ST/AFS/SGB/94 (1 Dec. 1952). See also rule 52, SGB/81 (25 June 1948), rule 52, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 51, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 51, ST/AFS/SGB/81/Rev.3 (6 July 1951).

34/ G A (III/1), Plen., Annexes, p. 155, A/652.

f. APPLICATION OF THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION
TO PARTICULAR CATEGORIES OF INDIVIDUALS

i. Individuals from Non-Self-Governing and Trust Territories

35. At its eighth session, the General Assembly adopted resolution 746 (VIII), regarding the recruitment of staff from Non-Self-Governing and Trust Territories. This resolution, the adoption of which had been recommended by the Fourth Committee, was expressly linked to Article 101 (3) of the Charter. It reads as follows:

"The General Assembly,

"Considering that the paragraph 3 of Article 101 of the Charter of the United Nations, regarding the employment of the staff of the United Nations, states that, in addition to the necessity of securing the highest standards of efficiency, competence and integrity in employment of Secretariat staff, due regard should be paid to the importance of recruiting the staff on as wide a geographical basis as possible,

"Having regard to the objectives set forth in Chapters XI and XII of the Charter in respect of the advancement of the inhabitants of Non-Self-Governing and Trust Territories,

"Considering that the services of individuals from Non-Self-Governing and Trust Territories in the Secretariat of the United Nations will contribute to a wider geographical coverage in the recruitment of staff,

"Considering the statement made by the Secretary-General that he has already taken note of the wishes expressed in the Fourth Committee on this matter,

"1. Recommends that the Secretary-General consider the desirability of continuing and increasing the recruitment of suitably qualified inhabitants of Non-Self-Governing and Trust Territories for the Secretariat of the United Nations;

"2. Invites the Secretary-General to draw the attention of the specialized agencies to the present resolution with a view to a similar policy being followed as far as possible in the secretariats of those agencies."

36. In the discussion 35/ on the resolution at its draft stage in the Fourth Committee, sympathy with the intention underlying the proposal was expressed but it was doubted whether its adoption was necessary or desirable. Its implementation might impair to some extent the discretionary powers of the Secretary-General, who could not be expected to replace existing staff by persons from Non-Self-Governing Territories. It was also pointed out that the Secretary-General had already informed the Committee that he realized the importance of the participation of the inhabitants of Non-Self-Governing Territories in the work of the Secretariat, that he had taken good note of the proposal, and that he therefore hoped that no resolution on the subject would be necessary.

35/ G A (VIII), 4th Com., 334th, 335th and 340-342nd mtgs.

37. On the other hand, it was asserted that the desired goal could be achieved without any difficulty through appointments to posts which became vacant as a result of the normal turnover of staff. The proposal was entirely consistent with the terms of Article 101 (3), since it promoted the principle of geographical distribution and since candidates from Non-Self-Governing Territories would be required to possess the same qualities of efficiency, competence and integrity which were required of other members of the Secretariat. The prerogatives of the Secretary-General under the Charter would therefore not be impaired.

ii. Stateless persons or nationals of non-member States

38. At the first part of its first session, the General Assembly, on the recommendation of its General Committee, adopted resolution 30 (I), under which it dealt with applications from nationals of non-member States for employment with the Secretariat. By this resolution, the General Assembly instructed the Secretary-General:

"1. To receive and file such applications for employment with the Secretariat as may be received from nationals of non-member States.

"2. To inform the governments of non-member States making enquiry with regard to application for employment that such applications will be received and filed, but that employment can only take place in accordance with the regulations of the Secretariat."

39. The Provisional Staff Regulations, 36/ adopted by the General Assembly at the same session, did not contain any provision relating in particular to the employment of nationals of non-member States. However, a staff rule 37/ subsequently promulgated by the Secretary-General dealt specifically with the employment of stateless persons or nationals of non-member States in the following terms:

"The appointment of stateless persons or citizens of non-member States shall be limited to exceptional cases."

iii. Individuals with status of permanent residence at duty station

40. In his report on personnel policy, submitted to the General Assembly at its eighth session, the Secretary-General dealt 38/ with certain problems arising out of the acquisition by some staff members of a status of permanent residence in the country of their duty station or in another country. The Secretary-General pointed out that, in the case of staff members whose nationality was an important feature in their selection for employment, the acquisition of a status of permanent residence might raise a question with regard to the application of the principle of geographical distribution, since it might imply an intention not to maintain ties with the countries of which the staff members concerned were nationals.

36/ G A resolution 13 (I), annex II.

37/ Rule 55, SGB/81 (25 June 1948), rule 55, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 55, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 55, ST/AFS/SGB/81/Rev.3 (6 July 1951). No comparable provision has been included in subsequent staff rules or regulations.

38/ G A (VIII), Annexes, a.i. 51, A/2533, para. 117.

41. The question was considered by the Fifth Committee; the views expressed and the decisions taken were recorded 39/ in the report of the Committee to the General Assembly, as follows:

"70. Several delegations expressed the hope that the Secretary-General would submit definite proposals in due course for dealing with the problem that had arisen with regard to the application of the principle of geographical distribution. The view was widely shared that international officials should be true representatives of the culture and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations. It was stated by the representative of the Secretary-General that definite proposals had not yet been submitted since the Secretary-General had as yet no clear knowledge of how large the problem would be. Should any considerable number of internationally recruited staff members decide to retain their permanent residence status, the Secretary-General would report the matter to the General Assembly at its next session, together with specific proposals for dealing with the situation.

"71. A formal proposal, however, was moved orally by the representative of Czechoslovakia to the effect that staff members at Headquarters having permanent residence status should be excluded, for the purposes of geographical distribution of the staff, from the quotas appropriate to their country of nationality and should be included for such purposes within the quota appropriate to the United States. He further requested that this proposal should be voted on in two parts. The first part of the proposal being rejected by 18 votes to 18 with 10 abstentions, it was ruled that the proposal as a whole had failed.

"72. The Committee, however, accepted, by 20 votes to 16, with 13 abstentions, an alternative proposal by the representative of Lebanon to the effect that, for purposes of applying the criterion of equitable geographical distribution as required by Article 101 of the Charter, staff members of a nationality other than that of the host country who acquired permanent residence status in the host country should be classified in a special category.

"73. It was the understanding of the Committee that these decisions should be recorded in its report to the General Assembly for the guidance of the Secretary-General in giving effect to the policies thus approved through appropriate amendments to the Staff Rules."

42. The Fifth Committee also concurred 40/ in a recommendation 41/ of the Advisory Committee on Administrative and Budgetary Questions that persons in permanent residence status should, in future, be ineligible for appointment as internationally recruited staff members unless they were prepared to change to the status normally accorded to other alien staff members by the laws of the country of their duty station.

39/ Ibid., A/2615, para. 70.

40/ Ibid., para. 69.

41/ Ibid., A/2581, para. 10.

43. In his report on personnel policy to the General Assembly at its ninth session, the Secretary-General stated: 42/

"14. The report of the Fifth Committee to the eighth session referred to the possibility that the geographical distribution of the staff might be adversely affected if a considerable number of internationally recruited staff members decided to retain permanent residence status in the country of their duty station although that country was not the country of their nationality. The Secretary-General is able to report that the number of internationally recruited staff members in permanent residence status at Headquarters has so diminished that it does not significantly affect the geographical balance of the staff."

3. The prohibition of distinction as to race, sex or religion

44. In addition to Article 101 (3), other Articles of the Charter embody principles applicable to the selection of the staff and the determination of their conditions of service. Thus, for example, Article 8 states:

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

45. The principle enunciated in the above-quoted and other Articles has been given effect in the following staff regulation: 43/

"In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion ...".

46. The manner in which Article 8 has been applied within the Secretariat has been the subject of consideration by the Commission on the Status of Women. Resolutions urging the Secretary-General to appoint women to senior positions within the Secretariat were adopted by the Commission at its second, third, fourth, fifth, sixth, and seventh sessions, and are further discussed elsewhere in this Repertory. 44/

B. Appointment of the staff

1. Authority to appoint the staff

a. IN GENERAL

47. Under the terms of Article 101 (1), the authority to appoint staff members is vested in the Secretary-General. This has been restated in regulation 4.1 of the Staff Regulations, 45/ adopted under General Assembly resolution 590 (VI), which reads as follows:

42/ G A (IX), Annexes, a.i. 54, A/2777.

43/ G A resolution 590 (VI), regulation 4.3. See also G A resolution 13 (I), regulation 10; rule 53, SGB/81 (25 June 1948), rule 53, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 53, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 53, ST/AFS/SGB/81/Rev.3 (6 July 1951).

44/ See in this Repertory under Article 8.

45/ See also rule 50, SGB/81 (25 June 1948), rule 50, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 50, ST/AFS/SGB/81/Rev.2 (1 Jan. 1950), and rule 50, ST/AFS/SGB/81/Rev.3 (6 July 1951).

"As stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment each staff member shall receive a letter of appointment in accordance with the provisions of annex II to the present regulations and signed by the Secretary-General or by an official in the name of the Secretary-General."

48. During the discussions concerning the organization of the Secretariat in the Administrative and Budgetary Committee of the Preparatory Commission of the United Nations, a proposal 46/ was submitted under which appointments of officials of the Secretariat would have the concurrence of the Governments of the candidates concerned.

49. In support of the proposal, it was stated that, in many cases, the Governments concerned were in the best position to assess the qualifications and capacities of candidates for appointment. Further, persons appointed to the Secretariat must command the confidence of their Governments if they were to be of real value to the United Nations. Once the officials were appointed, however, the exclusively international character of their responsibilities would naturally be respected.

50. In opposition to the proposal, it was stated that the procedure suggested would impinge on the exclusive responsibility of the Secretary-General under Article 101 for the appointment of the staff as well as on the independence and international character of the Secretariat under Article 100. It was considered common sense that the staff should, so far as possible, be acceptable to Member Governments, and also that the Secretary-General would often require information regarding candidates from Governments or private bodies. However, to give Governments particular rights in this respect would provide opportunities for political pressure on the Secretary-General, and would be extremely undesirable. Doubts were also expressed whether Governments would be in a better position than the Secretary-General to assess the qualifications of candidates.

51. Upon being put to the vote, the above-mentioned proposal was rejected. 47/

b. STAFF OF SPECIAL ORGANS

i. The Secretariat of the Military Staff Committee

52. Under the rules of procedure 48/ of the Military Staff Committee, appointments of the staff of that organ are made by the Secretary-General upon the nomination of the Committee.

ii. The staff of the Office of the United Nations High Commissioner for Refugees

53. Under the terms of the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the General Assembly under resolution 428 (v), authority to make appointments to the staff is vested in the High Commissioner. The relevant provisions read as follows:

"14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

46/ PC/AB/54.

47/ Journal of the Preparatory Commission of the United Nations (No. 25), Supplement No. 6 - PC/AB/66, twenty-second and twenty-third meetings, Decisions.

48/ S/421.

"15. (a) Within the limits of the budgetary appropriations provided, the staff of the Office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions."

iii. Staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

54. In accordance with the terms of General Assembly resolution 502 (IV), appointments to the staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) are made by the Director of that Agency. The relevant provision states that

"The Director shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable, and to the extent possible utilize the facilities and assistance of the Secretary-General;".

iv. Staff of the United Nations Korean Reconstruction Agency

55. Under the terms of General Assembly resolution 410 A (V), the Agent General of the United Nations Korean Reconstruction Agency (UNKRA) is empowered to appoint the staff of the Agency. In specifying the functions of the Agent General, the General Assembly directed him to

"Select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Agent General and the Secretary-General shall agree are applicable;".

v. Staff of the Technical Assistance Board

56. Under resolution 222 A (IX), entitled "Expanded Programme of Technical Assistance for Economic Development of Under-developed Countries", the Economic and Social Council established the Technical Assistance Board (TAB) and made provision for a secretariat to serve the Board.

57. The terms of the resolution did not specify the authority responsible for making appointments to the secretariat of the Board. In actual practice, that power is exercised by the Executive Chairman of TAB. With respect to resident technical assistance representatives, however, resolution no. 3 49/ of the Technical Assistance Committee of the Economic and Social Council provides that such representatives should be appointed by the Executive Chairman in agreement with TAB.

2. Methods of recruitment

a. SELECTION ON A COMPETITIVE BASIS

58. In the selection of the staff, the Secretary-General follows certain guiding principles additional to those discussed above. Among such principles is that of the selection of the staff on a competitive basis.

49/ E S C (XIV), Annexes, a.i. 22, E/2238, annex II.

