

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. Article 101 provides the principles regarding the recruitment and employment of the international officials comprising the staff of the United Nations. The Article establishes the authority to administer, on the part of the Secretary-General, and the power to regulate, on the part of the General Assembly, these basic conditions. In this context, the present study examines some of the contemporary questions that have arisen in maintaining the quality, level and representation of staff commensurate with the expanded international role and responsibilities the United Nations has now assumed.
2. The format of this study reflects the same overall structure as previous studies of this Article.¹ Certain subheadings have been updated to provide a more conceptual and contemporaneous approach to the material, incorporating changes in the Organization and the structure of the Secretariat. However, the range and scope of coverage remains essentially the same.
3. The general survey provides a brief account of the major developments in the application of the Article, highlighting larger trends in relation to previous periods. The analytical summary of practice provides a more detailed consideration of the significant questions in the administration and management of staff which arose during the period under review.
4. Certain aspects of the discussion of the character and management of the Secretariat, and actions taken with regard to it, may be found under the examination of other Articles of Chapter XV of the Charter. Article 101 in this regard is related to Articles 5, 8, 97 and 100.

¹ See *Repertory and Supplements Nos. 1-6*.

I. GENERAL SURVEY

5. During the period under review, repeated and specific reference to Article 101 and its principles appeared in a number of resolutions of the General Assembly which considered an agenda item on "personnel questions" at each session.² The principles of Article 101 were further recalled in the context of decisions on the administration and functioning of the Secretariat.³ Several decisions of the United Nations Administrative Tribunal (UNAT) considered the application of Article 101 in their judgements,⁴ and the interpretation of Article 101 also formed part of an advisory

² See G A resolutions 40/258, 41/206, 42/220 and 43/224. See also the study of this Article in *Supplement No. 6*, vol. VI.

³ See, e.g., G A resolutions 41/213, sect. I, and 42/211.

⁴ See AT/DEC/385 and AT/DEC/386.

opinion of the International Court of Justice (ICJ) on UNAT Judgement No. 333.⁵

6. However, references to the principles of Article 101 did not necessarily signify consensus as to their application or interpretation. Indeed the period under review may be characterized by a number of differences of opinion over the implications of the Article with regard to issues of recruitment and management of staff, prolonging the consideration of a number of issues.⁶ Debate emerged as to the

⁵ *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion* (hereinafter *Advisory Opinion*), *ICJ Reports 1987*, p. 18. See also AT/DEC/333; and *Repertory, Supplement No. 6*, vol. VI, under Article 100, paras. 15-17.

⁶ See, e.g., paras. 63-71 below.

interpretation of the provisions of the Article themselves, such as the importance of giving “due regard” to recruitment on as wide a geographical basis as possible in relation to the “paramount consideration” of securing the highest standards of efficiency, competence and integrity under paragraph 3.⁷

7. The stimulus for consideration of issues related to Article 101 took place largely in the context of the mounting attention given to staff costs and the administration of the Secretariat in the light of the financial crisis affecting the United Nations. The consequences of the recruitment freeze instituted by the Secretary-General also had an impact on the continuing focus on the application and interpretation of the principle of equitable geographical distribution, which was considered at every session of the General Assembly during the period.⁸ Special significance was attached to the level and distribution of appointments of staff. The Assembly explicitly reiterated Article 101 in the context of decisions on the composition of higher-level positions in the Secretariat.⁹ In that regard, particular emphasis was also placed on the representation of women in such positions, especially following the adoption of the programme of action for the *Nairobi Forward-Looking Strategies for the Advancement of Women*.¹⁰

8. Concern over staff costs led to additional attention being given to the definition of the conditions of service of

⁷ See paras. 10-23 below. See also *Repertory, Supplement No. 4*, vol. II, under Article 101, para. 29.

⁸ See G A resolutions 40/258 A, 41/206 A, 42/220 A and 43/224 A. See also A/41/627.

⁹ G A resolution 42/220 A, sect. II, para. 2.

¹⁰ See G A resolution 40/258 B, 42/220 C and 43/224 C. See also G A resolution 41/111. Further reference may be made to consideration of this issue under the study of Article 8 in this *Supplement*, vol. I.

II. ANALYTICAL SUMMARY OF PRACTICE

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

1. THE PRINCIPLE OF GEOGRAPHICAL DISTRIBUTION

(a) *In general*

10. As in the past,¹⁸ the General Assembly gave considerable attention during the period under review to the principle of geographical distribution in connection with the composition of the Secretariat. In that context, Article 101, paragraph 3, was repeatedly recalled in connection with resolutions of the Assembly on the composition of the Secretariat.¹⁹ The implications of the recruitment freeze resulted in renewed consideration of both the interpretation of

¹⁸ See *Repertory, Supplement No. 6*, vol. VI, under Article 101, paras. 13-30.

