

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 Article vests the General Assembly with the power to regulate the appointment of staff and the basic conditions of their service. Its purpose is to ensure that the employees of the United Nations collectively represent all the people of the world. While exercising their power to appoint staff, individual Member States must act within the parameters of Article 100. That provision imposes requirements of the non-interference by Member States with the staff of the Secretariat.¹ The necessity of maintaining a balance was stated in the Secretary-General's 1980 report to the General Assembly on the work of the Organization:

"Equitable geographical distribution of the Secretariat, the desirability of establishing and maintaining a more rational recruitment policy, the career prospects of

staff as well as the status and security of the members of the international civil service are vital matters that have engaged the attention of Member States and staff alike. We must spare no efforts to tackle effectively these crucial issues, if we are to reaffirm and revitalize the original concept of an independent international civil service outlined so cogently in Articles 100 and 101 of the Charter."²

Article 97 is also invoked in conjunction with Article 101 when the authority of the Secretary-General's actions is questioned.

2. The present study includes a new subsection (v), "Women", under section II.A.2 (f), "Application of the principle of geographical distribution to particular categories of individuals".

¹See this *Supplement*, under Article 100.

²G A (35), Supplement No. 1.

I. GENERAL SURVEY

3. During the period under review, the General Assembly adopted five resolutions that bear directly on the interpretation and application of Article 101. Members of the Fifth Committee of the Assembly engaged in lengthy discussion under the agenda item entitled "personnel questions" in an attempt to develop a personnel policy that complied with the provisions of Article 101. The difficulty arose from the question of equitable geographical distribution. Both Secretaries-General who held office during the period under review expressed positions of greater flexibility than that of the General Assembly.

4. The stimulus for the issues discussed in this period of review arose in 1978. At its thirty-third session, the General Assembly adopted a major resolution detailing measures and guidelines for the recruitment of Professional Staff.³ The aim of the guidelines was to improve the geographical distribution of the staff.

5. At its thirty-fourth session, in 1979, the General Assembly adopted resolution 34/219 of 20 December 1979, in which it requested the Secretary-General to submit: (a) a report outlining the basis on which the desirable ranges in effect in 1979 (posts subject to equitable distribution) were established; (b) alternative tables of desirable representation for all Member States on the basis of contribution and membership; and (c) a description of desirable ranges for Member States with upper and lower limits, and how those ranges related to the population criteria of different regions.⁴

6. On 17 December 1980, the General Assembly adopted a definitive resolution detailing the recruitment procedures for posts subject to geographical distribution in the United Nations Secretariat.⁵ Part of the recruitment procedures entailed the establishment of an annual work plan designed to facilitate the search for candidates from

³G A resolution 33/143; see *Supplement No. 5*, under Article 101.

⁴G A resolution 34/219, sect. 1.

⁵G A resolution 35/210.

underrepresented and unrepresented countries, and female candidates. Competitive examinations would be held at the P-1 and the P-2 levels, and specific procedures were to be followed for recruitment for P-3 positions.

7. At its thirty-seventh session,⁶ in 1982, the General Assembly adopted resolutions 37/235 A to D of 21 December 1982. In resolution 37/235 A, it noted that some limited progress had been made with respect to the situation of unrepresented and underrepresented Member States and towards a balanced and equitable geographical distribution of staff in the Secretariat. It requested the Secretary-General to include in his annual reports on the composition of the Secretariat information concerning the improvement of geographical distribution in the Secretariat, especially at the higher levels. In resolution 37/235 B, the Assembly requested the Secretary-General to intensify his efforts in the recruitment of women. In resolution 37/235 C, it took note of the note by the Secretary-General on the repatria-

⁶No resolutions pertaining to "personnel questions" were adopted at the thirty-sixth session.

tion grant and amended the relevant Staff Regulations. In resolution 37/235 D, the Assembly requested the Secretary-General to permit candidates participating in competitive examinations to take the examination in any of the working languages.

8. In its resolutions 38/231 and 39/245 of 20 December 1983 and 18 December 1984, respectively, the General Assembly again reviewed the composition of the Secretariat and reiterated the need to recruit staff from underrepresented and unrepresented countries, in keeping with the principle of equitable geographical distribution. In resolution 39/245, the General Assembly requested the Secretary-General to conduct an overall review of the system of competitive examinations and to study ways and means of applying the population factor in the determination of available posts.

9. During the period under review, the General Assembly also took several decisions to amend the Staff Regulations and discussed other issues concerning the conditions of service of the Staff. The United Nations Administrative Tribunal rendered several judgements in this regard.