59. This principle has been embodied in regulation 4.3 of the Staff Regulations adopted under resolution 590 (VI). 50/ The regulation reads, in part, as follows:

"So far as practicable, selection of staff members shall be made on a competitive basis."

b. EXCLUSION ON THE GROUND OF ASSOCIATION WITH FASCIST AND NAZI ACTIVITIES

60. In its report, the Preparatory Commission of the United Nations stated 51/ that:

"57. The Secretary-General should take the necessary steps to ensure that no persons who have discredited themselves by their activities or connections with Fascism or Nazism shall be appointed to the Secretariat."

61. Account was taken of that recommendation in the staff rules 52/, promulgated by the Secretary-General. Thus, rule 56 of the staff rules in force prior to 1 January 1953 provided:

"No persons shall be appointed who have discredited themselves by their activities or connexions with fascism or nazism."

c. OTHER CONSIDERATIONS

62. Recruitment is also governed by other considerations. Thus, candidates for appointment are required to meet appointed medical standards 53/ and are normally not considered if they are not between 20 and 60 years of age. 54/ The fact that a candidate for appointment is closely related to a staff member ordinarily disqualifies the candidate. 55/

63. In addition to the general requirements set forth above, certain special requirements govern the recruitment of personnel for certain subsidiary organs of the United Nations. Two examples of such requirements are noted below.

50/ See also G A resolution 590 (VI), regulation 11; rule 54, SGB/81 (25 June 1948), rule 54, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 54, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 54, ST/AFS/SGB/81/Rev.3 (6 July 1951).

51/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, section 2, para. 57.

52/ Rule 56, SGB/81 (25 June 1948), rule 56, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 56, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 56, ST/AFS/SGB/81/Rev.3 (6 July 1951).

No similar provision has been included in subsequent staff rules or regulations.

53/ G A resolution 590 (VI), regulation 4.6; and rule 104.14, ST/AFS/SGB/94 (1 Dec. 1952), as amended by ST/AFS/SGB/94/Rev.1 (29 June 1953). See also rule 62, SGB/81 (25 June 1948), rule 62, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 62, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 62, ST/AFS/SGB/81/Rev.3 (6 July 1951).

54/ Rule 57, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 57, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 57, ST/AFS/SGB/81/Rev.3 (6 July 1951).

55/ Rule 104.10, ST/AFS/SGB/94 (1 Dec. 1952). See also rule 58, SGB/81 (25 June 1948), rule 58, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 58, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951) and rule 58, ST/AFS/SGB/81/Rev.3 (6 July 1951).

i. Understanding of the cultural background and needs of countries

64. In the choice of experts and other project personnel for the Expanded Programme of Technical Assistance, special attention is given to their understanding of the cultural backgrounds and needs of the countries to be assisted and to their capacity to adapt methods of work to local conditions, both social and material. ^{56/}

ii. Sympathy with the objectives of the United Nations in Korea

65. Rule 3.3 of the staff rules ^{57/} applicable to the personnel of UNKRA provides that:

"No persons shall be appointed who are not in sympathy with the basic objectives of the United Nations in Korea."

3. *The nature of the relationship between the Organization and the staff member*

a. IN GENERAL

66. The appointment of an individual as a staff member of the Organization creates a contractual relationship between the Organization and the person concerned. The practice of concluding formal contracts of employment originated in the Staff Rules drafted by the Preparatory Commission of the United Nations ^{58/} and promulgated by the Secretary-General on 9 March 1946. ^{59/} Rule 2 provided that:

"Upon appointment every member of the staff shall receive a letter of appointment signed by the Secretary-General or his authorized deputy ... The appointee in accepting appointment shall sign and return to the Secretary-General or his authorized deputy a letter of acceptance which states that he agrees to the conditions set forth in the letter of appointment and subscribes to the oath of office in Regulation 2 of the Staff Regulations. The letter of appointment and the letter of acceptance shall constitute the contract of employment."

b. PARTIES TO THE CONTRACT

67. The question of the parties to the contract of employment was dealt with by the International Court of Justice in its Advisory Opinion ^{60/} on the effect of awards of compensation made by the Administrative Tribunal. In this connexion, the Court stated that:

^{56/} Rule 215 (c), ST/AFS/SGB/81/Rev.7 (26 May 1952), and rule 215 (c), ST/AFA/SGB/81/Rev.8 (8 Aug. 1953). See also rule 213 (f), ST/AFS/SGB/81/Rev.4 (Oct. 1951) and article 12 (b), ST/AFS/SGB/81/Rev.5 (14 Feb. 1952).

^{57/} United Nations Korean Reconstruction Agency, Manual of Instructions, chap. II, p. 10.

^{58/} Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, section 4, p. 98.

^{59/} SGB/3 (9 March 1946).

^{60/} Effect of awards of compensation made by the U.N. Administrative Tribunal, I C J, Reports 1954, p. 53. For proceedings which led to this advisory opinion. see paras. 138 and 139 below.

"Such a contract of service is concluded between the staff member concerned and the Secretary-General in his capacity as the chief administrative officer of the United Nations Organization, acting on behalf of that Organization as its representative. When the Secretary-General concludes such a contract of service with a staff member, he engages the legal responsibility of the Organization, which is the juridical person on whose behalf he acts."

c. TERMS OF THE CONTRACT

i. Letter of appointment

68. The contract of service between the Organization and the staff member is contained in the letter of appointments, 61/ which is the evidence of the offer of employment made by one, and accepted by the other, of the two parties.

69. A letter of appointment is issued to each staff member in accordance with the following requirements of the Staff Regulations: 62/

"Upon appointment each staff member shall receive a letter of appointment in accordance with the provisions of annex II to the present regulations and signed by the Secretary-General or by an official in the name of the Secretary-General."

70. The Staff Regulations are explicit with regard to the contents of the letter of appointment 63/ and lay down that:

"A. The letter of appointment shall state:

- (1) That the appointment is subject to the provisions of the Staff Regulations and of the Staff Rules applicable to the category of appointment in question, and to changes which may be duly made in such regulations and rules from time to time;
- (2) The nature of the appointment;
- (3) The date at which the staff member is required to enter upon his duties;
- (4) The period of appointment, the notice required to terminate it and period of probation, if any;
- (5) The category, level, commencing rate of salary, and if increments are allowable, the scale of increments, and the maximum attainable;
- (6) Any special conditions which may be applicable."

ii. Staff Regulations and Staff Rules, the Administrative Manual of the Secretariat et cetera

71. Rule 104.1 of the Staff Rules promulgated on 1 December 1952 64/ provides:

61/ Ibid., p. 57.

62/ G A resolution 590 (VI), regulation 4.1. See also rule 52, SGB/3 (9 March 1946), rule 63, SGB/81 (25 June 1948), rule 63, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 63, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 63, ST/AFS/SGB/81/Rev.3 (6 July 1951).

63/ G A resolution 590 (VI), annex II. See also rule 2 in SGB/3 of 9 March 1946.

64/ ST/AFS/SGB/94.

"The letter of appointment granted to every staff member contains expressly or by reference all the terms and conditions of employment. All contractual entitlements of staff members are strictly limited to those contained expressly or by reference in their letters of appointment." ⁶⁵

72. As stated in paragraph 70 above, the letter of appointment refers to the provisions of the Staff Regulations and Staff Rules applicable to the particular category of appointment.

73. Further definitions of the nature of the contractual relationship between staff members and the Organization may be found in the material relating to the establishment and the work of the Administrative Tribunal of the United Nations. Thus, the contract of employment and the terms of appointment of a staff member have been defined in the Statute of the Administrative Tribunal of the United Nations ⁶⁶ as including "all pertinent regulations and rules in force ⁶⁷ at the time of alleged non-observance of such contracts or terms of appointment", including the staff pension regulations." In its Judgment No. 15, ⁶⁷ the Administrative Tribunal construed this provision in relation to the Personnel Volume of the Administrative Manual of the Secretariat. The Administrative Tribunal stated:

"3. In view of a suggestion by the Respondent that the procedural part of the Manual ... merely consists of instruction to officials or units as to the detailed manner in which certain administrative actions shall be performed', the Tribunal has examined all the relevant facts. Staff Rule 220 provided that

'These rules are subject to conditions and rates established by the Secretary-General in administrative instructions.'

The Manual itself provided:

'The Administrative Manual shall be the official medium for the issuance of administrative policies, instructions and procedures designed to implement the Staff Rules ...'

The letters of appointment contained the phrase quoted in the preceding paragraph.

"4. The Tribunal therefore considers that the contractual relationship between the Secretary-General and the staff is governed not only by the Staff Regulations and Staff Rules, but also by any directives lawfully issued in pursuance thereto by the Secretary-General, the main body of which are to be found in the Administrative Manual. It follows that, as the Tribunal found in Judgment No. 2, the Administrative Manual, being binding upon the Administration and the staff, is a document which the Tribunal must apply under the terms of Article 2 of its Statute."

⁶⁵/ No comparable provision was included in previous staff rules.

⁶⁶/ G A resolution 351 (IV). See para. 141 below.

⁶⁷/ AT/DEC/15. The character of the Personnel Volume of the Administrative Manual referred to in the decision was modified after the decision was rendered. On 1 January 1953, a new Personnel Volume (ST/AFS/SGB/95) came into effect, consisting of the following: the pertinent Articles of the Charter; the Staff Regulations; the Staff Rules; the Regulations of the Joint Staff Pension Fund; and the Statute of the Administrative Tribunal.

d. DISTINCTION BETWEEN CONTRACTUAL AND
STATUTORY FACTORS AFFECTING STAFF

74. It has been seen above that the appointment of an individual to the staff of the United Nations creates a contractual relationship between that person and the Organization, and that the Staff Regulations, Staff Rules, and other administrative directives form part of the contract of employment. In this connexion, regulation 12.1 of the Staff Regulations adopted under resolution 590 (VI) provides:

"These regulations may be supplemented or amended by the General Assembly,
without prejudice to the acquired rights of staff members." 68/

75. In several instances, the question of the binding effect upon staff members of changes in the Staff Regulations made subsequent to the time of perfection of the contract of employment has been raised in the Administrative Tribunal of the United Nations. In judgements pronounced in connexion with several cases in which this question was raised, the Tribunal drew a distinction between contractual and statutory elements affecting staff members. The Administrative Tribunal declared: 69/

"In determining the legal position of staff members a distinction should be made between contractual elements and statutory elements:

"all matters being contractual which affect the personal status of each staff member, e.g., nature of his contract, salary, grade;

"all matters being statutory which affect in general the organization of the international civil service, and the need for its proper functioning, e.g., general rules that have no personal reference.

"While the contractual elements cannot be changed without the agreement of the two parties, the statutory elements on the other hand may always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members.

"The Tribunal interprets the provisions of Regulation 28 of the Provisional Staff Regulations and article XII of the new Staff Regulations 70/ in this manner.

"With regard to the case under consideration the Tribunal decides that a statutory element is involved and that in fact the question of the termination of temporary appointments is one of a general rule subject to amendment by the General Assembly and against which acquired rights cannot be invoked."

4. Types of appointments:

76. The types of appointments granted to staff members of the United Nations fall within three broad categories, and are designated as permanent appointments, temporary appointments, and regular appointments. Temporary appointments may be of several types.

68/ See also G A resolution 13 (I), regulation 28; rule 213, SGB/31 (25 June 1948), rule 213, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 223, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 223, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 112.2, ST/AFS/SGB/94 (1 Dec. 1952).

69/ AT/DEC/20-25 and 27.

70/ Reference to "new Staff Regulations" was to Staff Regulations adopted under General Assembly resolution 590 (VI).

77. Prior to the promulgation, on 3 March 1954, of amendments 71/ to the Staff Rules promulgated by the Secretary-General on 1 December 1952, 72/ only two basic categories of appointments existed: permanent appointments and temporary appointments. In the amendments promulgated on 8 March 1954, the regular appointment was established as a third basic category.

78. The three categories of appointments may be distinguished from one another by their nature and the causes for which they may be terminated, as indicated in the following paragraphs.

a. PERMANENT APPOINTMENTS

Nature

79. Permanent appointments are granted to those staff members who are intended for the career service. In the words 73/ of the Administrative Tribunal

"this type of appointment has been used from the inception of the Secretariat to ensure the stability of the international civil service and to create a genuine body of international civil servants freely selected by the Secretary-General."

80. Permanent appointments imply a tenure until the retirement age, subject only to review every five years on grounds of efficiency, competence and integrity. 74/

Causes of termination

81. Prior to the adoption of General Assembly resolution 782 (VIII), a permanent appointment could be terminated only if the necessities of the service required abolition of the post or reduction of the staff, if the services of the staff member proved unsatisfactory, if he was, for reasons of health, incapacitated for further service, 75/ or in case of serious misconduct. 76/

82. Under resolution 782 (VIII), the General Assembly laid down causes for the termination of a permanent appointment not embodied in the Staff Regulations then in existence. It decided to add the following new text to staff regulation 9.1 (a):

71/ ST/SGB/94/Amend.1.