¹⁹ See, e.g., G A resolutions 40/258 A, 41/206 A and 42/220 A.

staff. Changes to the calculation of both active service pay and pension benefits during the period resulted in extensive consideration and debate over the basis and principles governing the entitlements of staff. Changes to the conditions of service also resulted in a significant amount of UNAT adjudication.¹¹ At its forty-third session, the General Assembly was prompted to call for a comprehensive review of the conditions of service of staff.¹²

9. New emphasis was given in the period under review to the administration of justice within the Secretariat. The General Assembly directed continuing and specific attention to personnel questions in its agenda.¹³ While there had been ongoing consideration of reform of the adjudicative structure in the context of merging UNAT with the Administrative Tribunal of the International Labour Organization (ILOAT),¹⁴ emphasis was placed during the period on shifting the focus from litigation to the administrative settlement of disputes.¹⁵ This led to ongoing reforms of the Joint Disciplinary Committee, the Joint Appeals Board and further consideration of the establishment of an Office of Ombudsman.¹⁶ Nevertheless the volume of litigation and the repercussions of several judgements resulted in consideration of the competence and status of UNAT and the question of appeals from its decisions.¹⁷

¹¹ See, e.g., AT/DEC/370, AT/DEC/395 and AT/DEC/421.

¹² G A resolution 43/226.

¹³ See G A resolutions 40/252, 40/258 A, 42/220 B and 43/224 B.

¹⁴ See G A resolution 33/117.

¹⁵ See A/C.5/42/28, para. 9, and A/C.5/43/25, para. 4.

¹⁶ G A resolutions 40/258 A, para. 7 and 42/220 B; and see also para. 88 below.

¹⁷ See paras. 89-96 below.

the principle of geographical distribution under Article 101, and its application. As regards interpretation, some difference of views emerged as to the relative importance of the provisions of Article 101, paragraph 3. With respect to the application of geographical distribution, particular consideration centred on the implications of the freeze on recruitment in the light of the financial crisis and the establishment of UNIDO, formerly a subsidiary body, as a specialized agency.²⁰

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

11. As noted, one issue that emerged during the period under review was the question of the importance of geographical distribution relative to the necessity of securing the highest standards in recruitment. In the report of the International Civil Service Commission (ICSC) to the Gen-

²⁰ See A/41/627, para. 2.

eral Assembly at its forty-first session, some members of the Commission had stated that, while efficiency, competence and integrity were important, geographical balance was by no means secondary.²¹ That view found subsequent support among some delegations in the Fifth Committee who maintained that the close relationship between the highest standards in recruitment and the principle of equitable geographical distribution entailed that neither should overshadow the other nor be given greater weight.²² However, others took a different view. Objecting to the views expressed in the ICSC report, the Federation of International Civil Servants' Associations (FICSA) pointed out that Article 101 emphasizes the "paramount" importance of the highest standards of efficiency, competence and integrity in recruitment, whereas "due regard" was to be paid to geographical distribution.²³ FICSA requested that the Assembly reaffirm that the paramount consideration in recruitment should be the highest standards in those aspects. Some delegations in the Fifth Committee similarly stressed the decisive importance of securing the highest standards.²⁴ The Assembly for its part requested that the Secretary-General, in all questions relating to the composition of the Secretariat, continue to implement both the letter and the spirit of Article 101, paragraph 3.²⁵

12. An additional question that emerged in the period under review was the relationship between the principle of equitable geographical distribution and the principle espoused by the General Assembly that no position should be considered the exclusive preserve of any Member State.²⁶ To that end, a majority of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group of 18) recommended fixing the percentage of positions of nationals of a Member State that might be fixed-term or permanent.²⁷ However the recommendations of the Group of 18 did not command a consensus, as some members of the Group felt that they violated the principle that the Secretary-General might permit replacement by candidates of the same nationality to ensure representation of Member States whose nationals served primarily on a fixed-term basis – and therefore counter to the principle of equi-

table geographical distribution.²⁸ In the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*, the International Court of Justice in its advisory opinion also considered the issue of the impact of fixed-term contracts. While the majority opinion did not reach this specific issue, dissenting opinions in a case in which the Applicant raised, inter alia, Article 101 questioned whether the practice by which nationals of some States allowing recruitment only by way of secondment on fixed-term contracts might be in conflict with the principles of the Charter.²⁹ For its part, the General Assembly reaffirmed that the Secretary-General, in making appointments to the upper echelons, should strive to appoint only a candidate from a Member State other than that of the incumbent in order to reinforce the principle of rotation in the upper echelons of the Secretariat in the light of Article 101, paragraph 3, of the Charter.³⁰ The Assembly further requested the Secretary-General to review the composition of the upper echelons of the Secretariat in the context of the recommendations of the Group of 18 with particular reference to length of service in the upper echelons.³¹