II. ANALYTICAL SUMMARY OF PRACTICE

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

1. NECESSITY OF SECURING THE HIGHEST STANDARDS OF EFFICIENCY, COMPETENCE AND INTEGRITY

(a) *In general*

10. The General Assembly has on many occasions manifested a constant awareness of the necessity of securing the highest standards of efficiency, competence and integrity.⁷

11. In its resolutions 35/210, 37/235 and 39/245, the General Assembly once again reaffirmed this consideration and expressed its conviction that the necessity of ensuring the highest standards of efficiency, competence and integrity was compatible with the principle of equitable geographical distribution.

12. Both the General Assembly and the Secretary-General frequently emphasized, especially in connection with the establishment of various recruitment guidelines or procedures, the primary importance of recruiting staff meeting the highest standards of efficiency, competence and integrity. This was reiterated in the Assembly as follows:

"It was universally agreed that there need be no conflict between the requirements of efficiency, competence and integrity, on the one hand, and those of geographical balance and a balance between men and women on the other",⁸

and by the Secretary-General, who emphasized the need, as required by the Charter,

⁷G A (34), 5th Comm., 26th mtg., Australia, para. 42; 31st mtg.; Poland, para. 11; G A (35), 5th Comm., 56th mtg., Sweden, paras. 46 and 49; G A (36), 5th Comm., 41st mtg., Asst. Secretary-General for Personnel Services, para. 27; G A (39), 5th Comm., 55th mtg., Spain, para. 8.

⁸G A (35), 5th Comm., 56th mtg., Sweden, para. 46, 49.

"... to concentrate on enhancing the efficiency, competence and integrity of the international civil service and to ensure respect for the exclusively international character of its responsibilities."⁹

** (b) *The concept of integrity*

2. THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION

(a) *In general*

13. As it had done during the previous review period (1970-1978),¹⁰ the General Assembly gave ample attention during the current period under review to the principle of geographical distribution together with the necessity of securing the highest standards of efficiency, competence and integrity within the Secretariat. The Fifth Committee of the General Assembly discussed the subject at every meeting devoted to the agenda item entitled "personnel questions" and reviewed the reports submitted by the International Civil Service Commission and the Joint Inspection Unit, as well as the Secretary-General's annual reports on the composition of the Secretariat. The debates and the resolutions subsequently adopted by the Assembly focused on the recruitment procedures for posts subject to geographical distribution. The primary areas of concern were: (a) equitable geographical distribution of staff, with specific attention to unrepresented and underrepresented countries; (b) an increase in the representation of developing countries in senior policy positions; and (c) an increase in the number of women in the Secretariat at Professional posts.

14. These efforts culminated in the development of definitive recruitment procedures as a means of implementing general principles previously agreed upon. Those procedures, reproduced below, were adopted by the General

⁹G A (36), Supplement No. 1 (A/36/1), chap. XI.

¹⁰See *Supplement No. 5*, under Article 101.

Assembly in its resolution 35/210 of 17 December 1980 and are laid out in the annex thereto:

“ANNEX

“Recruitment procedures for posts subject to geographical distribution in the United Nations secretariat

“I. Basic preliminary requirements

“1. All posts shall be classified at each level of grades by occupation, this concept meaning ‘posts having largely comparable functions and the same entrance level qualifications’. This classification shall be published.

“2. Distinction shall be made between:

(a) Occupations for which it is reasonable to expect several vacancies each year;

(b) Those for which recruitment will be open only at widely spaced intervals.

“3. For posts falling under category 2 (a), job descriptions shall be complemented by an ‘occupational description’, which will outline the main functions, the minimum level of qualifications and the desirable supplementary qualifications.

“4. The vacancy announcement for all posts shall incorporate the existing job description. All changes in existing job descriptions and the content of job descriptions of new posts shall be submitted for approval to the Office of Personnel Services, justified by references to changes in programmes approved by intergovernmental bodies.

“5. All pending departures of staff shall be made known to the Office of Personnel Services by the substantive departments as far in advance as possible of the actual departure date.

“6. No prior commitments for appointments shall be made by the substantive departments.

“7. In order to increase the number of candidates from unrepresented and underrepresented countries and of women candidates:

(a) Timely and frequent publicity shall be made regarding vacancies and recruitment of personnel, in cooperation with Member States, through information media, United Nations offices, universities and professional organizations, including women’s organizations whenever appropriate, so as to enable the Office of Personnel Services to implement the personnel and recruitment policies adopted by States Members of the Organization;

(b) Regular recruitment missions composed of officials from both the Office of Personnel Services and the substantive departments shall be sent.

