ARTICLE 101

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ARTICLE 101

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. The organization of this study follows that established in Repertory Supplement No. 2. It has, however, been considered appropriate to add the following subheading under II A 2 f: “iv. Officials at senior level.” The heading II C 2: “Entitlements of the staff” has, in view of the important decisions taken by the General Assembly in the field of pensions during the period covered by this Supplement, been divided into two subheadings: “a. In active service” and “b. Pensions”.

2. The major question treated in this Supplement is that of geographical distribution. Other decisions of the General Assembly concerning specific aspects of the conditions of service of the staff are mentioned under the appropriate headings. In addition, decisions of the Administrative Tribunal of the United Nations relating to the interpretation of the Staff Regulations and Rules issued under Article 101 are reported.

I. GENERAL SURVEY

3. During the period under review, the General Assembly devoted much attention to the composition of the staff, that is to say, the question of geographical distribution and that concerning the proportion of fixed-term appointments in relation to permanent appointments. The discussion of those questions, particularly during the fourteenth, fifteenth and sixteenth sessions of the General Assembly, were greatly influenced by the proposal to replace the office of the Secretary-General by an executive body consisting of three persons representing three different political groups of States, which is dealt with under Article 100. In view of the wide divergence of opinion which existed on the composition of the Secretariat, it did not prove possible to agree on a draft resolution on that subject when the report of the Committee of Experts on the Review of the Activities and Organization of the Secretariat was considered in the Fifth Committee at the sixteenth session of the General Assembly. The Chairman of the Committee of Experts observed in the Committee’s report that “the question really at stake in this chapter [dealing with geographical distribution] is the whole problem of the nature of the Secretariat”. At the seventeenth session, on the basis of proposals made by the Secretary-General, a certain consensus was reached in the Fifth Committee. Resolutions on the subject of geographical distribution were adopted by the General Assembly at the fourteenth, fifteenth, seventeenth and eighteenth sessions (resolutions 1436 (XIV), 1559 (XV), 1852 (XVII) and 1928 (XVIII)).

4. The above-mentioned Committee of Experts was appointed by the Secretary-General at the request of the General Assembly. Its terms of reference were, according to General Assembly resolution 1446 (XIV), “to work together with the Secretary-General in review-
ing the activities and organization of the Secretariat of the United Nations with a view to effecting or proposing further measures designed to ensure maximum economy and efficiency in the Secretariat"; they were widened by the General Assembly in resolution 1559 (XV) to include the study of "the categories of posts subject to geographical distribution and the criteria for determining the range of posts for each Member State with a view to securing a wide geographical distribution of the staff of the Secretariat taking into account, inter alia, the relative importance of various posts." The Committee's report dealt with the nature of the Secretariat, its organization at the top level, geographical distribution, economic and social activities, budget stabilization and a number of other questions relating to the organization and activities of the Secretariat.

5. The General Assembly also took decisions on the conditions of service of the staff, such as, resolutions 1658 A (XVI) and 2050A (XX) relating to base salary scales and post adjustment of staff members; resolutions 1561 (XV), 2007 (XIX) and 2050B (XX) concerning the pensionable remuneration of staff members; and resolutions 1408 (XIV) and 1562 (XV) which amended the Pension Scheme for Members of the International Court of Justice.

6. The Secretary-General continued to implement the policy of decentralization of the economic and social activities of the Secretariat as decided upon by the General Assembly.

7. Under decisions of the Security Council and the General Assembly, further subsidiary organs were established during the period under review. On the other hand, two existing subsidiary organs, the Special Fund and the Expanded Programme of Technical Assistance, were consolidated in the United Nations Development Programme (UNDP) by resolution 2029 (XX) of the General Assembly. Such decisions entailed appropriate arrangements for the assignment of staff to those organs which are discussed under this Article.

8. The Administrative Tribunal of the United Nations took a number of decisions concerning its competence and interpreting the contractual relationship of the staff with the United Nations in the light of the relevant provisions of the Charter, the Staff Regulations and Rules and directives issued by the Secretary-General. In one case, it dealt with the contractual position of staff members of the United Nations Secretariat seconded to another member of the United Nations family. It also adopted a number of amendments to the rules of the Tribunal.

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

**b. The concept of integrity

2. THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION

a. In general

9. The geographical distribution of the staff of the Secretariat was considered by the General Assembly at every session during the period under review, with the exception of the nineteenth session. The consideration of that question at the fourteenth, fifteenth and sixteenth sessions was, as has been stated, marked by sharp differences of views resulting from different conceptions of the nature of the Secretariat. Some representatives considered that the existence of three main groups of Member States, the Western States, the socialist States and the neutralist States, should be recognized and reflected in the composition of the Secretariat in which the three groups should be equally represented; others disputed such a classification and maintained that representation of political or ideological groupings in the Secretariat was completely un-

3 See para. 3 above.

4 See this Supplement, under Article 100, para. 6.

5 See Repertory, under Article 101, para. 21.
States presented difficulties for the Secretary-General; those were aggravated by the fact that developing countries were frequently short of qualified personnel who could be spared for service in international organizations. During the period under review, the question of the proportion of fixed-term staff was extensively discussed by the General Assembly in view of the attitude of certain Member States which considered that the Secretariat should consist preponderantly of fixed-term rather than career staff and that the appointment of staff for a limited period rather than as career appointments would make it easier for developing countries to provide qualified persons for service in the Secretariat. The questions of geographical distribution and of the proportion of fixed-term staff were, however, considered as a single item.

13. The desirability of ensuring an adequate geographical distribution of the staff dealing with public information was stressed in the course of the discussion on the public information activities of the United Nations at the fourteenth and fifteenth sessions of the General Assembly. In resolution 1405 (XIV) on that item, the General Assembly requested the Secretary-General “to give continuing and special consideration to the importance of adequate regional representation at the policy-making level of the Office of Public Information and in the information centres”. In resolution 1558 (XV), the Secretary-General was requested “to intensify his efforts to achieve a more effective regional representation at the policy-making level of the Office of Public Information”.

14. During the period under review, as noted in the General Survey above, the General Assembly adopted the following four resolutions on the geographical distribution of the staff: resolutions 1436 (XIV), 1559 (XV), 1852 (XVII) and 1928 (XVIII).

b. Interpretation of the principle of geographical distribution

15. While the Charter refers to “recruiting the staff on as wide a geographical basis as possible”, the term “geographical distribution” has, in the practice of the General Assembly, assumed a more technical meaning, that is to say, the geographical distribution of staff holding posts subject to criteria designed to ensure wide and balanced geographical distribution, and has been related to the question of the criteria by which the “desirable range of posts” subject to geographical distribution to be attributed to the various member States is to be computed.

16. As to the interpretation of the principle, representatives who supported the proposal of the replacement of the office of the Secretary-General by an executive body and the application of the principle of equal representation of three political groups of Member States to the Secretariat as a whole took the view that it was incorrect, in relation to the problem of adequate “representation” in the Secretariat, to interpret “geographical” considerations in too literal a sense. The term “geographical” had been used by the authors of the Charter mainly in its political sense, since the Charter was primarily a political document and the United Nations a political organization. The existence in the world of three main groups of States and the alignment of forces which they represented were a contemporary reality which should be recognized and reflected in the composition of the Secretariat.