13. Note should be taken in this context of the continuing consideration given to the representation of women as a factor in geographical distribution. The General Assembly specifically called upon the Secretary-General to take measures to increase the representation of women in posts subject to geographical distribution.³²

(c) Criteria for the principle of geographical distribution

14. It will be recalled that, at its thirty-fourth session, the General Assembly had adopted resolution 35/210 requesting the Secretary-General to calculate new desirable ranges for all Member States, to apply as from 1 January 1981, on the basis of a set of initial criteria set out in that resolution.³³ During the period under review, the Assembly adopted resolution 40/258 A, in which it requested the Secretary-General, inter alia, to submit to the General Assembly at its forty-first session proposals for the review of the system of desirable ranges with a view to achieving a balanced application of all factors relevant to the calculation of the desirable ranges, including the population factor. Pursuant to that mandate, the Secretary-General submitted a re-

²¹ G A (41), Suppl. No. 30, para. 202.

²² See, e.g., G A (43), 5th Comm., 23rd mtg., para. 50; *ibid.*, 16th mtg., para. 14; and *ibid.*, 22nd mtg., para. 26.

²³ A/C.5/41/13, paras. 50 and 51.

²⁴ See, e.g., G A (43), 5th Comm., 26th mtg., para. 9, and *ibid.*, para. 29.

²⁵ G A resolution 41/206 A, para. 2.

²⁶ G A resolution 43/224 A, para. 5. The principle was espoused in previous sessions of the General Assembly. See G A resolution 35/210, sect. I, para. 3.

²⁷ G A (41), Suppl. No. 49, recommendations 55 and 57. The Group of 18 in its report recommended that at least 50 per cent of the nationals of a Member State should be employed on a permanent basis, and that no more than 50 per cent of the nationals of a Member State should be appointed on a fixed-term basis. *Ibid.*

²⁸ *Ibid.*

²⁹ See *Advisory Opinion*, pp. 129-130, and 172 (Diss. Op. Schwebel and Evensen).

³⁰ G A resolution 42/220 A, sect. II, para. 2. See also resolution 41/206 B, paras. 1 and 2.

³¹ *Ibid.*, para. 3.

³² See G A resolutions 40/258 B, para. 3, and 42/220 C, para. 5. The General Assembly specifically called for an overall participation rate of 30 per cent of the total of posts subject to geographical distribution by 1990.

³³ See *Repertory, Supplement No. 6*, vol. VI, under Article 101, paras. 15-22.

port on the subject to the General Assembly in which he discussed the background regarding the principle enshrined in Article 101, paragraph 3, in the following terms:

“The parallel problems of defining what constituted equitable geographical distribution of the staff of the Secretariat, and establishing a yardstick for measuring the progress made towards that end, were first addressed in 1948 through the introduction in the Secretary-General’s bulletin No. 77 of the concept of desirable ranges³⁴ for Member States, in response to General Assembly resolution 153 (II) of 15 November 1947. The resolution sought to attain a balanced geographical distribution through the granting of priority to appointments from unrepresented Member States. The bulletin also gave priority to appointments from underrepresented Member States rather than overrepresented Member States. Nationals of an overrepresented Member State would be appointed only if there were no suitably qualified candidates available from underrepresented Member States. The granting of priority to unrepresented and underrepresented States has continued ever since to be a main feature of recruitment policy ...

“The yardstick for the proper representation of Member States was originally determined by reference to desirable ranges linked with the scale of assessments from the contributions of Member States to the regular budget of the Organization. Later membership and population were introduced as separate factors.”³⁵

15. At its forty-first session, the General Assembly adopted resolution 41/206 C, which provided as follows:

“*The General Assembly,*

“ ...

“*Taking note* of the report of the Secretary-General on the system of desirable ranges for the geographical distribution of staff in the Professional category and above,

“1. *Requests* the Secretary-General to submit updated calculations on desirable ranges for all Member States, taking into account the views expressed by

³⁴ G A (3), Annexes, agenda item 40, A/652, annex 1.