72/ ST/AFS/SGB/94.

73/ AT/DEC/29-37.

74/ Rule 60, SGB/81 (25 June 1948), rule 60, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 60, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 60, ST/AFS/SGB/81/Rev.3 (6 July 1951), rule 104.12, ST/AFS/SCB/94 (1 Dec. 1952), and rule 104.13, ST/AFS/SGB/94/Amend.1 (8 March 1954).

75/ G A resolution 13 (I), regulation 21; G A resolution 590 (VI), regulation 9.1 (a); and rule 102, SGB/81 (25 June 1948), rule 102, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 102, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 102, ST/AFS/SGB/81/Rev.3 (6 July 1951).

76/ G A resolution 13 (I), regulation 19; G A resolution 590 (VI), regulation 10.2; and rule 24, SGB/3 (9 March 1946), rule 140 (b), SGB/81 (25 June 1948), rule 140 (b) ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 140 (b), ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 140 (b), ST/AFS/SGB/81/Rev.3 (6 July 1951). See para. 126 below for discussion of serious misconduct.

"The Secretary-General may also, giving his reasons therefor, terminate the appointment of a staff member who holds a permanent appointment:

(i) If the conduct of the staff member indicates that the staff member does not meet the highest standards of integrity required by Article 101, paragraph 3, of the Charter;

(ii) If facts anterior to the appointment of the staff member and relevant to his suitability come to light which, if they had been known at the time of his appointment, should, under the standards established in the Charter, have precluded his appointment.

"No termination under sub-paragraphs (i) and (ii) shall take place until the matter has been considered and reported on by a special advisory board appointed for that purpose by the Secretary-General.

"Finally, the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment if such action would be in the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned."

83. These additional provisions were included on the initiative 77/ of the Secretary-General. As already stated in paragraph 15 above, the Secretary-General pointed out 78/ in his report on personnel policy to the General Assembly at its eighth session that a discrepancy existed between the Charter and the Staff Regulations in that the Charter specified "integrity" as one of the basic conditions for employment while the Staff Regulations made no explicit reference to integrity. The Secretary-General added that the word "integrity", as used in the Charter, referred to certain generally accepted moral standards, and was not covered by the phrases "unsatisfactory service" or "misconduct." He then said that it was doubtful whether the rules then in existence would permit him to take the necessary action with respect to a staff member found to be lacking in integrity. On the other hand, specification of lack of integrity as a cause for termination would eliminate the ambiguity then in existence and would be in full conformity with the provisions of the Charter.

84. The discussion in the Fifth Committee was summarized 79/ in its report to the General Assembly as follows:

"20. The Advisory Committee on Administrative and Budgetary Questions concurred in the text for sub-paragraph (i) proposed by the Secretary-General. Its observations on the sub-paragraph are set out in paragraphs 5 and 6 of its report (A/2555). It was pointed out by many representatives that sub-paragraph (i) merely incorporated in the regulations the standard of integrity which was already to be found in the Charter. It was also considered a natural corollary to the amendment to staff regulation 1.4. On the other hand, some representatives considered it unnecessary, since they believed that the standard of integrity was already covered by the provisions relating to unsatisfactory service and to misconduct. They believed that integrity was too indefinite a term, required subjective evaluation, and might be subject to political interpretations. Other

77/ G A (VIII), Annexes, a.i. 51, A/2533, para. 58.

78/ Ibid., paras. 32 and 33.

79/ G A (VIII), Annexes, a.i. 51, A/2615, para. 20.

representatives, however, called attention to the Secretary-General's statement that 'integrity' applied only to actions and activities which were morally objectionable, and had no political connotations. The Secretary-General, in his report, had also pointed out that the term 'integrity' and the term 'loyalty', as often applied in the political sphere, did not cover the same set of considerations, although of course in a case of contested 'loyalty', acts might come to light which indicated a lack of integrity as an independent fact (paragraph 59). Many representatives supporting this amendment also referred to the Secretary-General's statement that the proposed regulation related only to present integrity and that events in the past were to be considered only as evidentiary."

85. The text proposed by the Secretary-General was approved ^{80/} by the Fifth Committee after the adoption of certain amendments. The draft resolution containing the new text was adopted by the General Assembly after some drafting changes and became resolution 782 A (VIII).

b. TEMPORARY APPOINTMENTS

86. The category of temporary appointments comprises the indefinite appointment, the fixed-term appointment, and the probationary appointment.

i. Indefinite appointments

Nature

87. The indefinite appointment is a temporary appointment which does not have any specific expiration date and which continues in effect until terminated or converted into another type of appointment.

To whom granted

88. Rule 104.12 (c), ^{81/} promulgated on 8 March 1954, provides that:

"The Indefinite Appointment may be granted only to:

(i) Persons specifically recruited for the Field Service or mission service who are not granted a Fixed-Term or a Regular Appointment.

(ii) Persons recruited subject to a waiver of medical requirements who are not granted a Fixed-Term Appointment.

"The Indefinite Appointment does not carry any expectancy of conversion to any other type of appointment. The Indefinite Appointment shall have no specific expiration date and shall be governed by the Staff Regulations and Staff Rules applicable to Temporary Appointments which are not for a fixed-term."

Causes for termination

89. No specific and precise distinction existed in the Provisional Staff Regulations adopted by the General Assembly under resolution 13 (I) with regard to the conditions governing the termination of permanent contracts, on the one hand, and temporary contracts on the other. The Administrative Tribunal of the United Nations, in its

^{80/} Ibid., paras. 34 and 36.

^{81/} Rule 104.12 (c), ST/SGB/94/Amend.1 (8 March 1954).

Judgment No. 4, 82/ considered the question whether temporary appointments could be terminated by the Secretary-General at his discretion. The Tribunal held:

"That while it is not for the Tribunal to substitute its judgment for that of the Secretary-General with respect to the adequacy of the grounds for termination stated, it is for the Tribunal to ascertain that an affirmative finding of cause which constitutes reasonable grounds for termination has been made, and that due process has been accorded in arriving at such an affirmative finding.

"That adequate cause for the termination of holders of temporary-indefinite contracts includes, but is not limited to, all those specified in Staff Regulation 21; and that other causes, not necessarily related to mere technical proficiency of a type reflected in favourable service ratings, may reasonably be invoked for termination of temporary-indefinite contracts.

"That in the case of termination of employees with service ratings of 'satisfactory' or better, there is a presumptive right to consideration for posts elsewhere in the Secretariat for which their qualifications are appropriate, and that an essential of due process is either an affirmative showing that reasonable efforts were made to place such employees in other posts, or a statement of reason why this was not done."

90. At the sixth session of the General Assembly, the Secretary-General proposed that his authority to terminate temporary-indefinite appointments should be clarified in the proposed permanent staff regulations then under consideration. In a memorandum on this subject, the Secretary-General stated: 83/

"... the Secretary-General believes it essential that it be clearly understood that temporary appointments may be terminated at any time whenever the Secretary-General considers that such action would be in the interests of the United Nations. It is evident from the records of the General Assembly and the Advisory Committee that it was always intended that the Secretary-General have the right to terminate temporary appointments freely and in his discretion, in order to improve the calibre of the staff and to develop eventually a permanent staff which would meet the high standards envisaged by the Charter. In the Secretary-General's opinion such authority is undoubtedly necessary in order to enable him to replace the temporary staff with better personnel qualified in all respects to become permanent career officials in the organization."

91. The proposal submitted by the Secretary-General resulted in the expression of three main points of view 84/ from members of the Fifth Committee. Some representatives expressed complete agreement with the position taken by the Secretary-General and emphasized the existence of a distinction between temporary and permanent contracts. Others agreed that the Secretary-General should be vested with discretionary powers in the termination of appointments, but thought that such powers should be limited to a probationary period of appointment and that the proposed staff regulations should include a provision to that effect. A third group opposed, on principle, a grant of discretionary power to terminate an appointment, whether temporary or permanent, and asserted that all terminations should be based on reasons susceptible of objective test.

82/ AT/DEC/4, paras. 4-6.

83/ G A (VI), Annexes, a.i. 45, A/1912/Add.1, para. 6.

84/ G A (VI), 5th Com., 335th and 336th mtgs.

92. On the recommendation of the Fifth Committee, the General Assembly adopted the draft resolution which became resolution 590 (VI) and contained the proposal of the Secretary-General to include the following provision in the Staff Regulations: 85/

"In the case of all other staff members [staff members other than those holding permanent or fixed-term appointments], including staff members serving a probationary period for a permanent appointment, the Secretary-General may at any time terminate the appointment, if, in his opinion, such action would be in the interest of the United Nations."

93. That provision was applied by the Administrative Tribunal in several cases brought before it during 1953 by former staff members of United States nationality whose temporary-indefinite appointments had been terminated. Those former staff members alleged, among other things, that their terminations had resulted from pressure exerted upon the Secretary-General by a Sub-Committee of the United States Senate and by the Department of State of the United States, in violation of the Charter and the Staff Regulations. In identically worded passages in Judgments No. 19, 20, 22-25, and 27, 86/ the Administrative Tribunal held:

"The Respondent states that in this case he invoked the provisions of Article 9.1 (c) in terminating the Applicant's appointment; that in so doing without stating the reason he took a decision which in his opinion was in the interest of the United Nations; that his conception of the interest of the United Nations was not subject to review by this Tribunal; that above all no proof has been submitted that his decision had been based on improper grounds; and that in those circumstances his decision could not be called in question or rescinded by the Tribunal.

"The discussions in the Fifth Committee show that the intention of the authors of the United Nations Staff Regulations approved by General Assembly resolution 590 (VI) on 2 February 1952, was to invest the Secretary-General with discretionary powers in the termination of temporary appointments.

"Article 9.1 (c) provides that the Secretary-General may terminate temporary appointments, if in his opinion such action would be in the interest of the United Nations.

"Such discretionary powers must be exercised without improper motive so that there shall be no misuse of power, since any such misuse of power would call for the rescinding of the decision.

"With regard to the case under consideration, no evidence has established improper motivation and the Tribunal accordingly rejects the claim."

Referring to the discretionary powers of the Secretary-General under staff regulation 9.1 (c), the Administrative Tribunal also held, in Judgments Nos. 21 and 24, 87/ that "It is not a question of the opinion of the Tribunal but of the opinion of the Secretary-General."

85/ Staff regulation 9.1 (c).

86/ AT/DEC/19, 20 and 22-25.

87/ AT/DEC/21 and 24.

Right of the Secretary-General to withhold reasons for termination

94. In its Judgment No. 4, 88/ the Administrative Tribunal considered the question whether the Secretary-General had the right to withhold his reasons for terminating temporary contracts. The Tribunal held:

"That a statement of cause, if requested by the terminated employee, in terms sufficiently specific to facilitate proceedings before the Appeals Board and the Administrative Tribunal, is an essential element of due process in the termination of temporary-indefinite contracts".

95. The Administrative Tribunal added that a contrary interpretation would be inconsistent with the general rule of law according to which the clauses of a contract should not be interpreted as placing upon one of the parties all the burdens and obligations, even when the clauses had been drafted by one of the parties alone; that the proceedings before the Appeals Board and the Tribunal would be frustrated if the decisions of the Secretary-General and his reasons could not be subjected to objective consideration; and that in the absence of an express provision authorizing the Secretary-General to withhold his reasons for termination, the Tribunal could not assume so important a derogation of the general principles of appeals procedure and due process of law.

ii. Fixed-term appointmentsNature

96. The nature and purpose of the fixed-term appointment are defined in the Staff Rules 89/ as follows:

"The Fixed-Term Appointment, having an expiration date specified in the letter of appointment, may be granted for a period not exceeding five years to persons recruited for service of prescribed duration, including persons temporarily seconded by national governments or institutions for service with United Nations. The Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment."

Causes for termination

97. Fixed-term appointments may be terminated prior to the expiration dates thereof for the same reasons as permanent appointments. 90/

Right to renewal

98. The Administrative Tribunal, in its Judgment No. 4, 91/ ruled that

"a statement of cause, if requested by the terminated employee, in terms sufficiently specific to facilitate proceedings before the Appeals Board and the

88/ AT/DEC/4.

89/ Rule 104.12 (b), ST/SGB/94/Amend.1 (8 March 1954).

90/ G A resolution 13 (I), regulation 21. See also rule 102, SGB/81 (25 June 1948), rule 102, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 102, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 102, ST/AFS/SGB/81/Rev.3 (6 July 1951), and G A resolution 590 (VI), article IX, para. 9.1 (b).