17. Other representatives took the opposite view: it was essential, in the letter and spirit of the Charter, to interpret the word “geographical” in its literal and not in any political sense, for the representation of countries or groups of countries within the Secretariat was contrary to the Charter; Article 100 (1) clearly laid down that staff members of the Secretariat could not be recruited on the basis of political or ideological considerations.8

18. It was pointed out that the term “geographical distribution” was not to be found in the Charter. The Charter provided that the staff should be recruited on the basis of certain prescribed qualities; it did not stipulate that candidates must be nationals of any particular country as a condition of their recruitment into the Secretariat. The term “geographical basis” had erroneously been interpreted as meaning “nationality”. It was necessary to bear in mind that the Secretariat was composed of individuals rather than nationals of Member States and that its staff must be protected by the provisions of Article 8.7

19. The General Assembly, in its resolution 1559 (XV), reaffirmed the third paragraph of the preamble to General Assembly resolution 153 (II) of 15 November 1947, which read as follows:

“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.”

c. Criteria for the application of the principle of geographical distribution

20. The Committee of Experts on the Review of the Activities and Organization of the Secretariat had been requested, under resolution 1559 (XV), “to study the categories of posts subject to geographical distribution and the criteria for determining the range of posts for each Member State with a view to securing a wide geographical distribution of the staff of the Secretariat, taking into account, inter alia, the relative importance of various posts, and to report to the Assembly at its sixteenth session”.

21. Under the formula applied hitherto, posts subject to geographical distribution had been apportioned among Member States largely on the basis of the Members’ contributions to the United Nations budget. The “desirable range of posts” was calculated in accordance with the percentage of budgetary contributions, allowing for an upward or downward variation within 25 per cent of the contribution except that (1) the upward deviation in the number of nationals was not allowed in the case of Member States contributing more than 10 per cent and (2) a desirable minimum range of one to three had been allowed for Member States regardless of their assessed budgetary contributions.8

6 G A (XVI), Annexes, a.i. 64, A/5063, para. 7.
7 Ibid., para. 9.
22. The Committee rejected the idea of a points system to give varying weights to different posts according to their relative importance and the calculation of national quotas on the basis of points rather than positions. It recognized, on the other hand, that some consideration should be given to the view that an otherwise adequate number of posts at junior level did not compensate for the lack of staff at senior levels.

23. In order to take account of that factor, the Committee proposed to distinguish between (1) geographical distribution at the levels G-5 (Headquarters) and P-1 through D-1 and (2) geographical distribution at the levels of D-2 and Under-Secretary. The formula proposed by the majority of the Committee was designed to take account of four factors:

(i) The membership, as such, of the Organization;
(ii) The population factor;
(iii) The desirability of securing over-all geographical balance for the seven main geographical regions of the world;
(iv) The size of each Member State’s contribution to the regular budget of the United Nations.

To achieve that objective, the majority of the Committee proposed the following formula for the first group (levels G-5 at Headquarters and P-1 through D-1):

(i) A minimum of two staff from members each Member State;
(ii) In addition, one staff member from each Member State for each 10 million population up to 150 million, and an additional staff member for each 30 million population in a Member State in excess of 150 million;
(iii) The remainder of the posts available under geographical distribution would be allotted to each Member State according to its contribution to the regular budget of the United Nations.

24. For the second group, at the D-2 and Under-Secretary levels, the majority of the Committee suggested a distribution by seven geographical regions, that is to say, candidates for positions at the D-2 and Under-Secretary levels should be recruited in the same ratio as the total of the desirable target of the countries of each region bore to the total number of G-5 (Headquarters) through D-1 positions.9

25. The newly appointed Acting Secretary-General stated that he would need a little time fully to familiarize himself with the basic issues relating to personnel and to the budgetary and financial policy of the Organization. He had no panaceas to offer, but would give those problems his immediate attention, in consultation with those of his colleagues who were directly concerned, as well as with those whose views might help to formulate constructive proposals for the Fifth Committee’s consideration.10

26. The Fifth Committee had before it two draft resolutions, one in general terms submitted by the United States11 and one submitted jointly by thirteen Powers12 which, inter alia recommended that the Secretary-General should be guided in his efforts to achieve a more equitable geographical distribution by consideration of the following principles and factors:

(a) A minimum target of five staff members from each Member State;
(b) Equal regard to be paid to the relative sizes of populations and the ratios of contributions to the regular budget of the United Nations;
(c) The relative importance of posts at various levels;
(d) The need for a balanced regional composition of the staff at levels of D-2 and above.

27. As the sponsors of the two draft resolutions could not reach agreement on a mutually acceptable compromise text, the Committee decided, on the proposal of the representative of Canada, to include a statement in its report by which the Secretary-General was invited:

"(a) to take into consideration the contents of the two draft resolutions and also the views expressed in the Committee on this question, and (b) to present to the General Assembly at its seventeenth session a statement of his considered views on how to improve the geographical distribution of the staff of the Secretariat".13

28. In his report14 to the General Assembly at the seventeenth session, the Acting Secretary-General made the following proposals:

(a) Due regard should be paid in the recruitment of all international staff to securing as wide a geographical spread as possible.
(b) In the Secretariat proper, for Professional posts other than those with special language requirements, an equitable geographical distribution would take account of the fact of membership, of Members’ contributions and of their populations. An appropriate allocation to each of those factors might be:
(i) a minimum range of one to five posts attributable to membership;
(ii) a reservation of 100 posts to take account of such differences in size of populations as do not receive sufficient weight in the other two factors; and
(iii) the balance of posts to be assigned on the basis of the ratios of assessed contributions: in a staff of 1,500 that factor would amount to some 60 per cent.
(c) In the Secretariat proper, General Service staff of all grades should be excluded from the scope of geographical distribution, though not of course from the principle of desirability of wide geographical spread.
(d) Secretariat staff members appointed to missions would remain included in the geographical count. Persons recruited on a temporary basis for mission service should remain outside the count, but should continue to be reported to the General Assembly.

9 G A (XVI), Annexes, a.i. 61, A/4776, paras. 71-77.
10 G A (XVI), Annexes, a.i. 64, A/5063, para. 32.
11 Ibid., para. 35 and annex I.
12 Ibid., para. 37 and annex II.
13 Ibid., para. 51.
14 G A (XVII), Annexes, a.i. 70, A/5270, para. 69.
30. In Article 101 (3), it is laid down that the paramount consideration in the employment of the staff and in the determination of conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity and that due regard is to be paid to the importance of recruiting staff on as wide a geographical basis as possible.

31. The relationship between the two sentences was differently interpreted by representatives whenever the question of geographical distribution was discussed. Some representatives felt that since the highest standards of efficiency, competence and integrity were to be the paramount consideration, the consideration of recruitment on as wide a geographical basis as possible would have to be subordinate. Others maintained that neither sentence was intended to take precedence over the other and that the attempts to prove that more weight should be given to the consideration of efficiency, competence and integrity had hampered the application of the principle of geographical distribution. A number of representatives took an intermediate position. They considered that no conflict arose between the two principles stated in the Article and that neither one must be given more weight than the other. There was no justification for regarding efficiency and geographical distribution as conflicting requirements. In their opinion, the divergent interpretations of Article 101 (3) could be ascribed to differing conceptions of the nature of the Secretariat: on the one hand, those who laid predominant stress on the personal attributes of the staff envisaged a supra-national civil service composed of individuals acknowledging an exclusive allegiance to the Charter, and, on the other hand, those who attached an equal importance to geographical distribution saw the Secretariat as an international, as opposed to a supra-national, civil service — a service that would reflect, with the object of reconciling, the existing alignment of national forces in the world.\(^\text{17}\)

32. The Preparatory Commission of the United Nations had expressed the opinion that the two principles, "as experience has shown, can in large measure be reconciled".\(^\text{18}\) As early as 1947, the General Assembly had expressed, in resolution 153 (II), the view that the attainment of a balanced geographical distribution in the composition of the Secretariat did not conflict with the "necessity of securing the highest standards of efficiency, competence and integrity".