³⁵ A/C.5/41/6, paras. 4 and 5. In addition, the Secretary-General indicated that the concept of “staff in posts subject to geographical distribution” had been introduced in General Assembly resolution 1559 (XV). He stated that application of that principle referred to the staff of the regular Secretariat in Professional and higher-level posts who were appointed for at least one year by, and were responsible directly to, the Secretary-General and whose geographical distribution was to be judged by reference to the system of desirable ranges for the representation of each Member State. *Ibid.*, para. 10.

Member States at the current session and, in particular, the following criteria:

“(a) The desirability of the base figure for the calculations being related to the actual number of posts subject to geographical distribution;

“(b) The movement towards the establishment of parity between the membership and contribution factors;

“(c) The direct allocation of posts subject to the population factor of 7.2 per cent to Member States in proportion to their populations;

“(d) The need for flexibility upwards and downwards from the mid-point of the desirable ranges;

“2. *Requests* the Secretary-General to present proposals thereon to the General Assembly with a view to reaching a decision at its forty-second session.”³⁶

(d) Application of the principle of geographical distribution

16. During the period under review, the General Assembly drew specific attention to the application of the principle of equitable geographical distribution.³⁷ By its resolution 40/258 A, the Assembly, recalling Article 101, paragraph 3, of the Charter, requested the Secretary-General to:

“develop and apply a second medium-term plan of recruitment for the period 1986-1987 with specific targets for recruitment from unrepresented and underrepresented countries with a view to bringing all Member States within their desirable ranges and to make special efforts to increase the number of staff recruited from Member States below the mid-point of their desirable ranges in order to bring them towards their mid-point”.

17. In that connection, the Secretary-General, in his report to the General Assembly at its forty-first session, recalled that the current application of the principle of equitable geographical distribution involved a comparison of the number of nationals within posts subject to geographical distribution with the State’s desirable range of representation. From that calculation, the Member State would fall into one of the four categories: unrepresented, underrepresented, within range, and over-represented. A State would be unrepresented when none of its nationals was serving in a post subject to geographical distribution; underrepresented when the number of nationals serving in posts was

³⁶ See further G A resolution 42/220 A, sect. III, cited in para. 21 below.

³⁷ See, e.g., G A resolutions 40/258 A, paras. 2-4, 41/206 A, paras. 3-6, and 42/220 A, sect. I, para. 2.

lower than the lower limit of the desirable range; and over-represented when the number of its nationals exceeded the upper limit of the desirable range.³⁸

18. However, the Secretary-General noted in the same report that two major events had affected the application of the principle of geographical distribution.³⁹ First, the effects of the financial crisis had led to the implementation of certain measures with respect to recruitment, including the freezing of recruitment plans and targets, and the suspension of national competitive examinations. As a result, the number of nationals recruited from developing countries had decreased.⁴⁰ Further, the conversion of the United Nations Industrial Development Organization (UNIDO), formerly a subsidiary body of the United Nations, into a specialized agency in 1985⁴¹ increased the number of unrepresented and underrepresented Member States within the Secretariat, as 350 posts normally subject to geographical distribution were lost.⁴² The recommendation of the Group of 18, subsequently endorsed by the General Assembly, that Secretariat staffing be reduced with particular emphasis on higher-level positions also had an impact.⁴³

19. Subsequent consideration of the application of the principle of equitable geographical distribution focused on measures to be taken in the light of those developments. The General Assembly repeatedly requested that the Secretary-General lift the freeze on recruitment of external candidates at the earliest possible date and explore alternatives to that policy.⁴⁴ While agreeing with the necessity of injecting “new blood” into the Organization, the Secretary-General observed that he could not fully lift the current recruitment freeze to recruit junior professional officers owing to financial circumstances.⁴⁵

20. One area of consideration was the representation of staff from unrepresented and underrepresented Member States at the upper echelons. This had been a specific aspect of requests by the General Assembly in considering the composition of the Secretariat at its fortieth session.⁴⁶ Recalling Article 101, the Assembly subsequently requested that the Secretary-General preserve the principle of equita-

ble geographical distribution and the need for rotation in the composition of the upper echelons of the Secretariat. To that end, the Assembly requested the Secretary-General to ensure that equal opportunity was given to nationals of all Member States when making appointments to all posts at the levels of Under-Secretary-General and Assistant Secretary-General, calling upon the Secretary-General in making those appointments to strive to appoint only a national of a country other than that of the incumbent in order to reinforce the principle of rotation.⁴⁷ The principle of rotation was reaffirmed by the Assembly at its forty-second session, with the further request that the Secretary-General review the composition of the echelons of the Secretariat in the context of the relevant recommendations of the Group of 18 with particular reference to length of service in the upper echelons.⁴⁸