“II. Annual work plan of recruitment

“8. In order to facilitate the search for and the appointment of qualified candidates, particularly from unrepresented and underrepresented countries and from among women, an annual work plan of recruitment shall be established. The plan shall indicate:

(a) General data on the estimated number of recruitments by grade and broad occupational groups;

(b) The targets to be reached during the year as to the number of candidates to be recruited from unrepre-

mented and underrepresented countries and among women, in accordance with the targets established by the relevant resolutions of the General Assembly;

(c) The various means by which recruitment will be undertaken, such as competitive examinations, publicity or recruitment missions.

“9. The Secretary-General will report to the General Assembly each year on the implementation of the plan.

“III. Use of competitive methods at the P-1 and P-2 levels

“10. At the P-1 and P-2 levels, recruitment shall be made as a rule through competitive examinations. This principle shall be applied as follows:

(a) Movement of staff from the General Service category to the Professional category shall continue to be limited to 30 per cent of the total number of posts available for appointment at these levels and is to be regulated exclusively through competitive examinations under the conditions outlined in section I, paragraphs 1 (g) and (i), of General Assembly resolution 33/143 of 20 December 1978. No exceptions shall be authorized.

(b) For the remaining 70 per cent of posts at the P-1 and P-2 levels, a transitional plan ending 31 December 1982 shall be established for applying progressively the method of competitive examination, with due regard paid to the principle of equitable geographical distribution.

(c) Competitive examinations under the plan shall be devised on a national basis, in consultation with the Governments concerned. They shall contain measures to protect the confidentiality and objectivity of the methods of selection and to ensure that the methods of testing take into account the cultural and linguistic diversity of the membership of the United Nations. They shall be geared to candidates with at least a first-level university degree. The examinations should be based on written tests in one of the official languages of the United Nations, including a general test, specialized examination by occupational groups and personal interview. They may be organized simultaneously by groups of countries, but a given number of vacancies should be defined and offered to each country in advance, taking into account the geographical representation of each Member State. A reserve list shall be established from which all P-1 and P-2 posts will be filled.

“IV. Methods of recruitment at the P-3 level and above

“11. The list of occupations for which it is reasonable to expect several vacancies each year, as stated in section I, paragraph 2 (a), above, shall be communicated to Member States, together with the corresponding ‘occupation description’, not later than 1 October of the preceding year, and applications for candidates shall be requested on this basis.

“12. Vacancy announcements for all posts shall be issued without delay as soon as vacancies are known.

“13. All applications received from candidates meeting the minimum standards established by the Office of Personnel Services for posts and occupations shall be put into the roster of external candidates. This roster shall be modernized rapidly and rendered operable and efficient. A roster of internal candidates should be developed and organized along the same lines and

used in accordance with the Staff Regulations and Rules of the United Nations.

"14. For each post open to recruitment a dossier shall be established comprising:

(a) A list of all potential qualified candidates, indicating name, nationality, sex, age and qualifications; this list shall be drawn from the roster;

(b) Their ranking by order of preference established by the substantive department concerned in consultation with the Office of Personnel Services;

(c) A summary of the interviews of the candidates considered most suitable.

This dossier shall be made available to the Appointment and Promotion Committee and the Appointment and Promotion Board.

"15. For the evaluations of the candidates, the Office of Personnel Services, in consultation with the substantive departments concerned, shall take into account the targets indicated in the annual recruitment work plan.

"16. If the substantive department and the Office of Personnel Services agree on the selection of one candidate, this recommended candidate will be proposed for appointment, in accordance with the staff Regulations and Rules of the United Nations. If there is no agreement, the matter shall be submitted for advice to the Appointment and Promotion Committee and the Appointment and Promotion Board. If no solution is found, the Secretary-General or his designated representative will take the final decision.

"17. The qualifications, nationality and sex of selected candidates shall be indicated on a list to be published twice a year and communicated to the delegations of Member States."

(b) *Interpretation of the principle of geographical distribution*

15. As outlined in Article 101, paragraph 3, of the Charter, the recruitment of the staff must be made on as wide a geographical basis as possible. In the practice of the General Assembly, the term "geographical distribution" assumed a more technical meaning. According to an established computation, each Member State was assigned "a desirable range of posts". Many of the debates in the Fifth Committee involved statements of dissatisfaction with the number of assigned posts and how those calculations were made.¹¹

¹¹G A(34), 5th Comm., 31 mtg., Uganda, para. 26; 32nd mtg., United Republic of Cameroon, para. 20, Sierra Leone, para. 31, Union of Soviet Socialist Republics, para. 42, Egypt, para. 34; 34th mtg., Barbados, para. 6, Pakistan, para. 9: "a rigid adherence to numerical targets might not be consistent with Article 101 . . . especially if they were based on the existing system of desirable ranges, which gave preponderant weight to a State's contribution to the budget", Ukrainian SSR, para. 14; G A (35), 5th Comm., 60th mtg., Ghana, para. 1, Czechoslovakia, para. 4, "One long-standing area of concern to the international community was the principle of equitable geographical distribution, the main barrier to which was the continued practice of awarding permanent contracts"; 61st mtg., Pakistan, para. 10; 62nd mtg., Sudan, para. 99; G A (37), 5th Comm., 32nd mtg., China, para. 25; G A (38), 5th Comm., 48th mtg., Pakistan, para. 38.