33. That view was reaffirmed by the General Assembly in the preamble to resolution 1559 (XV). In the preamble to resolution 1852 (XVII), the General Assembly adopted a recommendation on the progress achieved in the geographical distribution of the staff of the Secretariat.\(^\text{19}\)
Assembly recognized “that the principle of an equitable geographical distribution in the Secretariat does not conflict with the paramount considerations of employment of staff, namely, the necessity of securing the highest standards of efficiency, competence and integrity as laid down in Article 101, paragraph 3, of the Charter of the United Nations”.

e. Posts to which the principle of geographical distribution is not applicable

34. The Committee of Experts on the Review of the Activities and Organization of the Secretariat was, by resolution 1559 (XV), requested, inter alia, “to study the categories of posts subject to geographical distribution ...” The Committee considered whether the following categories of staff should be included within the total number of posts used as a base in calculating the application of the formula for geographical distribution:

(a) Mission staff at the P-1 level and higher;
(b) The Chairman of the TAB and his staff and the Managing Director and staff of the Special Fund;
(c) The staff of the International Court of Justice;
(d) The United Nations High Commissioner for Refugees (UNHCR) and his staff;
(e) The Executive Director of UNICEF and his staff;
(f) Consultants appointed by the Secretary-General and experts appointed under the various technical assistance programmes.

35. The Committee was agreed that the Executive Chairman of TAB and his staff and the Managing Director of the Special Fund and his staff should be included in the total United Nations staff for geographical distribution purposes. The majority of the Committee held that specially recruited mission staff, the staff of the International Court of Justice, UNHCR, the Executive Director of UNICEF and his staff, consultants and technical assistance experts should continue to be excluded from geographical distribution.19

36. The joint draft resolution mentioned earlier 20 followed the views of the Committee of Experts on that matter, but as has been stated, the Fifth Committee took no decision on it.

37. In his report to the General Assembly at its seventeenth session, the Acting Secretary-General suggested that the Executive Chairman of TAB and his staff and the Managing Director and staff of the Special Fund should continue to be excluded from geographical distribution as the same considerations applied to them as to the Executive Director of UNICEF and his staff. The Acting Secretary-General would, on the other hand, review, in consultation with the executive heads of the programmes, the geographical balance of those staffs and report annually to the General Assembly on progress in improving their geographical distribution vis-à-vis the suggested criterion of voluntary contributions.

38. The Acting Secretary-General also suggested that General Service staff at Headquarters at the principal level (G-5) should no longer be included in geographical distribution, a point which had already been made earlier in the Secretary-General’s report to the General Assembly at its fourteenth session 21 and in the Secretary-General’s comments on the report of the Committee of Experts, 22 or, alternatively, that the General Service category should be self-contained and that a weightage of 50 to 60 per cent for host countries should be included in any geographical distribution formula for General Service staff. 23

39. Most representatives in the Fifth Committee felt that, in view of the Secretary-General’s intention to report annually on the progress made in improving the geographical composition of the staffs of the agencies dealing with voluntary programmes, they should not, for the time being, be included within an approved formula for geographical distribution since that would leave the Secretary-General time to work out a fair solution to the problem. That point of view was opposed by other representatives who were of the opinion that since the principle of geographical distribution was not limited in the Charter, it should be applied to the secretariats of all organizations within the United Nations family. 24

40. As regards the principal (G-5) level of the General Service category, most representatives agreed that it should not be included within the scope of the geographical distribution formula; in any event, before taking any decision to extend the scope of the formula to the principal level (G-5) of the General Service staff at Headquarters, it would be necessary to make a study of the additional costs that would arise; they would be found unwarrantably high. Some representatives also felt that for the G-5 level at Headquarters remedial action to ensure a better geographical distribution was urgently required. 25

41. On the recommendation of the Fifth Committee, the General Assembly adopted resolution 1852 (XVII), 26

f. Application of the principle of geographical distribution to particular categories of individuals

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

**ii. Stateless persons or nationals of non-member States

iii. Individuals with status of permanent residence at duty station

42. While no decision relating to the subject-matter was taken by the Administrative Tribunal of the United Nations during the period under review, an earlier decision, decision No.66,27 may be cited here in view of its importance.

19 G A (XVI), Annexes, a.i. 61, A/4776, paras. 50-60.
20 See para. 26 above.
22 G A (XVI), Annexes, a.i. 61, A/4794, para. 40.
23 G A (XVII), Annexes, a.i. 70, A/5270, para. 54. On the status of G-5 staff at Headquarters, see G A (XV), Annexes, a.i. 60, A/4591, paras. 10-14.
24 G A (XVII), Annexes, a.i. 70, A/5377, paras. 22 and 23.
25 Ibid., paras. 24 and 25.
26 See para. 29 above.
27 AT/DEC/66.
iv. Officials at senior level

43. In the course of the discussion of the question of geographical distribution at the fourteenth, sixteenth, seventeenth, eighteenth and twentieth sessions, a number of representatives pointed out that the relative importance of posts should be taken into account and that imbalance in geographical distribution existed particularly at the senior (D-1 and above) level. In resolution 1436 (XIV) the General Assembly recommended, *inter alia*, that "vacancies in posts at higher levels of the Secretariat should be filled, as far as possible, by qualified candidates representative of geographical areas and main cultures which are not represented, or not adequately represented, in these key posts;" 28

44. As has been reported, 29 the Committee of Experts on the Review of the Activities and Organization of the Secretariat had recommended that the problem of equating posts at different levels could best be solved, though admittedly not wholly, by dividing it into two parts: (1) geographical distribution at the levels G-5 (Headquarters) and P-1 through D-1, and (2) geographical distribution at the levels of D-2 and Under-Secretary, and to apply to the latter group a formula for distribution on a regional basis.

45. In his report to the Assembly at its seventeenth session, the Acting Secretary-General stated that he shared the view expressed in the Assembly that it was important that the composition of the staff should reflect the geographical composition of the Organization, particularly at the highest level. Significant adjustments had been made at the upper levels of the Secretariat. To take Under-Secretaries as a case in point, the distribution was as follows: three from Africa, four from Asia and the Far East, four from Eastern Europe, four from Western Europe, three from Latin America and two from North America. The Acting Secretary-General expected that that satisfactory balance would be extended by the prospective changes in the levels immediately below in the relatively near future. 29

46. In resolution 1852 (XVII), the General Assembly recommended, *inter alia*, that the "relative importance of posts at different levels" and the "need for a more balanced composition of the staff at levels of D-1 and above" should be taken into account.

47. In resolution 1928 (XVIII), the General Assembly, "recognizing the need for a more equitable distribution of staff among the Member States within the various regions, in particular at the levels of senior posts", requested "the Secretary-General to take into special account the equitable distribution of posts among Member States of each region, as defined in his report, in the recruitment of staff on as wide a geographical basis as possible, especially at the levels of D-1 and above, and, to this end, to consider suitable persons from Member States not already 'represented' at such levels".

48. The Secretary-General stated in his report to the General Assembly at its twentieth session that he had given special attention to the improvement of the composition of the staff at the levels D-1 and above.

It could be seen that, as compared with the situation on the corresponding date of the preceding year, there was, in terms of the principles applicable to the staff as a whole, a more balanced distribution of the senior posts among the nationals of the various geographical regions at the end of the year under review. 30

49. Concerning the question of staff in senior posts, the Secretary-General pointed out that six of the seven regions had shared in the over-all increase in the number of senior posts in the Secretariat which had arisen out of the growth of the establishment. 31

g. Means for giving effect to the principle of geographical distribution

i. Increase in the recruitment of staff in the General Service category of persons of different nationalities

ii. Greater use of fixed-term contracts

50. During the period under review, the question of the proportion of fixed-term contracts was discussed at every session of the Assembly, except the nineteenth, in connexion with geographical distribution.