91/ AT/DEC/4. This judgment was rendered before the promulgation of staff rule 104.12 (b), quoted in paragraph 96 above.

Administrative Tribunal ... may be an essential element of due process in the non-renewal of fixed-term contracts, if, on the merits of the case, the Tribunal finds that reasonable expectancies, not necessarily foreclosed by the inclusion of a terminal date in the agreement, have been raised by the circumstances surrounding the performance of the work under the fixed-term contract."

iii. Probationary appointments

Nature

99. The nature and purpose of the probationary appointment may be gathered from the following provision 92/ in the Staff Rules:

"The Probationary Appointment may be granted to persons under the age of 50 years who are recruited for career service. The period of probationary service under such an appointment shall normally be two years. In exceptional circumstances it may be reduced, or extended for not more than one additional year.

"At the end of the probationary service the holder of a Probationary Appointment shall be granted either a Permanent or a Regular Appointment, or be separated from the service.

"The Probationary Appointment shall have no specific expiration date and shall be governed by the Staff Regulations and Staff Rules applicable to temporary appointments which are not for a fixed term."

100. The above-quoted text was promulgated by the Secretary-General, after the General Assembly had, by resolution 781 (VIII), approved staff regulation 4.5 concerning probationary appointments. This regulation reads as follows:

"(b) The Secretary-General shall prescribe which staff members are eligible for permanent appointments. The probationary period for granting or confirming a permanent appointment shall normally not exceed two years, provided that in individual cases the Secretary-General may extend the probationary period for not more than one additional year."

Causes for termination

101. Probationary appointments may be terminated by the Secretary-General for the same reasons as temporary appointments which are not for a fixed term.

c. REGULAR APPOINTMENTS

Nature

102. The nature of the regular appointment may be deduced from the following staff rule: 93/

"(a) The Regular Appointment may be granted, when warranted by specific circumstances, especially such circumstances of a local nature, to locally recruited staff members who are holders of Probationary Appointments and have

92/ Rule 104.12 (a), ST/AFS/SGB/94/Amend.1 (8 March 1954).

93/ Rule 104.13 (II), ST/AFS/SGB/94/Amend.1 (8 March 1954).

shown that they meet the high standards of efficiency, competence and integrity established in the Charter.

"(b) The Regular Appointment shall be for an indefinite period and may last until retirement. It shall be governed by the Staff Regulations and Staff Rules applicable to temporary appointments which are not for a fixed term and shall be subject to review every five years."

Causes for termination

103. Under the above-quoted rule, regular appointments may be terminated for the same causes as indefinite appointments.

C. Conditions of service

1. *Authority responsible for determining conditions of service*

a. IN GENERAL

104. The authority to establish regulations concerning the Secretariat, vested in the General Assembly under Article 101 (1), of the Charter, has been restated in rule 50 of the rules of procedure 94/ of the General Assembly as follows:

"The General Assembly shall establish regulations concerning the staff of the Secretariat."

Pursuant to these provisions, the General Assembly adopts regulations laying down the conditions of service in the Secretariat.

105. In the performance of that function, the General Assembly is assisted by the Advisory Committee on Administrative and Budgetary Questions, which it established by resolution 14 (I). Under that resolution, however, the Advisory Committee was empowered to deal with personnel matters "only in their budgetary aspects."

106. Provision has also been made by the General Assembly for the participation of representatives of the staff in the discussion of matters relating to their conditions of service. Article VIII of the Staff Regulations, adopted by the General Assembly under resolution 590 (VI) reads as follows:

"8.1 (a) A Staff Council, elected by the staff, shall be established for the purpose of ensuring continuous contact between the staff and the Secretary-General. The Council shall be entitled to make proposals to the Secretary-General for improvements in the situation of staff members, both as regards their conditions of work and their general conditions of life.

"... ...

"8.2 The Secretary-General shall establish joint administrative machinery with staff participation to advise him regarding personnel policies and general

94/ United Nations Publication, Sales No.: 1954.I.17.

questions of staff welfare and to make him such proposals as it may desire for amendment of the Staff Regulations and Rules." 95/

107. The staff regulations which have been adopted in the past by the General Assembly have been restricted in the main to a determination of the basic conditions of service and broad principles affecting policy, their implementation by the promulgation of staff rules being left to the Secretary-General. In this connexion, the opening paragraph of the Staff Regulations adopted by the General Assembly under resolution 590 (VI) reads as follows:

"The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat. They represent the broad principles of personnel policy for the staffing and administration of the Secretariat. The Secretary-General, as the Chief Administrative Officer, shall provide and enforce such Staff Rules consistent with these principles as he considers necessary."

108. The General Assembly has thus authorized the Secretary-General to promulgate Staff Rules to implement the Staff Regulations. At the same time, however, the General Assembly has required the Secretary-General to inform it of any action he takes in the exercise of this authority. Regulation 12.2 of the Staff Regulations adopted by the General Assembly under resolution 590 (VI) provides that:

"The Secretary-General shall report annually to the General Assembly such Staff Rules and amendments thereto as he may make to implement these regulations." 96/

109. In his report 97/ on personnel policy to the General Assembly at its eighth session, the Secretary-General suggested an arrangement whereby the General Assembly would have an opportunity to discuss the principles applied by the Secretary-General in the performance of certain functions under the Staff Regulations. He stated:

"38. In the constitutional and legal traditions of a great number of countries, the form of control normally exerted upon the chief executive (where strictly legal criteria are inapplicable) is what may be called a parliamentary one.

"39. In the United Nations the closest analogy to such parliamentary control would be an arrangement by which the General Assembly would have opportunities of discussing the principles applied by the Secretary-General in his interpretation of the proposed new grounds for termination to the extent that they are not of a nature which puts them under the control of the Administrative Tribunal. If the proposals made in the present report are adopted, I would consider such a review of principles of interpretation by the General Assembly as a step in the right direction in the development of a balanced and sound constitutional and legal system in the United Nations administration.

"40. As principles are evolved by the Secretary-General through his administrative interpretations of the newly specified grounds for termination,

95/ See also G A resolution 13 (I), annex II, regulation 15, rule 135, SGB/81 (25 June 1948), rule 135, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 135, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 135, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rules 108.1 and 108.2, ST/AFS/SGB/94 (1 Dec. 1952).

96/ See also G A resolution 13 (I), annex II, regulation 29.

97/ G A (VIII), Annexes, a.i. 51, A/2533, p. 1.

these principles should be brought to the notice of the General Assembly. This will be the case next year in connexion with the consideration of a pending report from the International Civil Service Advisory Board, and again when the procedures suggested here have been tried for a suitable period so that an attempt can be made to translate into a legislative text the principles thus far evolved."

110. That suggestion prompted the submission to the Fifth Committee of a draft resolution which would give effect to the ideas of the Secretary-General. That draft resolution was endorsed by a number of representatives, but it was stressed that the review by the General Assembly should be confined strictly to principles and should not extend to individual cases. The draft resolution was adopted without amendment by the Fifth Committee and by the General Assembly, and became resolution 782 C (VIII). The text of the resolution reads as follows:

"The General Assembly

"1. Decides to undertake, at its tenth session in 1955, on the basis of a report to be submitted by the Secretary-General and of the comments thereon of the Advisory Committee on Administrative and Budgetary Questions, including their recommendations as to such further action as may be required of the General Assembly, a review both of the principles and standards progressively developed and applied by the Secretary-General in his implementation of the Staff Regulations and of the Staff Regulations themselves;

"2. Requests the Secretary-General to circulate to the governments of Member States, not later than four weeks before the opening date of the tenth session of the General Assembly, the report and comments referred to in paragraph 1 above."

b. STAFF OF SPECIAL ORGANS

111. Apart from the adoption of Staff Regulations and the grant of authority to the Secretary-General to promulgate Staff Rules to implement those Regulations, the General Assembly has made specific provisions for the conditions of service of the staff of special organs.

i. Staff of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East

112. Under paragraph 5 of General Assembly resolution 302 (IV), authority to determine the conditions of service of the staff of UNRWA is vested jointly in the Secretary-General and the Director of the Agency. The resolution provides that the Director of the Agency should select and appoint his staff

"in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable ...".

ii. Staff of United Nations Korean Reconstruction Agency

113. A similar situation exists with regard to the authority to determine the conditions of service of the staff of UNKRA. Paragraph 9 of General Assembly resolution 410 (V) stipulates that the Agent General of the Agency should select and appoint his staff

"in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Agent General and the Secretary-General shall agree are applicable;".

2. Entitlements of the staff

114. The entitlements of the staff have been established in accordance with principles laid down either in the Staff Regulations or through specific decisions of the General Assembly.

115. Temporary salary scales established by the Secretary-General in accordance with General Assembly resolution 13 (I) were replaced by a salary, allowance and leave system approved by the General Assembly under resolution 470 (V). Under the latter system, all posts below those in the highest echelon 98/ were classified into four broad categories: Director and Principal Officer, Professional, General Service, and Manual Worker. Salary scales were laid down for the highest echelon of posts, the Director and Principal Officer, and the Professional categories, with the salary scales and wage rates for the remaining two categories being left to the Secretary-General to determine on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned.

116. The Secretary-General was also authorized, under resolution 470 (V), to determine the salary rates to be paid to personnel engaged for certain specific purposes, and to adjust the basic salary rates for the Director and Principal Officer and Professional categories at duty stations away from Headquarters, by the application of differentials which would take into account relative costs of living, standards of living and related factors. The provisions of General Assembly resolution 470 (V) were incorporated without change into the Staff Regulations adopted 99/ by the General Assembly at its sixth session.

117. Other benefits which have been made generally available to the staff include a children's allowance, 100/ a language allowance, 101/ annual leave, 102/ termination indemnity, 103/ and participation in a social security scheme which comprises a pension

98/ Assistant Secretaries-General and Principal Directors, subsequently replaced by a single level of officials designated as Under-Secretaries. (See G A resolution 887 (IX).)

99/ G A resolution 590 (VI).

100/ G A resolution 590 (VI), annex IV, para. 1. See also G A resolution 13 (I), section VI, para. 21 and G A resolution 82 (I), annex II, regulations 30-32, which were amended by G A resolutions 161 (II), annex A, 249 (III) and 470 (V), para. 5.

101/ G A resolution 590 (VI), annex I, para. 8. See also G A resolution 470 (V), annex I, para. 8.

102/ Rule 9, SGB/3 (9 March 1946), rule 75, SGB/81 (25 June 1948), rule 75, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 75, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 75, ST/AFS/SGB/81/Rev.3 (6 July 1951), rule 105.1, ST/AFS/SGB/94 (1 Dec. 1952). See also G A resolution 13 (I), regulation 18, and G A resolution 590 (VI), regulation 5.1.

103/ G A resolution 590 (VI), annex III, and G A resolution 13 (I), regulation 22. See also rule 107, SGB/81 (25 June 1948), rule 107, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 107, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 107, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 109.4, ST/AFS/SGB/94 (1 Dec. 1952).

plan, 104/ sick leave, 105/ maternity leave, 106/ and compensation for service-incurred death, illness or injury. 107/ Certain entitlements and benefits have been established specifically for internationally recruited staff members, such as a non-resident's allowance, 108/ home leave once every two years, 109/ an education grant, 110/ travel and removal expenses of the staff member and the members of his immediate family upon recruitment and repatriation, 111/ and a repatriation grant payable upon separation from service. 112/

113. As noted in this Repertory under Articles 104 and 105, paragraph 11, not every Member State has become a party to the Convention on the Privileges and Immunities of the United Nations, 113/ and certain staff members are thus subject to payment of national income taxes on the salaries earned by them in the service of the Organization. With a view to ensuring equality in net salaries among staff members, the General Assembly has, each year, provided 114/ on an annual basis for the reimbursement of taxes paid by staff members under those circumstances.