16. The Secretary-General expressed his concern about the insistence of exact number of posts by stating that:

"an increasing number of Member States seem less willing to observe, in practice, the obligations they assumed under the Charter with respect to the independent nature of the Secretariat . . . These developments put at risk the noble and essential experiment outlined in the Charter of building a truly international Secretariat working together with a common purpose for the United Nations. It will not be in the interests of the international community or of the Member States if the realization of the concept of an independent international civil service is so frustrated that it becomes more difficult to recruit, on a broad geographical basis, the highly competent and dedicated men and women we need to serve the cause of peace . . . The evolution of an effective international civil service is essential to the future usefulness of the United Nations in all its diverse fields of activity."¹²

17. Despite those reservations, the General Assembly adopted resolution 34/219 of 20 December 1979, in which it requested even more specific computations regarding staff in positions subject to equitable geographical distribution. The Assembly requested:

"(b) A series of alternative tables of desirable representation for all Member States on the basis of a redistribution of the percentages used at present for the criteria of contribution and membership so as to reflect a membership percentage of 50 per cent or a membership percentage equal to that of contribution while maintaining the existing percentage in respect of the population factor; these alternative tables, which shall take into account the new scale of assessment for 1980, 1981 and 1982, shall include:

- (i) A range of increases in the lower limit of the present minimum desirable range;
- (ii) An increase in the upper limit of the present minimum desirable range;
- (iii) Suggested formulae for the removal or relaxation of the upper limits of the desirable ranges of developing Member States;
- (iv) Formulae for relating the population criterion directly to regional populations, with suggestions for its utilization by individual Member States;

(c) An outline of any possible additional criteria which, in the Secretary-General's considered view, might also be utilized in determining a system of desirable ranges or representation with suggestions for their inclusion under subparagraphs (b) (i) to (iv) above;

(d) A study of the implications of the establishment of a ceiling on the percentage contribution for calculating the personnel entitlement of any Member State;

(e) A detailed description of the way the present weighted desirable ranges have been calculated, with information as to the basis of this calculation, as well as a study dealing with an indicative evaluation of posts so as to ensure that Member States will have a balanced quantitative and qualitative representation."

18. In his 1980 annual report,¹³ the Secretary-General commented on this resolution as follows:

¹²G A (34) Supplement No. 1 (A/34/1), chap. XI.

¹³G A (35) Supplement No. 1 (A/35/1), chap. XII.

"... the resolution of the General Assembly requesting reports on the possibility for change in the existing criteria has given rise to serious differences between the major financial contributors and other Member States concerning the desirable ranges for geographical distribution of posts in the Secretariat".

Despite these concerns, the General Assembly on 17 December 1980 adopted a resolution with further technical directives for the calculation of posts subject to geographical distribution. Resolution 35/210 provided as follows:

"The General Assembly,

...

"1. *Requests* the Secretary-General to calculate new desirable ranges for all Member States, to apply from 1 January 1981, on the basis of the following initial criteria:

(a) The base figure for the calculations will be 3,350 posts;

(b) The membership factor will be based on 7.75 as the midpoint of the minimum desirable range;

(c) The population factor, to which 240 posts shall be allocated, will be directly related to the populations of the various regions and be distributed among the regions in proportion to their populations;

(d) The contribution factor will be based on the distribution of the remaining posts in proportion to the scale of assessments;

(e) The upper and lower limits of each range will be based on a flexibility of 15 per cent up or down from the midpoint but not less than 5.75 posts up or down;

"2. *Decides* that, in future, 10 out of every additional 100 posts shall be added to the population factor, and the remaining posts shall be assigned equally to the membership and contribution factors."¹⁴

19. In his 1981 annual report on the work of the Organization, the Secretary-General made the following comments:

"The very diversity of the international Secretariat inevitably creates stresses and strains . . . we must try unceasingly, as the Charter requires, to concentrate on enhancing the efficiency, competence and integrity of the international civil service and to ensure respect for the exclusively international character of its responsibilities . . . These proposals include specific directives concerning such matters as equitable geographical distribution, a more balanced distribution of nationalities in the units of the Secretariat, equal opportunities between the sexes and reform of various aspects of our personnel policies . . . Member States are increasingly concerned about the high cost of international organizations, of which the largest part is for staff costs. In addition, those who bear the bulk of these costs expect their share of the financial burden to be adequately reflected in the composition of the Secretariat. On the other hand, due regard must be paid to the importance of recruiting the staff on as wide a geographical basis as possible."¹⁵