51. During the consideration of that item by the Fifth Committee at the fourteenth session of the General Assembly, some representatives, particularly those supporting the proposal for equal representation of three political groups in the composition of the Secretariat, suggested suspension of the existing system of career appointments and the granting of fixed-term appointments only. 32 Other representatives, while opposing that view, were in favour of a moderate increase in the proportion of fixed-term to career appointments (then standing at 16.6 per cent). It was, however, pointed out that some staff should continue to be recruited on a career basis in order to maintain a satisfactory ratio between the two categories of staff. 32

52. The General Assembly, in resolution 1436 (XIV), recommended that "the Secretary-General's endeavours to increase the number of the Secretariat staff appointed on fixed-term contracts should be continued and encouraged."

53. At the fifteenth session, the Committee took note, 34 in its report, of the progressive movement towards the target of 20 per cent of fixed-term staff set by the General Assembly at its eleventh session in resolution 1095 A (XI). 35

54. The majority of the Committee of Experts on the Review of the Activities and Organization of the Secretariat 36 was in favour of an increase of the proportion of fixed-term contracts to 25 per cent by the end of 1962, which it did not consider as excessive. While convinced that the bulk of the staff should consist of persons intending to make service in the Secretariat a career and that the efficiency of the Secretariat was

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28 See paras. 23 and 24 above.
29 G A (XVII), Annexes, a.i. 70, A/5270, para. 6.
30 G A (XX), Annexes a.i. 84, A/5841, paras. 15 and 16.
32 G A (XIV), Annexes, a.i. 54, A/4329, para. 4.
33 Ibid., para. 5.
34 G A (XV), Annexes, a.i. 60, A/4642, para. 15.
35 G A (XI), Annexes, a.i. 51, A/3558, para. 129.
36 See para. 4 above.
dependent on the existence of a substantial core of career officials, the majority of the Committee agreed that the existence of a suitable proportion of officers on fixed-term contracts served a useful purpose in introducing new blood and new ideas.\(^{37}\)

55. The Soviet expert, on the other hand, proposed to discontinue the practice of granting permanent contracts to members of the Secretariat and to limit recruitment to nationals of countries under-represented in the Secretariat.\(^{39}\)

56. In the Fifth Committee, many representatives felt that it would not be wise to exceed the proportion of 20 per cent for fixed-term staff, in relation to career staff, which had already been attained, or — according to the latest statistics — slightly exceeded at 20.5 per cent.

That figure had been approved by the General Assembly in February 1957 (resolution 1095 (XI)) on the recommendation of the 1956 Salary Review Committee and the Fifth Committee. From the point of view of the Members, there was an undeniable advantage in their being able to draw on the experience of civil servants who had spent some time in the international secretariats; that was specially true of many of the newly independent States. Short-term service with the United Nations, however, if carried beyond 20 per cent, might weaken the concept of the Secretariat as a truly international body made up of officials wholly independent of any Government or any other authority external to the Organization.\(^{39}\)

57. Other representatives concurred in the view of the majority of the Committee of Experts that an increase in the proportion of fixed-term staff to 25 per cent by the end of 1962 would not be excessive. A radically different position was taken by a few representatives who maintained that the practice of granting career appointments to the large majority of the staff precluded any improvement in geographical distribution; that practice should be discontinued forthwith. Career appointments should in future be granted only in exceptional cases expressly authorized by the General Assembly.\(^{40}\)

58. Under a draft resolution proposed by thirteen Powers, which was not voted upon the General Assembly would have recommended to the Secretary-General the desirability of raising the percentage of fixed-term staff to 25 per cent of the total staff.\(^{41}\)

59. At the seventeenth session under the terms of a draft resolution\(^{42}\) submitted by Czechoslovakia, the General Assembly would recommend to the Secretary-General (a) to increase the proportion of fixed-term contracts which, at that time, according to the Secretary-General's report, stood at 25.4 per cent;\(^{43}\) (b) to limit further offers of permanent contracts to a minimum; and (c) to resume the practice of effectively reviewing every five years individual contracts for an indeterminate period and of not offering such contracts to higher officers of the Secretariat. The draft resolution was withdrawn as it did not receive sufficient support.

60. During the debate in the Fifth Committee at the eighteenth session of the Assembly, much of the discussion turned on the question of fixed-term staff in relation to career staff. Many representatives were disturbed by the further increase in the proportion of fixed-term staff from 25.4 per cent in 1962 to 29.7 per cent in 1963. A career service, offering security of tenure as a shield against the vicissitudes of political change and external pressure, was the very essence of the independent and impartial Secretariat which the Charter envisaged. On that and other matters under discussion, they were generally content to rely on the discretion and good sense of the chief administrative officer of the Organization rather than on the formulation of rigid directives.

61. Other representatives maintained that in seeking a judicious balance between the two types of appointment, the Committee should have full regard to the special problems of the developing countries. It should view with sympathy a modest, temporary expansion of the fixed-term staff. Existing geographical imbalances might be adjusted through the appointment to posts at the higher levels of nationals of “under-represented” countries on a fixed-term basis.

62. A few representatives pressed for a more radical approach to the question; they were in favour of a change in the existing situation so that the proportion of fixed-term staff might ultimately reach some 75 per cent. They were opposed to the Secretary-General’s intention of continuing with the conversion of fixed-term appointments with the object of bringing within the career group an increasing number of staff from the “under-represented” regions. In their opinion, fixed-term staff members could gain valuable experience in the Secretariat. Furthermore, the existing ratio seriously limited the Secretariat’s capacity to adjust to changes. The United Nations was a living, changing organism; corresponding changes in the composition of its Secretariat were therefore desirable. Yet, under the system of permanent appointments, such a process of adjustment was impossible. It should also be borne in mind that many highly qualified persons, being unwilling permanently to quit the environment in which they had lived and worked, on that account declined the offer of a career appointment.\(^{44}\)

63. Those differences of views on the ratio between fixed-term and career appointments were also reflected in the discussion in the Fifth Committee at the twentieth session of the General Assembly,\(^{45}\) when the proportion of fixed-term appointments, as reported by the Secretary-General, stood at 28 per cent.\(^{46}\)

iii. Other suggested means

64. In order to alleviate the difficulties of countries which might be unable to present qualified candidates

\(^{37}\) G A (XVI), Annexes, a. i. 61, A/4776, para. 92.

\(^{38}\) Ibid., para. 90.

\(^{39}\) G A (XVI), Annexes, a. i. 64, A/5063, para. 25.

\(^{40}\) Ibid., paras. 26 and 27.

\(^{41}\) Ibid., paras. 37-51.

\(^{42}\) G A (XVII), Annexes, a. i. 70, A/5377, para. 13. For discussion, see ibid., paras. 16 and 17.

\(^{43}\) Ibid., A/C.5/938, para. 3.

\(^{44}\) G A (XVIII), Annexes, a. i. 66, A/5646, para. 9.

\(^{45}\) G A (XX), Annexes, a. i. 84, A/6215, paras. 4 and 5.