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- 104/ G A resolution 243 (III) amended by G A resolutions 680 (VII) and 772 (VIII). See also G A resolution 13 (I), regulation 26, G A resolution 32 (I), annex I, G A resolution 162 (II), G A resolution 590 (VI), regulation 6.1.
 - 105/ G A resolution 590 (VI), regulation 6.2; rule 106.2, ST/AFS/SGB/94 (1 Dec. 1952). See also rule 14, SGB/3 (9 March 1946), rule 85, SGB/31 (25 June 1948), rule 85, ST/AFS/SGB/31/Rev.1 (16 June 1950), rule 85, ST/AFS/SGB/31/Rev.2 (1 Jan. 1951), rule 85, ST/AFS/SGB/31/Rev.3 (6 July 1951).
 - 106/ G A resolution 590 (VI), regulation 6.2; rule 106.3, ST/AFS/SGB/94 (1 Dec. 1952). See also rule 20, SGB/3 (9 March 1946), rule 88, SGB/31 (25 June 1948), rule 88, ST/AFS/SGB/31/Rev.1 (16 June 1950), rule 88, ST/AFS/SGB/31/Rev.2 (1 Jan. 1951), and rule 88, ST/AFS/SGB/31/Rev.3 (6 July 1951).
 - 107/ G A resolution 590 (VI), regulation 6.2, and ST/AFS/SGB/94/Add.1 (1 Dec. 1952). See also rule 153, SGB/31 (25 June 1948), rule 153, ST/AFS/SGB/31/Rev.1 (16 June 1950), rule 153, ST/AFS/SGB/31/Rev.2 (1 Jan. 1950), and rule 153, ST/AFS/SGB/31/Rev.3 (6 July 1951).
 - 108/ G A resolution 470 (V), annex I, para. 7 and G A resolution 590 (VI), annex I, para. 7. See also rule 103.5, ST/AFS/SGB/94 (1 Dec. 1952), rule 31, ST/AFS/SGB/31/Rev.2 (1 Jan. 1951), and rule 31, ST/AFS/SGB/31/Rev.3 (6 July 1951).
 - 109/ Rule 105.3, ST/AFS/SGB/94 (1 Dec. 1952), rule 80, SGB/31 (25 June 1948), rule 80, ST/AFS/SGB/31/Rev.1 (16 June 1950), rule 80, ST/AFS/SGB/31/Rev.2 (1 Jan. 1951), rule 80, ST/AFS/SGB/31/Rev.2/Add.1 (23 Feb. 1951), rule 80, ST/AFS/SGB/31/Rev.3 (6 July 1951). See also G A resolution 470 (V), para. 4, and G A resolution 590 (VI), regulation 5.3.
 - 110/ G A resolution 590 (VI), annex IV, para. 2. See also G A resolution 13 (I), para. 21, G A resolution 82 (I), annex II, regulations 33 and 34, G A resolution 161 (II), annex A, and G A resolution 470 (V), para. 5.
 - 111/ Rules 107.1 to 107.28, ST/AFS/SGB/94 (1 Dec. 1952), rules 107.1 to 107.28, SGB/3 (9 March 1946), rules 107.1 to 107.28, SGB/31 (25 June 1948), rules 107.1 to 107.28, ST/AFS/SGB/31/Rev.1 (16 June 1950), rules 107.1 to 107.28, ST/AFS/SGB/31/Rev.2 (1 Jan. 1951), and rules 107.1 to 107.28, ST/AFS/SGB/31/Rev.3 (6 July 1951). See also G A resolution 13 (I), annex II, regulation 25 and G A resolution 590 (VI), regulations 7.1 and 7.2.
 - 112/ G A resolution 590 (VI), regulation 9.4 and annex IV, para. 4. See also G A resolution 470 (V), para. 6 and annex II.
 - 113/ G A resolution 22 A (I).
 - 114/ G A resolutions 13 (I), part V; 160 (II), para. 5; 239 (III), part D; 358 (IV), para. 4 (f); 472 (V), para. 4 (f); and 585 (VI), para. 5 (g). See also G A (VIII), Annexes, a.i. 38, A/2624, para. 19.

3. Responsibilities of staff members

a. PERSONAL CONDUCT

119. The obligations of staff members with regard to their personal conduct are discussed in this Repertory under Article 100.

b. WORKING HOURS

120. Normal working hours have been established by the Secretary-General for Headquarters and for duty stations in the field. However, staff members are required 115/ to place their whole time at the disposal of the Secretary-General and are thus required to work beyond the normal hours of duty whenever requested to do so.

c. PROPRIETARY RIGHTS OVER WORK

121. In accordance with the Staff Rules 116/ promulgated by the Secretary-General, all proprietary rights, including title, copyright and patent rights, in any work performed by a staff member as part of his official duties, are vested in the United Nations.

d. FINANCIAL RESPONSIBILITY

122. Under the Staff Rules 117/ promulgated by the Secretary-General, a staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his negligence or of his having violated any regulation, rule or administrative instruction.

D. Disciplinary measures

1. Joint Disciplinary Committee

123. Provision 118/ has been made in the Staff Rules and the Staff Regulations for a Joint Disciplinary Committee, with staff representation, to advise the Secretary-General as to what disciplinary measures, if any, should be taken against staff members in cases involving unsatisfactory conduct.

115/ G A resolution 13 (I), annex II, regulation 17; G A resolution 590 (VI), regulation 1.2; and rule 14, SGB/81 (25 June 1948), rule 14, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 14, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 14, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 101.2, ST/AFS/SGB/94 (1 Dec. 1952).

116/ Rule 16, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 16, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 16, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 112.7, ST/AFS/SGB/94 (1 Dec. 1952).

117/ Rule 17, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 17, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 17, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 112.3, ST/AFS/SGB/94 (1 Dec. 1952).

118/ Rules 140 (c) and 141, ST/AFS/SGB/81/Rev.1 (16 June 1950), rules 140 (c) and 141, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rules 140 (c) and 141, ST/AFS/SGB/81/Rev.3 (6 July 1951) and rules 110.1 and 110.2, ST/AFS/SGB/94 (1 Dec. 1952). See also G A resolution 590 (VI), regulation 10.1.

2. Scope of disciplinary measures

a. IN GENERAL

124. The disciplinary measures which may be imposed by the Secretary-General upon staff members whose conduct is unsatisfactory include written censure, suspension without pay, demotion or dismissal for misconduct, and summary dismissal in case of serious misconduct. 119/

b. SERIOUS MISCONDUCT

i. Definition by the Administrative Tribunal of the term "serious misconduct"

125. Several cases involving the question of the definition of the term "serious misconduct" were brought before the Administrative Tribunal of the United Nations during 1953 by former staff members of United States nationality who had been summarily dismissed for refusing to reply to certain questions put to them by an agency of the Government of the United States. Pleading the privilege against self-incrimination provided in the Fifth Amendment to the Constitution of the United States, the former staff members had refused to answer, among others, the question whether they were or had been engaged in any subversive activities against the United States Government. The Secretary-General had taken the view that their refusal to answer that question gave rise to an inference that they were or had been so engaged, and that their claims of the privilege constituted a public pronouncement which reflected adversely on their status as international civil servants and rendered them unworthy of trust and confidence. Accordingly, he had considered that their refusal to answer constituted serious misconduct and had dismissed them for a fundamental breach of their obligations. 120/

126. The Administrative Tribunal held in virtually identically worded judgements 121/ that the conduct of the applicants could not be considered serious misconduct, and that the decision to terminate the employment of the applicants was therefore illegal. The Administrative Tribunal declared: 122/

"8. The Tribunal is thus called upon to consider whether the allegations against the Applicant constituted serious misconduct justifying her summary dismissal by the Secretary-General without reference to the Joint Disciplinary Committee.

"The conception of serious misconduct enabling the Secretary-General to inflict summary dismissal without disciplinary procedure was introduced at the revision of the Staff Regulations to deal with acts obviously incompatible with continued membership of the staff.

119/ Rules 24, SGB/3 (9 March 1946), rule 140 (b), SGB/81 (25 June 1948), rule 140 (b), ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 140 (b), ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 140 (b), ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 110.3, ST/AFS/SGB/94 (1 Dec. 1952).

120/ For a detailed discussion of this subject, see in this Repertory under Article 100.

121/ AT/DEC/29-37.

122/ See, for example, AT/DEC/37.

"Except in cases of agreement between the person concerned and the Administration, the disciplinary procedure should be dispensed with only in those cases where the misconduct is patent and where the interest of the service requires immediate and final dismissal.

"9. In the present case, the applicant invoked the privilege provided for in the constitution of her country. This step did not give rise to subsequent legal proceedings against the Applicant. This provision of the constitution may be properly invoked in various situations which, because of the complexity of the case law, cannot be summarised in a simple formula.

"The legal situation resulting from recourse to the Fifth Amendment was so obscure to the Secretary-General himself that he considered it desirable to seek clarification from a Commission of Jurists. Their conclusions were later discussed by the General Assembly, which reached no decision on them. Subsequently, these conclusions were partially set aside by the Secretary-General himself.

"The allegation of serious misconduct appeared so discreditable to the Secretary-General that he granted termination indemnities, which are expressly forbidden by the Staff Regulations (annex III) in cases of summary dismissal.

"Whatever view may be held as to the conduct of the Applicant, that conduct could not be described as serious misconduct which alone under Staff Regulation 10.2 and the relevant Rules, justifies the Secretary-General in dismissing a staff member summarily without the safeguard afforded by the disciplinary procedure.

"10. In these circumstances, the decision to terminate the Applicant's appointment, since it cannot be based upon the provisions of the Staff Regulations and Rules, must be declared illegal."

ii. Distinction laid down by the Administrative Tribunal between the terms "misconduct" and "unsatisfactory services"

127. In the judgements referred to above, the Administrative Tribunal also drew a distinction between misconduct and unsatisfactory services. It stated 123/

"7. Staff Regulation 9.1 provides for termination of employment for unsatisfactory services. Staff Regulation 10 deals with misconduct and authorizes summary dismissal for serious misconduct.

"The scope of the term 'unsatisfactory services' is to be determined by examination of the meaning given to the word 'services' as used in the Staff Regulations and Rules. It appears clearly that the word 'services' is used in the Staff Regulations and Rules solely to designate professional behaviour within the Organization and not to cover all the obligations incumbent on a staff member. If it is admitted that the plea of constitutional privilege in respect of acts outside a staff member's professional duties constitutes a breach of Staff Regulation 1.4, this fact cannot be considered as unsatisfactory services and cannot fall within the purview of Staff Regulation 9.1.

123/ Ibid.

"On the other hand, misconduct punishable under Staff Regulation 10 could be either misconduct committed in the exercise of a staff member's professional duties or acts committed outside his professional activities but prohibited by provisions creating general obligations for staff members.

"This view is confirmed by the fact that, during the discussions in the Fifth Committee on the revision of the Staff Regulations, the question of dealing with obligations deriving from Staff Regulation 1.4 was raised and no objection was made to the statement by the Chairman of the Fifth Committee that they were dealt with under the disciplinary provisions." 124/

c. SUSPENSION PENDING INVESTIGATION

128. A staff member charged with misconduct may be suspended from duty, with or without pay, pending investigation. Such a suspension is without prejudice to the rights of the staff member. 125/

E. Recourse available to staff members

1. In general

129. The Staff Regulations adopted under General Assembly resolution 590 (VI) include the following provisions under the heading of "Appeals":

"11.1. The Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, or against disciplinary action.

"11.2. The United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and pass judgment upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules."

2. Appeal to the Assistant Secretary-General for Administrative and Financial Services

130. Before a staff member may appeal an administrative decision, he is required to address a letter to the Assistant Secretary-General for Administrative and Financial Services, requesting that the administrative decision be reviewed. 126/

124/ Another discussion of the distinction between misconduct and unsatisfactory service may be found in another judgement (AT/DEC/38) of the Tribunal involving similar facts.

125/ Rule 142, SGB/81 (25 June 1948), rule 142, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 142, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 142, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 110.4, ST/AFS/SGB/94 (1 Dec. 1952).

126/ Rule 111.3, ST/AFS/SGB/94 (1 Dec. 1952).

3. *The Joint Appeals Board*

a. COMPETENCE OF THE BOARD

151. Provision 127/ has been made for a Joint Appeals Board with staff representation to advise the Secretary-General regarding appeals by staff members against administrative decisions.

152. In case the contested decision involves termination or other action on grounds of inefficiency or relative efficiency, the Board may not consider the substantive question of efficiency, but only evidence that the decision has been motivated by prejudice or by some other extraneous factor.

153. Where its competence is in doubt, the Joint Appeals Board itself decides.

154. In addition to its advisory functions, the Joint Appeals Board may 128/ also exercise conciliatory functions between the Secretary-General and staff members.

b. EFFECT OF THE ABSENCE OF A MEMBER UPON THE VALIDITY OF THE PROCEEDINGS OF THE BOARD

155. In its Judgment No. 28, 129/ the Administrative Tribunal considered the question of the validity of the proceedings of the Joint Appeals Board in a case in which the member elected by the staff withdrew from participation and the alternate member was available but was not summoned or notified. The Joint Appeals Board had proceeded with only two members present, namely, the Chairman and the member appointed by the Secretary-General.

156. The Tribunal held that the proceedings of the Joint Appeals Board were not valid and that the case should be re-submitted to the Joint Appeals Board.