20. In his 1983 annual report on the work of the Organization, the Secretary-General expressed his concerns regarding:

"the increasingly detailed directives issued in recent years by the General Assembly concerning various aspects of recruitment, even if these merely reflect its frustration at the Administration's failure to achieve, or the slow pace in achieving, goals set in earlier and more general guidelines as to the geographical, gender, linguistic and age distribution of the staff . . . the fact remains that rigid directives can be counter-productive from a political and administrative point of view and may not always be conducive to the smooth functioning or efficient administration of the Organization."¹⁶

(c) *Criteria for the application of the principle of geographical distribution*

21. Since its second and third sessions, and periodically thereafter, the General Assembly has recognized the scale of assessments as the dominant parameter for the application of the principle of geographical distribution. In addition to this financial factor, membership and population had also been taken into consideration. The three factors were considered as an indication in connection with the system of desirable ranges. Thus, any fluctuation in the scale of assessments equally affected the other two factors and therefore the system of desirable ranges of posts for each nationality and region.

22. During the period under review, many of the under-represented or unrepresented Member States challenged the fairness of the assessment procedure. Trinidad and Tobago expressed the view that, in numerical terms, the developing countries were grossly underrepresented both singly and collectively. That unfortunate situation reflected world realities. It was the result of the practice of calculating desirable ranges primarily on the basis of contributions. While the historical basis for that weighting was understandable, it was outdated and should be reviewed and brought into line with the realistic requirements of the membership of the Organization. For the majority of Members of the Organization, the issue of desirable ranges was not entirely a question of underrepresentation or overrepresentation, but rather of an imbalance which favoured the rich minority and which should be corrected by new weighting of the various criteria.¹⁷ Brazil concurred and added that the criteria for determining the desirable ranges for representation of Member States in the composition of the secretariat should be re-examined. A number of developing countries were being repeatedly penalized by an increasingly unfair and discriminatory budgetary burden without a corresponding increase in the participation of their nationals in the composition of the Secretariat.¹⁸

** (d) *The importance of the principle of geographical distribution in relation to the necessity of securing the highest standards of efficiency, competence and integrity*

(e) *Posts to which the principle of geographical distribution is not applicable*

23. Staff which have been excluded from geographical distribution are: staff with an appointment for less than one

¹⁴G A resolution 35/210, sect. II.

¹⁵G A (36) Supplement No. 1 (A/36/1), chap. XI.

¹⁶G A (38) Supplement No. 1 (A/38/1).

¹⁷G A (34), 5th Comm., 29th mtg., Trinidad and Tobago, para. 37.

¹⁸G A (34), 5th Comm., 30th mtg., Brazil, para. 38.

year; staff in posts with special language requirements; staff specially appointed for mission service with the United Nations Environment Programme (UNEP); staff specifically appointed after inter-agency consultation to posts financed on an inter-agency basis; technical cooperation project personnel; staff of the secretariats of the United Nations organs with special status in matters of appointment; staff who have permanent resident status in, but not the nationality of, the country of their duty station; and staff in the General Service and related categories.¹⁹

24. In Judgement No. 268 of 8 May 1981,²⁰ the Applicant sought accelerated salary increments as an employee of UNDP with additional language proficiency pursuant to General Assembly resolution 2480 B (XXIII) of 21 December 1968, which rewarded staff employees with language proficiency. The Respondent argued that the resolution did not apply to UNDP staff as they were not subject to the rules of geographical distribution because they were subject to Article 101, paragraph 3. General Assembly resolution 2480 (XXIII) provided that an accelerated salary increment was due to "staff subject to geographical distribution". The Applicant believed that that expression must be given its ordinary meaning, i.e., all staff of the United Nations in the Professional category and above, excluding only staff in posts with special language requirements. The Respondent argued that the meaning of the expression was that which it had acquired in the practice of the United Nations, i.e., "staff in posts which are subject to the system of desirable range of posts". In the past it had become necessary to identify which categories of staff should be subject to the application of geographical distribution and which should not. UNDP was in the category that was not bound by formulas of geographical distribution. Therefore the Tribunal ruled that the Applicant was not entitled to accelerated advancement.