\(^{46}\) Ibid., A/6077, paras. 11-13 and Table D.
for posts in the Secretariat, the Committee of Experts on the Review of the Activities and Organization of the Secretariat suggested the establishment and implementation of an adequate programme for trainees who would have fixed-term contracts of two or three years. Those trainees would count against their countries' target but it might be desirable to consider setting up some special extra-budgetary trainee posts, or, alternatively, to allow flexibility in recruitment levels (which might be P-1 through P-3) and to establish a fund sufficient to permit the employment of some fifteen to twenty staff members in that trainee category. 47

65. The Secretary-General stated in his comments that arrangements had been made for taking on in the Secretariat trainees who might join the Secretariat for a few years and return to their national services at the end of the period with the benefit of a better knowledge of the work and methods of the United Nations. 48 The Secretary-General also reported on the following steps taken to facilitate the recruitment of nationals of new Member States: (a) letters to the Governments concerned, (b) consultations with their delegations, (c) visits of senior officials to interview candidates and to encourage the government departments concerned to nominate persons for employment in the Secretariat, (d) circulation of vacancy lists and (e) efforts of officials travelling in Africa to stimulate interest of new Member States in United Nations recruitment. 49

66. In the Fifth Committee, a number of representatives noted with satisfaction the suggestion of the Committee of Experts for the establishment of an adequate programme for trainees serving on fixed-term appointments of two to three years' duration and counting against their countries' targets. 50

67. A scheme recommended by the Committee of Experts, whereby each year a limited number of senior staff members from the age of fifty years would be entitled to resign from the Secretariat under preferential conditions such as the payment of a special retirement benefit together with ad hoc compensation, found little support in the Fifth Committee. 51

68. The draft resolution 52 on the proportion of fixed-term staff submitted by Czechoslovakia in the Fifth Committee at the seventeenth session of the General Assembly recommended, inter alia, the resumption of the practice of effectively reviewing every five years individual contracts for an indeterminate period and of not offering such contracts to higher officers of the Secretariat. 53 The representative of the Secretary-General pointed out that the system of quinquennial review of permanent appointments had been abandoned, by decision of the Assembly in 1955, when the Secretary-General had come to the conclusion, with the concurrence of the Advisory Committee on Administrative and Budgetary Questions, that appointments should be subject to review only once, at the end of the first five years following the award of a permanent appointment. 54 As has been mentioned earlier, 55 the draft resolution was withdrawn.

**3. The Prohibition of Distinction as to Race, Sex or Religion 56**

B. Appointment of the staff

1. Authority to appoint the staff

a. In general 58

69. As stated in Article 101 (1) and in Staff Regulations 4.1, the authority to appoint staff members rests with the Secretary-General.

70. The same is true of the corresponding authority to terminate staff members.

71. Case No. 87 decided by the Administrative Tribunal of the United Nations in its judgement No. 90 59 concerned an application to rescind the administrative decision to terminate the Applicant's probationary appointment and not to grant her a permanent appointment. The Applicant had submitted an appeal against the decision to the Joint Appeals Board. The Board first considered the question of the validity of the decision taken regarding the Applicant in the absence of a Secretary-General, during the period from 18 September 1961, the date of the death of Mr. Hammarskjold, to 3 November 1963, the date of the election of U Thant. With regard to the confirmation of that decision on 27 September 1961, the Board took cognizance of an opinion of the United Nations Legal Counsel to the effect that the Director of Personnel was entitled to exercise the functions of the Secretary-General under the Staff Regulations and Rules during the interim between Mr. Hammarskjold's death and the election of his successor. The Board examined the case on its merits without expressing any views on that opinion.

72. The Tribunal held that the report of the Joint Appeals Board showed that, before leaving New York for the Congo, the Secretary-General had approved in writing a recommendation for termination of the Applicant's appointment which had been submitted to him by the Chairman of the Appointment and Promotion Board. That being the case, the question of the competence of the Director of Personnel to perform a function vested in the Secretary-General did not arise.

47 G A (XVI), Annexes, a.i. 61, A/4776, para. 87.
48 Ibid., A/4794, para. 33. While the budgetary estimates for 1959 provided for four junior professional trainees, the 1965 estimates provided for twenty trainees.
49 G A (XVI), Annexes, a.i. 64, A/C.5/890, para. 12.
50 Ibid., A/5063, para. 26. For other suggested means, see the dissenting view of the Soviet expert in the Report of the Committee of Experts on the Review of the Activities and Organization of the Secretariat, G A (XVI), Annexes, a.i. 61, A/4776, para. 90.
51 Ibid., para. 86.
52 G A (XVI) Annexes, a.i. 64, A/5063, para. 31.
53 See para. 59 above.
54 G A (XVII) Annexes, a.i. 70, A/5377, para. 13. See also para. 59 above.
55 Ibid., para. 27.
56 See para. 59 above.
57 See this Supplement, under Article 8.
58 See this Supplement, under Article 100, paras. 28 and 29.
59 AT/DEC/90.
since the Director of Personnel merely notified the person concerned of the decision arrived at.

73. Reference may be made to judgement No. 70 of the Administrative Tribunal of the United Nations in which the Tribunal asserted its competence to deal with the application of a local staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

b. Staff of special organs

**i. The Secretariat of the Military Staff Committee**

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

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

**iv. Staff of the United Nations Korean Reconstruction Agency**

**v. Staff of the Technical Assistance Board**

vi. United Nations Children’s Fund

74. Staff rule 104.14 a(i) provides that:

“An Appointment and Promotion Board shall be established by the Secretary-General to advise him on the appointment, promotion and review of staff in the General Service and Professional categories, and on the appointment and review of staff at the Principal Officer level, except those specifically recruited for service with the United Nations Children’s Fund, the United Nations Development Programme, or the United Nations Institute for Training and Research. The Secretary-General shall also establish an Appointment and Promotion Committee and such other subsidiary panels as may be necessary to assist the Appointment and Promotion Board in the performance of its functions. The heads of the organs referred to above may establish boards whose composition and functions are generally comparable to those of the Appointment and Promotion Board to advise them in the case of staff members recruited specifically for service with those organs.” Comparable boards have been established for UNICEF and the United Nations Development Programme. The United Nations Appointment and Promotion Board is competent also for the staff of the United Nations Institute for Training and Research. The Secretary-General shall also establish an Appointment and Promotion Board, and the staff of the Special Fund by the Managing Director of the Special Fund shall become the Administrator of the United Nations Development Programme, or the United Nations Development Programme and the present Executive Chairman of the Technical Assistance Board shall become the Administrator of the Programme, each to serve until 31 December 1966 or, pending a further review of arrangements at the management level, until such later date as may be determined by the Secretary-General after consultation with the Governing Council”.

ix. United Nations Development Programme

80. By resolution 2029 (XX), the General Assembly decided to combine the Expanded Programme of Technical Assistance and the Special Fund in a programme to be known as the United Nations Development Programme (UNDP).

81. According to paragraph 7 of the resolution, the Assembly decided that “as a transitional measure, the present Managing Director of the Special Fund shall become the Administrator of the United Nations Development Programme and the present Executive Chairman of the Technical Assistance Board shall become the Co-Administrator of the Programme, each to serve until 31 December 1966 or, pending a further review of arrangements at the management level, until such later date as may be determined by the Secretary-General after consultation with the Governing Council”.

82. In the resolution, it is not specified which is the authority responsible for the appointment of the staff. The staff of the Technical Assistance Board was appointed by the Executive Chairman of the Board, and the staff of the Special Fund by the Managing Director of the Fund.

83. The staff of UNDP is appointed by the Administrator of the Programme, to whom that authority has been delegated by the Secretary-General.

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60 AT/DEC/70.
61 See paras. 80-83 below.
x. United Nations Force in the Congo
84. Following consultations with the Advisory Committee on the Congo established by the Secretary-General after his statement to the Security Council at its 887th meeting, on 21 August 1960, the Secretary-General issued, on 15 July 1963, Regulations for the United Nations Force in the Congo which first came into existence pursuant to Security Council resolutions 145 of 14 July 1960 and 146 of 9 August 1960 and which formed an integral part of the United Nations Operation in the Congo (ONUC).