4. *The Administrative Tribunal of the United Nations*

a. LEGAL STATUS OF THE ADMINISTRATIVE TRIBUNAL AND POWER OF THE GENERAL ASSEMBLY TO ESTABLISH THAT TRIBUNAL

157. By resolution 351.(IV), the General Assembly established, and adopted a statute for, an Administrative Tribunal to hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment. 150/

158. Several questions relating to the establishment, functions and powers of the Tribunal were discussed 151/ by the Fifth Committee at the eighth session of the

127/ Rule 145, SGB/81 (25 June 1948), rule 145, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 145, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 145, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 111.1, ST/AFS/SGB/94 (1 Dec. 1952). For composition of Joint Appeals Board, see rule 140, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 146, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 146, ST/AFS/SGB/81/Rev.3 (6 July 1951) and rule 111.2, ST/AFS/SGB/94 (1 Dec. 1952).

128/ G A (VI), Annexes, a.i. 45, A/2108, para. 29.
129/ AT/DEC/28.

150/ For the provisions concerning the composition and procedure of the Tribunal, see ST/AFS/SGB/95, part V, articles 5, 6, 8 and 10.

151/ G A (VIII), 5th Com., 420th-423rd mtgs., and 425th-427th mtgs.

General Assembly and by the International Court of Justice which rendered an advisory opinion 132/ in pursuance of a request by the General Assembly under resolution 755 (VIII). The request for an advisory opinion resulted from the discussions in the Fifth Committee of a request 132/ by the Secretary-General for an appropriation to pay compensation awarded by the Administrative Tribunal to eleven staff members whose appointments had been terminated during 1952 and 1953.

139. Among the questions discussed by the Fifth Committee were the legal status of the Tribunal, and the power of the General Assembly to establish such a Tribunal. The view was expressed, on the one hand, that the Tribunal, having been established by the General Assembly, was a subsidiary organ of the General Assembly. On the other hand, it was argued that, although the Tribunal had been established by the Assembly, it was not an organ subsidiary thereto but an independent judicial organ set up under Article 101 (1) of the Charter. 134/

140. The International Court of Justice in its advisory opinion held that the Tribunal was an independent and truly judicial organ, and based this conclusion on a detailed examination of the Statute of the Administrative Tribunal. The Court rejected the view that the Tribunal was merely a subsidiary organ of the General Assembly, which the latter had established to assist it in the performance of its own functions. The Court pointed out that the Charter did not confer judicial functions on the General Assembly, and went on to say:

"By establishing the Administrative Tribunal, the General Assembly was not delegating the performance of its own functions: it was exercising a power which it had under the Charter to regulate staff relations. In regard to the Secretariat, the General Assembly is given by the Charter a power to make regulations, but not a power to adjudicate upon, or otherwise deal with, particular instances."

b. COMPETENCE OF THE ADMINISTRATIVE TRIBUNAL

i. Competence with regard to subject-matter

In general

141. Article 2 of the Statute of the Administrative Tribunal defines the subject-matter which falls within its competence in the following terms:

"1. The Tribunal shall be competent to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations."

The same article also provides in paragraphs 3 and 4 that, in the event of a dispute as to the competence of the Tribunal, the matter should be settled by decision of the Tribunal; and that the Tribunal would not be competent to deal with any applications in which the cause of complaint arose prior to 1 January 1950.

132/ Effect of awards of compensation made by the U.N. Administrative Tribunal, I C J, Reports 1954, p. 47.

133/ G A (VIII), Annexes, a.i. 36, A/2534, para. 8.

134/ For a further discussion of the status of the Tribunal, see in this Repertory under Article 22.

The question of the competence of the Tribunal to pass judgement on an agreement between the Secretary-General and a Member State

142. In the cases brought before the Tribunal by former staff members of United States nationality, referred to in paragraph 93 above, the applicants alleged, among other things, that the termination of their employment had resulted from an agreement 135/ between an organ of the Government of the United States and the Secretary-General and from pressure exercised upon the Secretary-General by certain organs of the Government of the United States in violation of the Charter and the Staff Regulations.

143. The Administrative Tribunal held 136/ that, under its Statute, it was not competent to pass judgement on the validity, in relation to the Charter, of an agreement made between the Secretary-General and a Member State, whatever influence that agreement might actually have had on the decision to terminate the employment of the applicants.

ii. The parties to cases within the competence of the Tribunal

144. Article 2 of the Statute of the Administrative Tribunal provides that:

"2. The Tribunal shall be open:

(a) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;

(b) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied."

145. As noted in this Repertory under Article 98, the Secretary-General represents the United Nations before the Administrative Tribunal. (See also paragraph 157 below.)

iii. Prerequisites for acceptance of an application by the Tribunal

146. Before an application will be received by the Administrative Tribunal for decision, the applicant must have exhausted other means of settlement. This prerequisite is laid down in Article 7 of the Statute of the Tribunal, which also embodies provisions regarding time limits within which an application may be filed, and specifies that the filing of an application shall not have the effect of suspending the execution of the contested administrative decision.

c. ACTION BY THE TRIBUNAL IF AN APPLICATION IS HELD TO BE WELL FOUNDED

147. The Statute of the Tribunal specifies the action to be taken by the Tribunal if it finds an application to be well founded. Article 9 of the Statute, as adopted under General Assembly resolution 351 (IV), read as follows:

"If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked; but if, in exceptional circumstances, such rescinding or specific

135/ G A (VII), Annexes, a.i. 75, A/2364, pp. 17-19, annex I.

136/ AT/DEC/19-27 and 29-37.

performance is, in the opinion of the Secretary-General, impossible or inadvisable, the Tribunal shall within a period of not more than sixty days order the payment to the applicant of compensation for the injury sustained. The applicant shall be entitled to claim compensation in lieu of rescinding of the contested decision or specific performance. In any case involving compensation, the amount awarded shall be fixed by the Tribunal and paid by the United Nations".

148. In his report on personnel policy to the General Assembly at its eighth session, the Secretary-General proposed 137/ that the foregoing text be revised. In this context, the report stated:

"83. Experience has indicated that, particularly in cases involving termination of appointment, where the Tribunal finds that the application is well founded, the payment of compensation should be the rule rather than the exception. It is normally not in keeping with the interest of good administration to reinstate an employee whom the Secretary-General has considered it necessary to terminate. At the same time, from the point of view of the staff member, it is not desirable to require a new finding by the Secretary-General that reinstatement is 'impossible or inadvisable'. Administrative experience and considerations indicate that the normal reaction, in case a decision of the Secretary-General is not upheld by the Administrative Tribunal, should be the payment of compensation. In those circumstances, however, where the Secretary-General believes that it would not be disadvantageous to rescind his decision, he should have the option of offering such rescission to the applicant in lieu of the compensation ordered."

149. The proposal 138/ of the Secretary-General was considered by the Fifth Committee. The relevant discussions in the Fifth Committee were summarized as follows in its report 139/ to the General Assembly:

"51. Some representatives opposed any action on this subject because they believed it undesirable to tamper with the Statute of the Administrative Tribunal in a way which might alter the existing balance between the power of the Secretary-General and of the Tribunal. Furthermore, it was pointed out that, in many national administrations, reinstatement was the normal remedy, and that compensation was not a satisfactory substitute for the loss of employment. Other representatives agreed that compensation should be the rule but did not favour a rigid ceiling thereon. To accept the proposed amendment, they believed, might reduce the Administrative Tribunal to a body whose sole function would be to approve or disapprove the grant of previously determined indemnities. On the other hand, opposition was also expressed on the ground that it would be contrary to Article 17 of the Charter to approve in advance a limit below which awards made by the Tribunal would not be subject to budgetary review by the General Assembly.

"52. There was general acceptance of paragraphs 2 and 3 of the Secretary-General's proposed revision of article 9 of the Statute of the Administrative Tribunal, and these paragraphs were not discussed in substance by the Committee. The view was expressed by one representative, however, that there should be no limit on the compensation for loss caused by a procedural delay."

137/ G A (VIII), Annexes, a.i. 51, A/2533, para. 83.

138/ The proposal was adopted by the Fifth Committee and the General Assembly with minor drafting changes. For the text, as adopted, see para. 150 below.

139/ G A (VIII), Annexes, a.i. 51, A/2615, paras. 51 and 52.

150. Upon the recommendation 140/ of the Fifth Committee, the General Assembly adopted a draft resolution which became resolution 782 B (VIII), to which the following amended text of Article 9 was annexed:

"1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgment, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.

"2. Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded the Tribunal may order the payment of compensation, not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay.

"3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations".

d. FINALITY OF JUDGEMENTS: EFFECT OF AWARDS OF COMPENSATION MADE BY THE TRIBUNAL

i. In general

151. Article 10 (2) of the Statute of the Administrative Tribunal provides that

"The judgments of the Tribunal⁷ shall be final and without appeal."

ii. The question of the right of the General Assembly to review and to refuse to give effect to awards of the Tribunal

152. As noted in paragraph 138 above, a request by the Secretary-General for an appropriation to pay compensation awarded by the Administrative Tribunal led the General Assembly, at its eighth session, to request by resolution 785 (VIII), an advisory opinion from the International Court of Justice. The resolution read as follows:

"The General Assembly,

"Considering the request for a supplementary appropriation of \$179,420, made by the Secretary-General in his report for the purpose of covering the awards made by the United Nations Administrative Tribunal in eleven cases numbered 26, and 37 to 46 inclusive,

140/ Ibid., para. 74.

"Considering the concurrence in that appropriation by the Advisory Committee on Administrative and Budgetary Questions contained in its twenty-fourth report to the eighth session of the General Assembly,

"Considering, nevertheless, that important legal questions have been raised in the course of debate in the Fifth Committee with respect to that appropriation,

"Decides

"To submit the following legal questions to the International Court of Justice for an advisory opinion:

'(1) Having regard to the Statute of the United Nations Administrative Tribunal and to any other relevant instruments and to the relevant records, has the General Assembly the right on any grounds to refuse to give effect to an award of compensation made by that Tribunal in favour of a staff member of the United Nations whose contract of service has been terminated without his assent?

'(2) If the answer given by the Court to question (1) is in the affirmative, what are the principal grounds upon which the General Assembly could lawfully exercise such a right?"'

153. During the discussion 141/ on the resolution at its draft stage in the Fifth Committee, the views set forth below were among those expressed in support of the contention that the General Assembly was entitled to refuse to give effect to awards made by the Tribunal. (1) The Tribunal was a subsidiary organ of the General Assembly, and as such was incapable of taking decisions that were binding upon its parent organ. (2) The budgetary powers vested in the General Assembly by the Charter implied that the latter not only had the right but the duty to review all proposed expenditures of the Organization, including compensation awarded by the Tribunal. The General Assembly could not relinquish its responsibilities in that respect to the Tribunal.

154. It was argued, on the other hand, that, the Administrative Tribunal having been established as a judicial tribunal, its judgements had the binding force of decisions of judicial organs. The General Assembly itself was a political and legislative organ, and hence was neither competent nor equipped to review the judgements of the Tribunal. Distinguishing between the concepts of "power" and of "right", some representatives conceded that the Assembly, by virtue of its budgetary powers, could refuse to pay compensation awarded by the Tribunal, but asserted that the Assembly had no legal right to do so.

155. The International Court of Justice, in its advisory opinion, 142/ held that the General Assembly had no right on any grounds to refuse to give effect to an award of compensation made by the Tribunal in favour of a staff member whose contract of service had been terminated without his assent, and the Court accordingly did not consider the second question which had been submitted.

156. On the question of the right of the General Assembly to review the judgements of the Tribunal, the Court stated, in part, as follows:

141/ G A (VIII), 5th Com., 420th-423rd mtgs., 425th-427th mtgs.

142/ Effect of awards of compensation made by the U.N. Administrative Tribunal, I C J, Reports 1954, p. 47.

"In order that the judgments pronounced by such a judicial tribunal could be subject to review by any body other than the tribunal itself, it would be necessary, in the opinion of the Court, that the statute of that tribunal or some other legal instrument governing it should contain an express provision to that effect. The General Assembly has the power to amend the Statute of the Administrative Tribunal by virtue of Article 11 of that Statute and to provide for means of redress by another organ. But as no such provisions are inserted in the present Statute, there is no legal ground upon which the General Assembly could proceed to review judgments already pronounced by that Tribunal. Should the General Assembly contemplate, for dealing with future disputes, the making of some provision for the review of the awards of the Tribunal, the Court is of opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ - considering the arguments of the parties, appraising the evidence produced by them, establishing the facts and declaring the law applicable to them - all the more so as one party to the disputes is the United Nations Organization itself."

iii. The parties bound by awards of compensation

157. The request by the Secretary-General for funds, referred to above, 143/ at the eighth session of the General Assembly, also gave rise to the question of who were the parties to a case before the Administrative Tribunal and who were in consequence the parties bound by the awards of compensation made by the Tribunal. The Secretary-General, in submitting his request for funds, had expressed 144/ the following opinion:

"From the point of view of pure form it is the Secretary-General who is a party before the Administrative Tribunal in cases where an employee appeals to the Tribunal against one of his decisions, but as the Secretary-General has no funds at his disposal for this purpose the indemnities which he may have to pay must be covered out of funds to be appropriated by the General Assembly; from the point of view of substantive interest, the General Assembly for this reason must be considered a party to the decisions of the Administrative Tribunal."