(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 resident at duty stations*
- ** (iv) *Officials at the senior level*
- (v) *Women*

25. During the period under review, women increasingly became a separate category of individuals to whom the principle of geographical distribution was applied. In its resolution 33/143 of 20 December 1978, the General Assembly requested the Secretary-General "to take the necessary measures to increase the number of women in posts subject to geographical distribution to 25 per cent of the total over a four year period in accordance with the principle of equitable geographical distribution". Hence, each subsequent resolution and report by the Secretary-General made note of the progress made, or not made, in obtaining that objective. For example, in his 1979 report

¹⁹See A/39/453.

²⁰*Mendez v. the Secretary-General of the United Nations*, Judgement No. 268 (8 May 1981).

on the work of the Organization, the Secretary-General stated that:

"We are in particular making efforts to improve the situation with respect to the position of women and the role of developing countries."²¹

In 1981, the following was reported:

"[The] proposals [initiated from time to time by the legislative intergovernmental bodies of the Organization] include specific directives concerning such matters as equitable geographical distribution, a more balanced distribution of nationalities in the units of the Secretariat, equal opportunities between the sexes . . ."²²

26. On 17 December 1980, the General Assembly adopted a six-part resolution, resolution 35/210, detailing specific actions to be taken pursuant to personnel questions. Part V drew attention to the status of women in the Professional category and above in the United Nations system:

"Noting resolution 24 adopted by the World Conference of the United Nations Decade for Women and the report of the Joint Inspection Unit on the status of women in the Professional category and above . . .

"Expressing deep concern at the lack of progress in increasing the proportion of women in the Secretariat,

" . . .

"2. *Calls upon* Member States to continue their endeavours to assist the United Nations and the specialized agencies to increase the proportion of women in the Professional category and above, *inter alia*, by nominating more women candidates;

"3. *Calls upon* the Secretary-General and the executive heads of the other organizations of the United Nations system to end all forms of discrimination based upon sex in recruitment, conditions of employment, assignment, training and promotion;

"4. *Requests* the Secretary-General and the executive heads of the other organizations . . . :

(a) To increase the proportion of women . . . so as to meet the target set in General Assembly resolution 33/143 . . . ;

(b) . . . To extend the practice of part-time employment and flexible working hours . . . ;

. . .

(d) To ensure further that women . . . are not discriminated against because of their sex;

(e) To intensify efforts to eliminate prejudices and other factors which work against the recognition of women's capabilities . . . ;

(5) *Requests* the Secretary-General and the executive heads of the other organizations of the United Nations system to examine additional measures that will advance the attainment of the policy directives concerning the appointment, promotion and assignment of women in the secretariats, including the possibility of designating a senior official to coordinate these functions."

27. Subsequent resolutions chart the concerns of the General Assembly:

"*The General Assembly*,

" . . .

²¹G A (34) Supplement No. 1 (A/34/1), chap. XI.

²²G A (36) Supplement No. 1 (A/36/1), chap. XI.

"Requests the Secretary-General to intensify his efforts to implement fully section III of General Assembly resolution 33/143 and section V of Assembly resolution 35/210 . . .

"Calls upon the Secretary-General to include in his annual report on the composition of the Secretariat statistical analyses on the number and percentage of women by nationality on all promotion registers and appointment lists, identifying both ad hoc and accelerated promotions as well as normal promotions and specifying what percentage of those eligible for promotion, actually promoted and appointed from outside, within each grade, are women with a view to ensuring that women have equal opportunity for advancement and appointment, particularly at the higher levels;"²³

and:

"The General Assembly,

" . . .

"Concerned by the lack of progress, especially in the past year, towards increasing the proportion of women in the Secretariat and, in particular, the failure to reach the target set in resolution 33/143,

" . . .

"Requests the Secretary-General to make special efforts to meet the goals and objectives established with respect to . . . [t]he recruitment, career development and promotion of women;"²⁴

and:

"The General Assembly,

" . . .

"Takes note of the decision of the Secretary-General to designate, on a temporary basis, a senior official with the title of Coordinator for the Improvement of the Status of Women in the Secretariat of the United Nations, to review the situation of women in the Secretariat and to make proposals for its improvement . . ."²⁵

(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

(iii) Equitable linguistic balance in the Secretariat

28. The General Assembly, in its resolution 38/232, requested the Secretary-General to report at the thirty-ninth session on the status of the linguistic skills of the United Nations staff, including the effects of the language incentive programme, and to propose, if necessary, further measures to improve the situation.

29. The language incentive programme had been established pursuant to General Assembly resolution 2480 B (XXIII) of 21 December 1968, which outlined two kinds of language incentives to be applied. An "adequate and confirmed knowledge of a second language" (a) was the condition upon which promotion from one grade to another was based, and (b) was also established as a qualifying

condition for the award of an accelerated salary increment, the incremental period being reduced from 12 months to 10 months.