85. According to paragraph 11 of the Regulations, the Secretary-General, under the authority of the Security Council and the General Assembly, had full command authority over the Force. Under paragraph 20 (b), the Officer-in-Charge of ONUC was to arrange with the Secretary-General for such international recruitment or detailment of staff from the United Nations Secretariat or from the specialized agencies to serve with the Force as might be necessary. Unless otherwise specified in the terms of their contracts, such personnel were staff members of the United Nations, subject to the Staff Regulations thereof and entitled to the privileges and immunities of United Nations officials as envisaged in Article 105 of the Charter of the United Nations and provided in the Agreement between the United Nations and the Republic of the Congo, signed on 27 November 1961. Under paragraph 20 (c), the Officer-in-Charge was authorized to recruit such local personnel as the Force required.

xi. United Nations Force in Cyprus
86. The Regulations for the United Nations Force in Cyprus established by Security Council resolution 186 of 4 March 1964, provided, in paragraph 20, that the Commander of the Force was to be appointed by the Secretary-General. He was to be entitled to diplomatic privileges, immunities and facilities in accordance with sections 19 and 27 of the Convention on the Privileges and Immunities of the United Nations. The Commander was authorized to appoint to his Headquarters staff officers made available by the Participating States and such other officers as might be recruited in agreement with the Secretary-General. The Commander was to arrange with the Secretary-General for such international recruitment or detailment of staff from the United Nations Secretariat or from the specialized agencies to serve with the Force as might be necessary.

xii. United Nations Industrial Development Organization
87. In General Assembly resolution 2089 (XX) on the establishment of the United Nations Industrial Development Organization paragraph 5 provided as follows:

"[The General Assembly] Decides that the secretariat of the organization shall be headed by an Executive Director, who shall be appointed by the Secretary-General of the United Nations and whose appointment shall be confirmed by the General Assembly."

88. In resolution 2152 (XXI) paragraphs 17 and 18 relating to the secretariat read as follows:

"17. The Organization shall have an adequate permanent and full-time secretariat, which will be appointed in accordance with Article 101 of the Charter of the United Nations, and which will avail itself of the other appropriate facilities of the Secretariat of the United Nations.

18. The secretariat shall be headed by the Executive Director who shall be appointed by the Secretary-General of the United Nations and whose appointment shall be confirmed by the General Assembly. He shall be appointed for four years and shall be eligible for reappointment."

**2. METHODS OF RECRUITMENT

3. THE NATURE OF THE RELATIONSHIP BETWEEN THE ORGANIZATION AND THE STAFF MEMBER

a. In general

89. The Administrative Tribunal of the United Nations consistently held that the affected staff member, in proceedings concerning his contractual relations, was entitled to due process of law providing adequate safeguards for the individual concerned, in particular a complete, fair and reasonable procedure; absence of such due process vitiated the action taken against the staff member. Where, in the view of the Tribunal, due process had not been observed, the Tribunal either rescinded the contested decision, awarded compensation or remanded the case for correction of the procedure.

90. In judgement 83, in particular, concerning an application for rescission of a decision to terminate the Applicant for health reasons, where the opinion of the Medical Director was contested by the Applicant, the Tribunal stated as follows:

"8. The Tribunal notes that the Staff Rules and Regulations do not specify the exact procedure to be followed in the case of termination of a permanent appointment for reasons of health. Nor do they provide for a procedure, in case a staff member contests the findings of the Medical Director. However, in the event of a difference between a staff member and the Secretary-General regarding sick leave, Staff Rule 106.2 provides that, upon the request of the staff member, the matter shall be referred to an independent practitioner or a medical board acceptable to both the Secretary-General and the staff member. The Tribunal observes that a similar rule relating to termination of appointment on health grounds might be appropriate."

Without deciding on the merits of the case, the Tribunal remanded the case for correction of the procedure used.

63 ST/SGB/ONUC/1 (mimeographed).
64 See this Supplement under Articles 104 and 105.
65 ST/SGB/UNFICYP/1; See also United Nations Juridical Yearbook, 1964, p. 177.
66 See AT/DEC/83 and 92.
67 See also AT/DEC/69, 70 and 99.
91. When the case came again before it, the Tribunal noted in its judgement 91\(^{68}\) that a satisfactory procedure was evolved by the establishment of a panel of three doctors, one nominated by the Respondent, one by the Applicant and a third doctor appointed by the former two.

92. In judgement 99\(^{69}\) the Tribunal found that the conditions under which sick leave could be granted to or imposed upon an employee necessarily constituted an element of the contractual relationship between him and the employer. Allegations that, in the case of a staff member, sick leave had been either refused or imposed and enforced in a wrongful way (including commitment to an institution for the mentally ill) implied, therefore, that, his terms of appointment had not been observed.

b. Parties to the contract

93. In case No. 91 decided by the Administrative Tribunal of the United Nations by judgement No. 92, which concerned a staff member of the United Nations who had been seconded to a specialized agency the Tribunal held that there were three parties to a contract of secondment, namely, the releasing organization, the receiving organization and the staff member concerned, and that that established a relationship between the three. It followed that the terms and conditions of secondment could not be varied unilaterally or simply by agreement between the releasing organization and the receiving organization to the detriment of the staff member concerned.

c. Terms of the contract

i. Letter of appointment

94. According to annex II of the Staff Regulations, the letter of appointment must state, \textit{inter alia}: the period of appointment, the notice required to terminate it and the period of probation, if any.

95. In its judgement No. 87\(^{70}\) the Administrative Tribunal of the United Nations was called upon to interpret its judgement No. 85 by which the Tribunal had ordered that the Applicant should receive (a) full salary to the date of the decision not to reinstate, less the amounts paid in lieu of notice and less also the amount of termination indemnity and (b) an amount equal to that which would be payable under the Staff Regulations and Rules if the Applicant’s appointment were terminated on the date of the decision not to reinstate; it was also called upon to interpret the meaning of the term “terminate” in staff regulation 9.3.

96. The Tribunal held that the term used in the judgement was the actual word used in staff regulation 9.3 ("terminates"). It observed that the definition of “termination” contained in staff rule 109.1 (b) merely distinguished several forms of separation from the United Nations, such as superannuation, retirement owing to disability, summary dismissal etc., and did not warrant a conclusion that the dates of termination and separation were identical. Since, according to the judgement, the Applicant’s situation was considered equivalent to a decision by the Secretary-General to terminate, the Applicant should be entitled to notice and indemnity under the relevant staff rules. The Tribunal ruled that the Applicant was entitled to three months’ notice and that termination indemnities due to her in its judgement No. 85 should be calculated on that basis.

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

d. Distinction between contractual and statutory factors affecting staff

4. TYPES OF APPOINTMENTS

a. Permanent appointments

97. Judgement No. 85\(^{71}\) of the Administrative Tribunal of the United Nations concerned an application for rescission of the decision to terminate Applicant’s permanent appointment on account of abolition of post. The Tribunal repeated its observations on the nature of a permanent appointment made in judgement No. 29 and quoted thereafter in later judgements.\(^{72}\) In terminating the permanent appointment of a staff member, the Respondent, that is to say, the Secretary-General had certain obligations under staff rule 109.1 (c). The burden of proving that the Respondent made a diligent search for another available post for the Applicant rested on the Respondent. In order to prove that the staff rights had not been disregarded, the Respondent had to show \(a\) that the Applicant was in fact considered for available posts and \(b\) that the Applicant was genuinely found not suitable for any of them. It was not sufficient to state that the Applicant could not have qualified for any available post without in fact making an assessment at the relevant date of the requirements of the available post and the qualifications of the Applicant.

98. The Tribunal decided that the Respondent had failed to fulfil his obligations under staff rule 109.1 (c) and that the administrative decision terminating the appointment of the Applicant should be rescinded.

99. Judgement No. 98\(^{73}\) concerned an application for rescission of a decision to terminate Applicant’s permanent appointment on account of unsatisfactory service.