158. At the outset of the discussion 145/ of the request for funds in the Fifth Committee, the Chairman of the Advisory Committee on Administrative and Budgetary Questions expressed the view that the position of the Secretary-General as a party before the Tribunal was a matter both of form and of substance. The Secretary-General thereupon replied that there was no difference between his views and those of the Advisory Committee, and that he had used the terms "pure form" and "substantive interest" in order to show the difference between his position and that of the General Assembly.

159. In the ensuing discussion, it was asserted that the parties to cases before the Administrative Tribunal were the applicant, on the one hand, and the Secretary-General, on the other, and that the judgements of the Tribunal were thus final and binding upon the applicant and upon the Secretary-General. However, those judgements were neither final nor binding upon the General Assembly, since the latter was not a party to cases before the Tribunal. On the other hand, it was argued that the General Assembly was a party to such cases, because Article 9 of the Statute of the Tribunal provided that it was the Organization which should carry out the decisions of the Tribunal, and also

143/ See paras. 158 and 152 above.

144/ G A (VIII), Annexes, a.i. 38, p. 5, A/2534, para. 8 (ii).

145/ G A (VIII), 5th Com., 420th-423rd mtgs. and 425th-427th mtgs.

because the competence to appropriate funds was vested in the General Assembly. Consequently, the General Assembly was, the argument continued, legally bound by awards made by the Tribunal.

160. The International Court of Justice dealt with this question in its advisory opinion. ^{146/} Declaring that the Tribunal was established as an independent and truly judicial body, the Court stated:

"According to a well-established and generally recognized principle of law, a judgment rendered by such a judicial body is res judicata and has binding force between the parties to the dispute. It must therefore be examined who are to be regarded as parties bound by an award of compensation made in favour of a staff member of the United Nations whose contract of service has been terminated without his assent."

"Such a contract of service is concluded between the staff member concerned and the Secretary-General in his capacity as the chief administrative officer of the United Nations Organization, acting on behalf of that Organization as its representative. When the Secretary-General concludes such a contract of service with a staff member, he engages the legal responsibility of the Organization, which is the juridical person on whose behalf he acts. If he terminates the contract of service without the assent of the staff member and this action results in a dispute which is referred to the Administrative Tribunal, the parties to this dispute before the Tribunal are the staff member concerned and the United Nations Organization, represented by the Secretary-General, and these parties will become bound by the judgment of the Tribunal. This judgment is, according to Article 10 of the Tribunal's Statute, final and without appeal. The Statute has provided for no kind of review. As this final judgment has binding force on the United Nations Organization as the juridical person responsible for the proper observance of the contract of service, that Organization becomes legally bound to carry out the judgment and to pay the compensation awarded to the staff member. It follows that the General Assembly, as an organ of the United Nations, must likewise be bound by the judgment."

iv. The question of a judicial review of decisions of the Administrative Tribunal

161. The advisory opinion of the International Court of Justice prompted the submission to the Fifth Committee, at the ninth session of the General Assembly, of a proposal ^{147/} under which a procedure for a judicial review of the decisions of the Administrative Tribunal by another organ would be established.

162. In the course of the discussion ^{148/} in the Fifth Committee, there was support for the proposal on the ground that, under national legal systems, the process of judicial review was deemed to be a prerequisite of a mature and sound judicial system. Such a process should be set up in the United Nations in order to provide against the contingency of grievous error by the Tribunal. On the other hand, there was doubt as to the desirability of a review of the judgements of the Tribunal. The arguments set forth below were among those adduced in support of that position. (1) It was necessary to ensure the finality of the judgements of the Tribunal lest its authority be weakened

^{146/} Effect of awards of compensation made by the U.N. Administrative Tribunal, I C J, Reports 1954, pp. 47 and 53.

^{147/} G A (IX), Annexes, a.i. 48, p. 3, A/C.5/L.317; p. 4, A/C.5/L.321.

^{148/} G A (IX), 5th Com., 474th-482nd mtgs. and 484th mtg.

or its administrative efficiency impaired by excessive delay. (2) The omission of a review procedure from the Statute of the Tribunal had been deliberate so as not to affect the morale of the staff adversely. A third group of representatives accepted the principle that there should be such a judicial review, but felt that the matter required further study.

163. The General Assembly, by resolution 360 (IX), decided to request the views of Member States on the question. It also decided to establish a special committee to study all the aspects of the question and to report thereon to the General Assembly at its tenth session.

v. The establishment of a special fund for payment of indemnities awarded by the Tribunal

164. At the ninth session of the General Assembly, the Secretary-General proposed, as an alternative to the payment of indemnities from the annual budget of the Organization, that a special indemnity fund be established and maintained out of income from staff assessment, from which the Secretary-General would be authorized to make all payments arising out of decisions by the Administrative Tribunal. The Secretary-General stated 149/ that there would be considerable merit in an arrangement of that kind, since it would place him in a position to make such payments within a reasonable time.

165. During the discussion 150/ of the above-mentioned proposal of the Secretary-General in the Fifth Committee, there was opposition to the establishment of a special indemnity fund, since it was considered that awards of the Administrative Tribunal should be paid, as in previous years, from budget appropriations. On the other hand, a number of representatives agreed with the proposal of the Secretary-General. A draft resolution recommended by the Committee for adoption by the General Assembly was adopted and became resolution 388 C (IX), by which the General Assembly established a special indemnity fund.

F. Organization of the Secretariat

1. *The question of the authority to determine the organization of the Secretariat*

a. IN GENERAL

166. The outlines of the initial organization of the Secretariat were laid down by General Assembly resolution 13 (I), which read, in part, as follows:

"The administrative organization of the Secretariat should be so designed as to enable the work of the Secretariat to be conducted with the greatest possible efficiency.

"Therefore, the General Assembly resolves that:

"1. The Secretary-General shall take immediate steps to establish an administrative organization which will permit of the effective discharge of his administrative and general responsibilities under the Charter and the efficient performance of those functions and services required to meet the needs of the several organs of the United Nations."

149/ G A (IX), Annexes, a.i. 48, p. 2, A/C.5/607, para. 6.

150/ G A (IX), Annexes, 5th Com., 474th-480th mtgs.

167. The General Assembly specified in that resolution that the Secretariat should consist of the following eight principal units: a Department of Security Council Affairs, a Department of Economic Affairs, a Department of Social Affairs, a Department for Trusteeship and Information from Non-Self-Governing Territories, a Department of Public Information, a Legal Department, a Conference and General Service, and an Administrative and Financial Service. It was further provided that the Departments and Services should be under the responsibility and supervision of Assistant Secretaries-General. The resolution then stated that:

"The Secretary-General shall take whatever steps may be required to ensure the necessary co-ordination between the Departments of Economic Affairs and of Social Affairs, and the maintenance of appropriate administrative relationships between those Departments and the Economic and Social Council, on the one hand, and between those Departments and the specialized agencies on the other.

"4. At the outset, the Departments and Services should, broadly speaking, conform to the description given in paragraphs 22-40 of Section 2, chapter VIII of the Report of the Preparatory Commission, 151/ but the Secretary-General shall make such changes in the initial structure as may be required to the end that the most effective distribution of responsibilities and functions among the units of the Secretariat may be achieved."

168. The General Assembly thus laid down the administrative organization of the Secretariat in general terms, and authorized the Secretary-General to establish within that framework an initial administrative structure which he was empowered to modify in the interests of an effective distribution of responsibilities and functions. The authority of the Secretary-General in that respect has been reaffirmed and clarified in a number of instances, some of which are dealt with below.

b. SOME ILLUSTRATIVE CASES

i. The United Nations Field Service

169. The question of the authority of the Secretary-General to establish units within the Secretariat was considered at the fourth session of the General Assembly in connexion with his proposal 152/ to establish a United Nations Field Service. The proposal, as submitted to the Special Committee on a United Nations Guard, which had been established in pursuance of General Assembly resolution 270 (III), read, in part, as follows:

"Composition and recruitment. The Field Service would be a part of the Secretariat, but would be recruited by secondment from national Governments. It would consist of a maximum of 300 men. Personnel would, as far as possible, be physically fit men between the ages of 22 and 30, with field experience and the necessary technical background. The term of service would be from one to three years, except for a small number of supervisory personnel who would be regular Secretariat members. The Field Service would be stationed at headquarters for training."

170. The opinions of the members of the Special Committee were given in the report of the Committee to the General Assembly. The views 153/ of the majority were stated in the report as follows:

151/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945.

152/ G A (IV), Suppl. No. 13 (A/959), Annexes, p. 6.

153/ G A (IV), Suppl. No. 13 (A/959), part two, para. 32.

"The majority of the Committee was of the opinion that the proposals of the Secretary-General did not give rise to legal objections. The proposed Field Service could not be considered as an armed force under Article 43 of the Charter, nor could it ever be used for enforcement purposes under Chapter VII. The sole function of the proposed Service would be to render technical services to missions operating under the provisions of the Charter and it stood therefore on precisely the same legal basis as any other unit of the Secretariat. Moreover, there was no doubt, in the view of the majority, that Article 97 of the Charter, which provides that 'the Secretariat shall comprise a Secretary-General and such staff as the Organization may require', gave full authority to the Secretary-General to create such a unit, possessing the functions which would be assigned to the Field Service."

The views 154/ of the minority were stated in the report in the following terms:

"The Field Service proposed by the Secretary-General has the character of a military unit: it consists solely of physically fit men between the ages of 22 and 30 with special military training. The Secretary-General's proposal provides that such persons shall be enrolled in units commanded by officers, shall be subject to military discipline, shall wear uniforms, be equipped with arms, be stationed for training and undergo supplementary special training of a military character. The above facts show that the Field Service would be a unit of purely military type. The Charter, however, does not provide that any units of military type should be at the disposal of the Secretary-General. Consequently, the establishment of a Field Service within the Secretariat is contrary to the Charter and cannot be permitted without a violation of the Charter. In accordance with the Charter, no organ, with the exception of the Security Council, has any legal basis for the establishment and use of any armed forces or units of military type whatsoever.

"Therefore, any proposal to set up an armed force or unit not specially provided for by the Charter, in whatever form it may be put forward, is contrary to the Charter and is illegal; to adopt such a proposal would be a clear breach of the Charter."

171. Similar views were advanced in the course of the discussion 155/ in the Ad Hoc Political Committee to which the report of the Special Committee had been referred, and in the General Assembly in plenary meeting when the report of the Ad Hoc Political Committee was debated. 156/ The General Assembly eventually adopted a draft resolution which became resolution 297 A (IV). That resolution read as follows:

"The General Assembly,

"Having considered the report of the Special Committee established by General Assembly resolution 270 (III) of 29 April 1949,

"Being of the opinion that the United Nations Field Service, as proposed by the Secretary-General in document A/AC.29/1 and modified by the report of the Special Committee, will contribute to the more efficient operation of United Nations missions,

154/ Ibid., part three, para. 48 (iii).

155/ G A (IV), Ad Hoc Pol. Com., 21st-24th mtgs.

156/ G A (IV), Plen., 252nd mtg., paras. 72-131.

"Considering that the Secretary-General has authority to establish the United Nations Field Service, subject to budgetary limitations and the normal administrative controls of the General Assembly,

"Takes note of the intention of the Secretary-General to establish this proposed unit as modified by the observations contained in the report of the Special Committee."

ii. The Technical Assistance Administration

172. On 31 July 1950 the Secretary-General established a new unit within the Secretariat designated as the Technical Assistance Administration (TAA), headed by a Director-General whose status was equivalent to that of an Assistant Secretary-General. In the budget estimates for the year 1951, the Secretary-General included 157/ estimates for the new unit. A separate report 158/ dealing specifically with the establishment of TAA was presented by the Secretary-General in response to a request made by the Fifth Committee at the fifth session of the General Assembly when it considered the budget for the year 1951. In the report, the Secretary-General made the following statement:

"2. The technical assistance programmes of the United Nations are operated and administered under General Assembly resolutions 53 (I), Advisory social welfare functions; 200 (III), Technical assistance for economic development; 246 (III), Training in public administration; Economic and Social Council resolution 222 A (IX) and General Assembly resolution 304 (IV), Expanded programme of technical assistance for economic development of under-developed countries.