30. The conclusion reached after the presentation of statistics was that although the percentage of staff promoted with confirmed knowledge of a second official language had steadily increased over the years, it was still below 50 per cent. Although the Secretary-General had spared no effort to promote linguistic balance in the Secretariat and had taken all necessary steps to enable staff in the Professional categories to take language courses, the conclusion was reached that the availability of effective language training alone was not enough of an incentive for staff to study another language. The suggestions given for accelerating the objectives had financial implications, and none of them would guarantee full linguistic balance. Therefore, it was concluded that there was no justification for changing the system of language incentives.²⁶

** (iv) Other suggested means

3. THE PROHIBITION OF DISTINCTION AS TO RACE, SEX OR RELIGION

B. Appointment of the staff

** 1. AUTHORITY TO APPOINT THE STAFF

** (a) In general

** (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 Korean Reconstruction Agency

** (iv) Staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

** (v) United Nations Children's Fund

** (vi) United Nations Institute for Training and Research

** (vii) United Nations Conference on Trade and Development

** (viii) United Nations Development Programme

** (ix) United Nations Force in the Congo

** (x) United Nations Force in Cyprus

** (xi) United Nations Industrial Development Organization

** (xii) Joint Inspection Unit

** (xiii) United Nations Force in Lebanon

2. METHODS OF RECRUITMENT

31. During the period under review, the staff of the Secretariat challenged the provisions of the resolutions

²³G A resolution 37/235 B.

²⁴G A resolution 38/231.

²⁵G A resolution 39/245, sect. I.

²⁶A/C.5/39/6 and Corr. 1.

dealing with recruitment on the basis that their implementation altered past personnel policies.

32. In United Nations Administrative Tribunal Judgement No. 310,²⁷ the Applicant and the Respondent disagreed as to whether the Applicant's candidature for a post had been ruled out without having been taken into consideration or examined. The Applicant had been excluded because the position had been reserved for candidates from French-speaking African countries. The Tribunal ruled that that had prevented the Applicant from exercising his right to have his candidature for a vacant post examined, on the basis of Article 101, paragraph 3. The Tribunal stipulated:

"It was not for the Secretary-General to alter [the] conditions laid down by the Charter and the Staff Regulations, by establishing as a 'paramount' consideration the search, however legitimate, for 'as wide a geographical basis as possible', thereby eliminating the paramount condition set by the Charter [namely, the necessity for securing the highest standards of efficiency, competency and integrity]."²⁸

33. In Administrative Tribunal Judgement No. 326,²⁹ the Applicant requested the Tribunal to order the Secretary-General to rescind his decision refusing to allow the Applicant to sign a waiver of privileges and immunities in order to acquire permanent resident status in the United States. The Respondent argued that complete freedom of staff to change nationality, as advocated by Applicant, could not be permitted by the Secretary-General without prejudice to Article 101, paragraph 3 of the Charter, which provided that in staffing the Organization "due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible". Furthermore, the subject had been of prime concern to the General Assembly for many years, as illustrated by the Assembly's frequent directives to the Secretary-General to intensify his efforts to achieve such equitable geographical distribution. The Tribunal stated that "conditions of employment in the United Nations do not a priori exclude any change in nationality during the period of service", but that the Staff Rules and Regulations left it to the "discretion of the Secretary-General . . . to act in a way which made a change in nationality during the time of the service possible or not".³⁰

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

****4. TYPES OF APPOINTMENTS**

²⁷*Estabial v. the Secretary-General of the United Nations*, Judgement No. 310 (10 June 1983).

²⁸*Ibid.*, para. XIV

²⁹*Fischman v. the Secretary-General of the United Nations*, Judgement No. 326 (17 May 1984).

³⁰*Ibid.*, para. IV.

C. Conditions of service

****1. AUTHORITY RESPONSIBLE FOR DETERMINING CONDITIONS OF SERVICE**

2. ENTITLEMENTS OF THE STAFF

(a) In active service

34. During the period under review, members of the staff requested access by staff representatives to the Fifth Committee. In its resolution 34/220 of 20 December 1979, the General Assembly expressed its readiness:

"to receive and consider fully the views of the staff as set out by a single recognized representative of the staff of the United Nations Secretariat in a document to be submitted through the Secretary-General and issued under the item entitled 'Personnel questions'".

In its resolution 35/213 of 17 December 1980, the Assembly decided to permit the selected staff member to make an oral presentation of the written document submitted under the terms of resolution 34/220. Any questions posed by the Fifth Committee in response to the statements made were to be answered in writing.