100. The Tribunal referred to earlier judgements in which it was held that a permanent appointment could not be terminated except under Staff Regulations which enumerated precisely the reasons for termination. In addition, having in mind the very substantial rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat, the Tribunal had considered that such permanent appointments could be terminated only upon a decision which had been reached by a complete, fair and reasonable procedure, which must be carried out prior to such decision.

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\(^{68}\) AT/DEC/91.

\(^{69}\) AT/DEC/99.

\(^{70}\) AT/DEC/87.

\(^{71}\) AT/DEC/85.

\(^{72}\) See Repertory, vol. V, under Article 101, para. 79.

\(^{73}\) AT/DEC/97.
101. The Tribunal recognized that, in the light of the composition of the Working Group of the Appointment and Promotion Board set up in pursuance of Staff rule 104.14 (d) and of the procedure followed by it in arriving at a recommendation, the review by that Group of the services of a staff member represented, in principle, the complete, fair and reasonable procedure required. Since, however, the Working Group’s report had failed to take into account all the facts of the case, and in particular the circumstances of a service-incurred accident which the Applicant had suffered, the Tribunal concluded that she had been deprived of the complete, fair and reasonable procedure which must be carried out before the termination of a permanent appointment.

102. The Tribunal, without deciding the merit of the case, ordered that the case be remanded for correction of procedure and awarded the Applicant compensation for the prejudice caused by the procedural delay.

b. Temporary appointments

i. Indefinite appointments

ii. Fixed-term appointments

iii. Probationary appointments

103. In judgement No. 90, 74 mentioned above the Administrative Tribunal of the United Nations recalled that it had consistently ruled that regulation 9.1 (e) of the Staff Regulations (providing for termination if, in the Secretary-General’s opinion, such action would be in the interest of the United Nations) granted to the Secretary-General discretionary powers with respect to the termination of appointments but that such powers should be exercised without improper motive which, if found, would constitute a misuse of power calling for the rescinding of the contested decision. 75

104. The Tribunal noted that the Applicant had not established the existence of any improper motive. As regards the Applicant’s complaints regarding the conditions prevailing in her service, the Tribunal observed that those complaints had been examined with the greatest care by the Joint Appeals Board and were known to the Secretary-General when he decided to maintain the contested decision. Accordingly, the Tribunal rejected the application.

105. The Tribunal took the same view in judgement No. 93 76 which equally related to an application for the rescission of a decision terminating a probationary contract. The termination had been made pursuant to regulation 9.1 (c). The Tribunal ruled, as regards the contention that the reference to the Appointment and Promotion Board was obligatory under staff rule 104.13 in all cases of probationary appointments, that the broad authority of the Secretary-General to terminate such appointments at any time under Staff Regulation 9.1 (e) was not limited or restricted by staff rule 104.13. Accordingly, the Tribunal rejected the application.

c. Regular appointments

C. Conditions of service

1. Authority responsible for determining conditions of service

**a. In general**

b. Staff of special organs

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

**ii. Staff of United Nations Korean Reconstruction Agency**

iii. United Nations Institute for Training and Research

106. Under the Statute of the Institute, the terms and conditions of service must generally conform to the United Nations Staff Regulations and Rules, subject to such arrangements as may be agreed upon between the Executive Director and the Secretary-General. The expenses of the staff are borne by the funds of the Institute. 77

iv. United Nations Force in the Congo

107. Under the regulations concerning the Force issued by the Secretary-General, the international personnel of the United Nations Force in the Congo were subject to the Staff Regulations. 78 The terms and conditions of locally recruited personnel were to be prescribed by the Officer-in-Charge and should generally, to the extent practicable, follow the practice prevailing in the locality. 79

v. United Nations Force in Cyprus

108. According to the regulations for the Force, 80 the international staff are staff members of the United Nations, subject to the Staff Regulations thereof. The Commander is authorized to recruit such local personnel as the Force requires. The terms and conditions of employment for locally recruited personnel are to be prescribed by the Commander and should generally, to the extent practicable, follow the practice prevailing in the locality.

2. Entitlements of the staff

a. In active service

109. At the sixteenth session of the General Assembly, the Secretary-General proposed (a) consolidation into the base salary scales, for level P-1 and above, of part of the existing post adjustments and (b) an increase in the base scales and a revision in the schedule of post adjustments. 81 In the event of approval being given to the increases in base scales, the Secretary-General proposed a modification of the staff assessment rates, 82 with the object of producing a pattern of assessment more closely similar to the pattern found in the

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74 See paras. 71 and 72 above.
75 See AT/DEC/18, 27, 43, 44, 45, 48, 49, 50, 54, etc.
76 AT/DEC/93.
77 E C S (XLI), a.i. 28, E/4200, annex 1, article V (2).
78 ST/SGB/ONUC/1 (mimeographed), para. 20 b.
79 Ibid., para. 20 c.
80 See foot-note 65 above.
81 G A (XVI), Annexes, a.i. 65, A/4823, para. 4.
82 Ibid., A/C.5/873.
system of national income tax in the countries in which the headquarters of the organizations were located. The Secretary-General’s proposals had been formulated in agreement with the executive heads of the agencies represented in the Administrative Committee on Co-ordination on the basis of the recommendations of the International Civil Service Advisory Board (ICSAB) and the Expert Committee on Post Adjustments.

110. The reasons for the proposal to raise the base salaries was the rise of comparable national civil service salaries since 1950 and the difficulties which the United Nations and the organizations having the “common system” of salaries and conditions of service experienced in recruiting and retaining qualified staff. In commenting on the proposals, the Director of Personnel explained that the effect of the increase of the base salaries would merely be to restore the relationship between United Nations salaries and those of the highest paid national civil service, that is to say that of the United States, in accordance with the recommendations of the Salary Review Committee of 1956. Those recommendations constituted an adaptation of the formula submitted by the Noblemare Committee (so-called after the Chairman of a Committee of the League of Nations) namely, that international salary scales should be based on the scales of the highest paid home services, adjusted for cost of living at the duty station and further adjusted for the repatriation factor.85

111. The Fifth Committee, which took account of the observations of the Advisory Committee on Administrative and Budgetary Questions, approved those proposals, to take effect as from 1 January 1962. They were approved by the General Assembly, on the recommendation of the Fifth Committee, by resolution 1658 A (XVI).

112. Another review of the salary scales of the Professional and higher categories of the international civil service took place in 1965. It was based on a report of the Secretary-General84 and a report of ICSAB85 which recommended a revision of (a) the gross base salary scales, (b) the rates of staff assessment, (c) the schedule of post adjustments and (d) the post adjustment index at Geneva. The proposals of ICSAB, which had been accepted by the Secretary-General and the executive heads of the specialized agencies and supported by the Advisory Committee,86 were approved by the Fifth Committee87 and, on its recommendation, by the General Assembly in resolution 2050 A (XX), with effect from 1 January 1966.

113. As regards other benefits, the Fifth Committee took note,88 at the fourteenth session of the Assembly of the report on definitions of dependency89 in which the Secretary-General recommended that the existing definitions should be continued.

114. At the fifteenth session, the Fifth Committee approved the interpretation of staff regulation 3.2 relating to the education grant, subject to the comments of the Advisory Committee.90

115. The maximum of the education grant was raised to $600 per annum by the General Assembly in resolution 1730 (XVI) and to $800 per annum in resolution 2121 (XX) adopted on the recommendations of the Fifth Committee.