"3. With the aim of ensuring that his responsibilities relating to the provision of technical assistance are carried out with the fullest degree of co-ordination and administrative efficiency, the Secretary-General on 31 July 1950 established a Technical Assistance Administration within the Secretariat, charged with the operation and administration of the programmes authorized by the resolutions specified above."

173. The estimates submitted by the Secretary-General for the TAA were approved by the Fifth Committee and, in turn, by the General Assembly, and the budget adopted by resolution 471 (V) contained a new section for that unit.

iii. Reorganization of the Secretariat

174. At the eighth session of the General Assembly, the Secretary-General submitted a report 159/ containing certain proposals for the reorganization of the Secretariat.

175. Under the proposals submitted by the Secretary-General, the structure of the Secretariat approved by the General Assembly under resolution 13 (I) would be modified as set forth below. (1) The Departments of Economic Affairs and Social Affairs would be merged into a single department. (2) Conference and General Services would be divided into two separate units, designated the Department of Conference Services and the Office of General Services. (3) The Legal Department, and Administrative and Financial Services would be transformed into staff offices of the Secretary-General, designated the Office of Legal Affairs, the Office of the Controller, and the Office

157/ G A (V), Suppl. No. 5 (A/1267), pp. 4, 79 and 80.

158/ G A (V), Annexes, vol. II, a.i. 39, p. 26, A/C.5/381.

159/ G A (VIII), Annexes, a.i. 48, p. 1, A/2554.

of Personnel respectively. (4) The two highest levels of posts, those of Assistant Secretary-General and Principal Director, would be replaced with a single supervisory level comprising (a) seven Under-Secretaries, with or without departments; (b) five heads of offices (Executive Assistant to the Secretary-General, Controller, Legal Counsel, Director of Personnel, Director of General Services); and four Deputy Under-Secretaries. The top supervisory level would thus consist of sixteen posts, all having the same status.

176. In the course of the discussion 160/ of the proposals submitted by the Secretary-General in the Fifth Committee, widespread support for the general lines of the proposed reorganization of the Secretariat was expressed. Upon the recommendation of the Fifth Committee, the General Assembly adopted a draft resolution, which became resolution 764 (VIII). Under this resolution, the General Assembly recommended that the Secretary-General proceed, to the extent possible, along the lines he had proposed in his report and prepare his 1955 budget within the broad framework of these proposals.

177. The matter was further discussed 161/ at the ninth session of the General Assembly at which the Fifth Committee decided to deal simultaneously with the budget estimates for 1955 and the report of the Secretary-General in the course of the general debate.

178. In his report on the organization of the Secretariat submitted to the General Assembly at its ninth session, the Secretary-General informed the General Assembly that a review of the Headquarters establishment had been undertaken to reassess the part which the Secretariat could most constructively play in furthering the objectives of the Charter and, in that context, to reappraise the nature and scope of the activities it could most usefully undertake. The review was directed to the following main fields of inquiry: (1) the character and volume of the substantive and administrative responsibilities of the Secretariat staff required to service and to implement the work programmes of other organs; (2) the main structure of the Secretariat and an appropriate organization for the units comprising the separate departments or offices; and (3) the number and levels of staff required to enable the Secretariat to fulfil its essential responsibilities.

179. During the discussions 162/ in the Fifth Committee, a majority of the representatives expressed full approval of the main features of the proposals of the Secretary-General. A few, however, felt that the proposals did not go far enough in making the Secretariat a much simpler, more flexible and less costly organ. Detailed discussion was concentrated, for the most part, on the specific question of the number and status of posts at the top supervisory level.

180. After discussion by the Fifth Committee, and upon its recommendation, the General Assembly adopted a draft resolution, 163/ which became resolution 886 (IX). The resolution reads as follows:

"The General Assembly,

"Considering its resolution 764 (VIII) of 9 December 1953 in which it recommended that the Secretary-General should proceed along the lines of his report to the eighth session on the organization of the Secretariat contained in document A/2554,

160/ Ibid., p. 6, A/2625.

161/ G A (IX), Annexes, a.i. 53, p. 44, A/2884.

162/ G A (IX), 5th Com., 435th-443rd mtgs.; 445th-450th mtgs.; 459th, 460th and 484th mtgs.

163/ A/C.5/L.282/Rev.1.

"Having examined the report of the Secretary-General to the ninth session on the organization of the Secretariat (A/2731) and the comments contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/2745),

"Taking note of the Secretary-General's intention to bring under detailed review in 1955 those United Nations offices and activities external to Headquarters, as well as the secretariats of the subsidiary bodies of the United Nations,

"Considering the Secretary-General's statements during the discussion of the item in the Fifth Committee of the General Assembly,

"1. Notes with appreciation the Secretary-General's report on the reorganization of the Secretariat and further notes his statements in the Fifth Committee and the general approval by the Economic and Social Council of the proposals made by the Secretary-General in document E/2598;

"2. Approves generally the measures adopted by the Secretary-General and invites him, in proceeding with the implementation of his proposals, to take into account the comments contained in the report of the Advisory Committee on Administrative and Budgetary Questions and the observations and suggestions made in the Fifth Committee of the General Assembly with reference to the various aspects of reorganization;

"3. Requests the Secretary-General to report progress to the General Assembly at its tenth session."

2. The principle of a unified Secretariat

a. WHY PREFERABLE TO SEPARATE SECRETARIATS FOR THE PRINCIPAL ORGANS OF THE UNITED NATIONS

181. In the discussions of the Executive Committee of the Preparatory Commission for the United Nations, two differing views were advanced with regard to the question of the administrative organization of the Secretariat. On the one hand, it was thought that the Secretariat should be organized functionally, each unit being at the disposal of any organ for the performance of work within its competence. On the other hand, the opinion was expressed 164/ that each of the principal organs of the United Nations should have its own secretariat. The former view was adopted by the Executive Committee and by the Preparatory Commission and, ultimately, by the General Assembly. In that connexion, the Preparatory Commission stated 165/ in its report:

"28. The principal reason for setting up the Secretariat as a single working body - though it will, of course, be internally organized so as to deal most effectively with the various aspects of the operations of the United Nations - is that all the organs it serves have their responsibilities in the primary common task of maintaining peace and security. This task is the unifying principle of the whole Organization, its organs, and the Secretariat. This principle is reinforced by the provision that special units of the Department of Security

164/ Report by the Executive Committee to the Preparatory Commission of the United Nations, PC/EX/113/Rev.1, 12 Nov. 1945, part III, chap. 6, section 2, paras. 22-35.

165/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, section 2, paras. 28 and 29.

Council Affairs serve the Security Council in its unique functions relative to military and enforcement measures.

"29. Another reason is that by organizing the Secretariat according to the work performed by each part and not in Departments tied exclusively to one or the other organ, duplication of work, overlapping and waste of time, and confusion will be avoided. Again, the creation of Departments attached exclusively to a single organ would give rise to divided loyalties and undesirable rivalry between Departments."

b. COMPATIBILITY OF THE PRINCIPLE OF A UNIFIED SECRETARIAT WITH THE PROVISION OF THE CHARTER

182. In recommending that the Secretariat should be organized as a single working body, the Preparatory Commission commented on the provision of the Charter requiring that staffs should be permanently assigned to organs of the United Nations. In this context, the Preparatory Commission stated: 166/

"30. Paragraph 2 of Article 101 of the Charter is interpreted to mean that the Secretary-General has full authority to move staff at his discretion within the Secretariat but must always provide the Economic and Social Council, the Trusteeship Council, and other organs with adequate permanent specialized staffs forming part of the Secretariat."

c. RELATION BETWEEN ORGANS OF THE UNITED NATIONS AND THE SECRETARIAT

183. Pursuant to the terms of Article 101 (2) and in accordance with the principle under discussion, the staff required by the different organs of the United Nations is assigned by the Secretary-General and forms part of the Secretariat. The principle in question is reflected in the rules of procedure of those organs. Thus, rule 46 of the rules of procedure of the General Assembly 167/ reads as follows:

"The Secretary-General shall provide and direct the staff required by the General Assembly and any committees or subsidiary organs which it may establish."

Rule 24 of the provisional rules of procedure of the Security Council 168/ reads as follows:

"The Secretary-General shall provide the staff required by the Security Council. This staff shall form a part of the Secretariat."

Rule 29 of the rules of procedure of the Economic and Social Council 169/ reads as follows:

"The Secretary-General shall provide and direct the staff required by the Council, its committees and such subsidiary bodies as may be established by them."

166/ *Ibid.*, para. 30.

167/ United Nations Publication, Sales No.: 1954.I.17.

168/ United Nations Publications, Sales No.: 1952.I.18.

169/ United Nations Publication, Sales No.: 1953.I.21.

Rule 25 of the rules of procedure of the Trusteeship Council 170/ reads as follows:

"The Secretary-General shall provide and direct the staff required by the Trusteeship Council and such committees, sub-committees and other subsidiary bodies as it may establish."

184. Similar provisions are embodied in the various resolutions by which subsidiary organs were established. For instance, under resolution 502 (VI) by which it established the Disarmament Commission, the General Assembly requested

"the Secretary-General to furnish such experts, staff and facilities as the Commission may consider necessary for the effective accomplishment of the purposes of the present resolution."

185. The principle that any unit of the Secretariat should be at the disposal of any organ requiring its services is also taken into account in the Staff Rules and Staff Regulations. Thus, regulation 1.2 of the Staff Regulations adopted by the General Assembly under resolution 590 (VI), provides that:

"Staff members are subject ... to assignment by /the Secretary-General/ to any of the activities or offices of the United Nations." 171/

d. EXCEPTIONS TO THE PRINCIPLE OF A UNIFIED SECRETARIAT

186. In adopting the principle of a unified Secretariat, the Preparatory Commission of the United Nations also laid down the following limitation to the principle:

"27. There is one exception to the rule that all Departments may at any time be called upon to do certain work for any organ. Owing to the fact that the Security Council has exclusive powers to deal with military and enforcement measures, it will be necessary that the special units of the Department of Security Council Affairs concerned with these measures should serve the Security Council exclusively.

187. In addition, mention was made in paragraph 8 above of the fact that certain organs or activities of the United Nations are served by special groups of staff. Such staff serve only the organs to which they are attached, and function under the supervision of the executive heads of those organs rather than of the Secretary-General.

188. In this connexion, the Secretary-General in his Annual Report on the Work of the Organization for the period 1 July 1950 - 30 June 1951, 172/ made the following comment:

"Other actions by the General Assembly on certain issues facing it at its fifth session have further accentuated the tendency to deal with special problems by the creation of new forms of organization, outside the regular Secretariat

170/ United Nations Publications, Sales No.: 1952.I.19.

171/ See also rule 3, SGB/3 (9 March 1946), rule 5, SGB/81 (25 June 1948), rule 5, ST/AFS/SGB/81/Rev.1 (16 June 1950), rule 5 (a), ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), and rule 5 (a) ST/AFS/SGB/81/Rev.3 (6 July 1950).

172/ G A (VI), Suppl. No. 1 (A/1844), p. 200.

and financed by voluntary contributions outside the normal appropriations. Last year, the United Nations International Children's Emergency Fund was prolonged for a further three years, at the end of which period its future would be reconsidered by the General Assembly 'with the object of continuing the Fund on a permanent basis'. Relief and reconstruction efforts have been continued for Arab refugees in the Middle East and similar measures have been initiated for Korea, both programmes being administered by executive heads who report directly to the General Assembly. These arrangements would seem to represent a new and permanent method of meeting major emergencies or special operational requirements. The Office of the High Commissioner for Refugees, financed from the regular budget, but having, under the terms of its Statute, a direct responsibility to the General Assembly and a semi-autonomous relationship to the Secretary-General, has been established at Geneva, and the High Commissioner is in the process of setting up field offices in selected areas of the world."

189. The Advisory Committee on Administrative and Budgetary Questions has also had occasion to comment on the same matter. In its Second Report of 1950 to the General Assembly, 173/ the Advisory Committee stated:

"the Committee has become aware of the administrative dangers and organizational difficulties inherent in the establishment of units and offices relatively independent of the Secretariat, such as the United Nations International Children's Emergency Fund, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the Office of the High Commissioner for Libya and the Office of the High Commissioner for Refugees. It stresses in particular the need for a precise definition of lines of administrative and financial responsibility up to the Secretary-General and the General Assembly itself."

173/ G A (V), Suppl. No. 7 (A/1312), p. 5, para. 14.

Chapter XVI

MISCELLANEOUS PROVISIONS