(b) After service

(i) Pensions

35. During the period under review, the General Assembly considered reports of the United Nations Joint Staff Pension Board and amended some of the regulations of the United Nations Joint Staff Pension Fund.³¹ In its resolution 38/239 of 20 December 1983, the Assembly amended the Pension Scheme Regulations for members of the International Court of Justice.³²

36. In Administrative Tribunal Judgement No. 237,³³ the Applicant had requested tax reimbursement on a partial lump sum commutation of pension benefits. The practice for years had been to reimburse retiring staff the national taxes on the one-third payment from the Tax Equalization Fund. An information circular had apprised employees of the expected reimbursements on commuted tax benefits. Following a challenge by the United States Mission to the United Nations to the legality of that practice, the Secretary-General discontinued the practice. In response to the Applicant's challenge to the Secretary-General's decision, the Tribunal noted that:

"Under article 101, the staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The Staff Regulations of the United Nations state under the title 'Scope and Purpose' that the Secretary-General . . . shall 'provide and enforce such staff rules consistent with these principles as he considers necessary'. Thus, the Secretary-General has discretion in framing the Staff Rules and in applying the Staff Regulations. In the exercise of these functions, the Secretary-General issues administrative orders and information circulars which the Tribunal has held to have

³¹See G A resolutions 34/221, 35/215, 36/118, 37/131, 38/233 and 39/246.

³²G A resolution 38/239, annex.

³³*Powell v. the Secretary-General of the United Nations*, Judgement No. 237 (13 February 1979).

the same force and effect as the Staff Rules unless inconsistent with the Staff Regulations.”³⁴

(ii) *Other after-service entitlements*

37. In Administrative Tribunal Judgement No. 273,³⁵ the Tribunal held that the Applicant was entitled to compensation following an amendment to the Staff Rules which made payment of the repatriation grant subject to the provision of evidence that “the former staff member has established residence in a country other than that of the last duty station”. The relevant staff rule had been amended in response to General Assembly resolution 33/119 of 19 December 1978, whereby it decided:

“that payment of the repatriation grant to entitled staff members shall be made conditional upon the presentation by the staff member of evidence of actual relocation, subject to the terms to be established by the [International Civil Service] Commission;”³⁶

The Tribunal held that:

“By making payment of the Applicant’s repatriation grant conditional on the production of evidence of relocation, the Respondent failed to recognize the Applicant’s acquired right . . . [and] [t]he stand taken by the Respondent has had the effect of depriving the Applicant of payment of the repatriation grant.”³⁷

38. That decision was subsequently the subject of a request by the Committee on Applications for Review of Administrative Tribunal Judgements for an advisory opinion by the International Court of Justice. The question submitted to the Court was as follows:

“Is the judgement of the United Nations Administrative Tribunal in Judgement No. 273, *Mortished v. the Secretary-General*, warranted in determining that General Assembly resolution 34/165 of 17 December 1979 could not be given immediate effect in requiring, for the payment of repatriation grants, evidence of relocation to a country other than the country of the staff member’s last duty station?”

39. The International Court of Justice decided as follows:³⁸

“1. By nine votes to six,

Decides to comply with the request for an advisory opinion;

[2A.] By ten votes to five,

³⁴*Ibid.*, para. XIII.

³⁵*Mortished v. the Secretary-General of the United Nations*, Judgement No. 273 (15 May 1981).

³⁶See also G A resolution 34/165 of 17 December 1979, in which the Assembly decided that “effective 1 January 1980 no staff member shall be entitled to any part of the relocation grant unless evidence of relocation away from the country of the last duty station is provided”.

³⁷Para. XVI.

³⁸*Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports, 1982, p. 325, para. 80.*

That the Administrative Tribunal of the United Nations in Judgement No. 273 did not err on a question of law relating to the provisions of the Charter of the United Nations;

[2B.] By twelve votes to three,

That the Administrative Tribunal of the United Nations in Judgement No. 273 did not commit any excess of the jurisdiction or competence vested in it.”

40. In its resolution 37/235 C of 21 December 1982, the General Assembly amended the staff regulations pertaining to the repatriation grant to read as follows:

“In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate. The repatriation grant shall not, however, be paid to a staff member who is summarily dismissed. Staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General. The amount of the grant shall be proportional to the length of service with the United Nations . . .”³⁹

In the preamble to the resolution, the Assembly acknowledged the advisory opinion of 20 July 1982 of the International Court of Justice reviewing the judgement.

****3. RESPONSIBILITIES OF STAFF MEMBERS**

****D. Disciplinary measures**

****E. Recourse available to staff members**

****1. IN GENERAL**

****2. APPEAL TO THE SECRETARY-GENERAL**

****3. THE JOINT APPEALS BOARD**

****4. THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS**

****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.**

³⁹G A resolution 37/235 C, annex.

Chapter XVI
MISCELLANEOUS PROVISIONS