116. At its eighteenth session, the General Assembly approved, by resolution 1929 (XVIII), certain amendments of the Staff Regulations enabling the Secretary-General to establish rules under which a flat rate language allowance might be paid to General Service staff to abolish the “service benefit” hitherto granted to certain staff members serving on temporary appointments and to extend the repatriation grant to all staff members whom the Organization is obliged to repatriate.91

b. Pensions

117. Under General Assembly resolution 1310 (XIII), the Secretary-General, in consultation with the United Nations Joint Staff Pension Board (UNJSPB) and the Administrative Committee on Co-ordination had appointed a group of experts to undertake “a comprehensive review of the system of benefits and their present and future adequacy, of the methods by which pensionable remuneration could be revised and of the financial and technical bases of the United Nations Joint Staff Pension Fund”.92

118. The report of the Pension Review Group92 was submitted by the Secretary-General to the General Assembly at its fifteenth session. The Fifth Committee considered the report, together with the Secretary-General’s proposals93, the report of UNJSPB94 and the report of the Advisory Committee.95 The General Assembly adopted resolution 1561 (XV) on the recommendation of the Fifth Committee and on the basis of a consolidated draft resolution prepared by the Secretary-General.96 Under that resolution, the base pensionable remuneration of the staff, which hitherto had been the net pay, was raised for staff subject to the Staff Assessment Plan to the annual rate of the staff member’s gross salary, less one half of the amount of staff assessment deductible from such gross salary under the Staff Assessment Plan (“half-gross” plus the net amount of non-resident allowances which might be payable. In the case of staff in the Professional category and above, the base pensionable remuneration was to be adjusted in multiples of 5 per cent whenever the weighted average of the post adjustment classifications of the headquarters and regional offices of the member organizations varied by 5 per cent measured from 1 January 1956; such adjustment to be effective.

83 G A (XVI), 5th Com., 875th mtg., para. 42.
84 G A (XX), Annexes, a.i. 77, A/5918, para. 2.
85 Ibid., A/5918/Add. 1.
86 Ibid., A/6056.
88 G A (XIV) Annexes, a.i. 54, A/4329, para. 19.
89 Ibid., A/C.5/780.
90 G A (XV) Annexes, a.i. 60, A/C. 5/832, para. 10; A/4591, para. 9 and A/4642, para. 22.
91 See also this Supplement, under Article 97, paras. 9 and 10.
92 G A (XV), Annexes, a.i. 63, A/4427.
93 Ibid., A/4468.
94 Ibid., A/4467.
95 Ibid., A/4563.
96 Ibid., A/4468/Add. 1.
119. In addition, certain other amendments to the Regulations of the Joint Staff Pension Fund were made, largely in accordance with the recommendations of the Pension Review Group.

120. By resolution 1799 (XVII), the General Assembly approved certain amendments to the Regulations of the Fund and resolved, in particular, that, as a temporary measure, pensions and annuities in payment and deferred annuities awarded as at 31 December 1961, 1962 and 1963 should be increased by 1 per cent on 1 January 1962, 1963 and 1964.

121. By resolution 2007 (XIX), as amended by resolution 2050 B (XX), the General Assembly decided that the pensionable remuneration of the staff should be the amount of the salary of the official established in accordance with staff regulation 3.1 ("full gross") and adjusted, in the case of staff in the Professional category and above, in multiples of 5 per cent whenever the weighted average of the post adjustment classifications of the headquarters and regional offices of the member organizations varied by 5 per cent from the weighted average as of 1 January 1966, plus the amount of any personal, non-resident's or language allowances payable.

122. By resolutions 1408 (XIV) and 1562 (XV), the General Assembly approved certain improvements of the benefits payable under the Pension Scheme Regulations for members of the International Court of Justice.

3. Responsibilities of staff members

a. Personal conduct

123. A decision of the Administrative Tribunal of the United Nations dealing with outside activities of staff members was reported under Article 100.97

**b. Working hours
**c. Proprietary rights over work
**d. Financial responsibility

**D. Disciplinary measures

E. Recourse available to staff members

**1. In general

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

**3. The Joint Appeals Board

97 See this Supplement under Article 100, paras. 21-24.
128. As regards the Applicant’s pleas concerning the Respondent’s alleged refusal to waive United Nations officials’ immunities, the Tribunal found that it had no competence to deal with the matter.

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

iii. Prerequisites for acceptance of an application by the Tribunal

129. The decision of the Administrative Tribunal of the United Nations of 3 October 1963 concerned a request, under article 7, paragraph 5 of its Statute, to suspend the provisions of the Statute regarding time limits in order to consider an application directed against the termination in 1956 of Applicant’s temporary indefinite appointment with the United Nations. The Tribunal found that, since the parties had not agreed to submit the application directly to it and since the matter had not been previously referred to a joint appeals body, neither of the requirements laid down in article 7, paragraph 1, of its Statute had been fulfilled; the request was therefore not receivable.

**c. Action by the Tribunal if an application is held to be well founded

**d. Finality of judgements; effect of awards of compensation made by the Tribunal

F. Organization of the Secretariat

1. THE QUESTION OF THE AUTHORITY TO DETERMINE THE ORGANIZATION OF THE SECRETARIAT

**a. In general

b. Some illustrative cases

**i. The United Nations Field Service

**ii. The Technical Assistance Administration

iii. Reorganization of the Secretariat

130. The Committee of Experts on the Review of the Activities and Organization of the Secretariat concentrated, in particular, on the organization of the Secretariat at the top level. However, it was not able to make unanimous recommendations for the organization of the Secretariat at the Under-Secretary level. Three past Presidents of the General Assembly, whom the Secretary-General had consulted on the matter and whose report was attached to the report of the Committee of Experts, recommended the addition of three Under-Secretaries-General for Special Political Affairs to the existing two, an arrangement which would make it possible to widen the geographical basis of the Organization on the top level. The Secretary-General, in his comments on the report of the Committee of Experts, suggested two categories of top-level officials, one with “political” functions, the other with primarily “administrative” functions, who might be designated as Assistant Secretary-General and Under-Secretary-General, respectively, but who would be of equal rank. There would be five Assistant Secretaries-General selected on a broad regional basis. The Advisory Committee, in its comments, expressed reservations, from an institutional point of view, about the desirability of any differentiation between officials at the top level by the introduction of an “administrative” and a “political” category. It stated its belief that, from a purely administrative point of view, a clear definition of the respective areas of competence of the top-ranking officials in charge of the main areas of activities of the Secretariat and of their direct responsibility to the Secretary-General was a necessary condition for effective administration.

131. U Thant, on his installation as Acting Secretary-General, stated: “In particular, it is my intention to invite a limited number of persons who are at present Under-Secretaries, or to be appointed as Under-Secretaries, to act as my principal advisers on important questions pertaining to the performance of functions entrusted to the Secretary-General by the United Nations Charter. In extending this invitation I am fully conscious of the paramount consideration of securing the highest standards of efficiency, competence and integrity, and with due regard to the importance of as wide a geographical basis as possible, as laid down in Article 101 of the Charter ... It is also my intention to work together with these colleagues in close collaboration and consultation in a spirit of mutual understanding. I am sure they will seek to work with me in the same manner. Of course, this whole arrangement is without prejudice to such future organizational changes as experience may reveal to be necessary.”

132. The Acting Secretary-General announced, subsequently, the appointment of three Under-Secretaries to serve with five others already on the staff.

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104 Ibid., A/4776, annex I.
105 Ibid., A/4794, paras. 17 and 20.
107 G A (XVI), Plen., 1046th mtg., para. 30. See also this Supplement, under Article 97, para. 47.

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108 AT/14, See also United Nations Juridical Yearbook, 1963, p. 159.
109 G A (XVI), Annexes, a.i. 61, A/4776, paras. 25-41 and separate opinions by Mr. A. A. Roshchin and Mr. M. L. Goodrich in appendix.
Chapter XVI

MISCELLANEOUS PROVISIONS