21. Another focus of attention was the application of desirable ranges as a means of assessing progress made towards equitable geographical distribution of staff and to assist the Secretary-General in recruiting staff to a level that Member States could agree was equitable. The practice had been to use a base figure used in the calculation of ranges taking into account the number of posts in the Secretariat, both occupied and vacant.⁴⁹ Following the request of the General Assembly to submit updated calculations on desirable ranges of posts for all Member States, taking into account the views expressed by Member States during the forty-first session,⁵⁰ the Secretary-General presented a report with updated calculations for the desirable range.⁵¹ The Secretary-General recommended, inter alia, the establishment of two base figures for the number of posts: one derived from the loss of 350 posts due to the withdrawal of UNIDO, the other taking account of the recommendation of the Group of 18 of a 15 per cent post reduction.⁵² However, the Secretary-General noted the continuing discord over the timing for implementation of the concept of parity, which, introduced in 1979,⁵³ related to the weight given to the membership and contribution factors in calculating the geographical distribution of posts.⁵⁴ In its subsequent consideration, the General Assembly gave specific direction on

³⁸ A/41/627, para. 6.

³⁹ *Ibid.*, para. 2.

⁴⁰ *Ibid.*, para. 9. The General Assembly requested the Secretary-General to lift the freeze on recruitment of external candidates at the earliest possible date, and explore alternatives to that policy.

⁴¹ For further discussion of the conversion of UNIDO into a specialized agency, see the study of Article 63 in the present *Supplement*, vol. IV.

⁴² G A (40), 5th Comm., 42nd mtg., paras. 6-7.

⁴³ See G A (41), Suppl. No. 49, recommendation 15. See also G A resolution 42/211, para. 10 (b).

⁴⁴ G A resolution 41/206 A, para. 7. See also G A resolution 42/220 A, sect. I, para. 1.

⁴⁵ A/42/234, para. 55.

⁴⁶ G A resolution 40/258 A, para. 3.

⁴⁷ See G A resolution 41/206 B, paras. 1 and 2. The Assembly allowed derogation from replacement by a national of a Member State other than that of the incumbent if the Secretary-General considered there were exceptional circumstances in the light of Article 101, para. 3. *Ibid.*, para. 2.

⁴⁸ G A resolutions 41/206 B and 42/220 A, sect. II, paras. 2 and 3.

⁴⁹ See A/C.5/41/6, paras. 15-18.

⁵⁰ See G A (41), 5th Comm., 29th, 30th, 32nd, 33rd, 37th, 45th and 46th mtgs.

⁵¹ A/C.5/42/7, para. 7.

⁵² *Ibid.*, para. 8.

⁵³ G A resolution 34/219. See *Repertory, Supplement No. 6*, vol. VI, under Article 101, para. 17.

⁵⁴ A/C.5/42/7, para. 9. The Secretary-General noted that there was a continuing discord among Members as to whether parity should be implemented immediately, or after a further intermediate step. *Ibid.*, para. 11.

the calculation of the desirable range, requesting the Secretary-General:

“... to base the desirable ranges for all Member States, with effect from 1 January 1988, on the following criteria:

“(a) The base figure for the calculations will initially be 2,700;

“(b) The weight of the membership factor will be 40 per cent of the base figure;

“(c) The population factor, which will be allotted a weight of 5 per cent, will be directly related to the population of Member States and posts subject to this factor will be distributed among Member States in proportion to their population;

“(d) The contribution factor will be based on the distribution of the remaining posts among Member States 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 upwards and downwards from the mid-point of the desirable range, but not less than 4.8 per cent up and down, the upper limit of the range being not less than 14 posts;

“(f) The base figure will be adjusted whenever the actual number of posts subject to geographical distribution increases or decreases by 100, the weights of the three factors being maintained;”

The Assembly furthermore decided:

“to review the desirable ranges at its forty-fifth session, taking into account the concept of parity between the membership and contribution factors and the views of Member States on this concept and also giving due consideration to the requirement of raising the percentage weight of the population factor”.⁵⁵

22. The representation of women was an issue that continued to be linked with the concept of equitable geographical distribution. In 1986, following its endorsement of the *Nairobi Forward-Looking Strategies for the Advancement of Women*,⁵⁶ the General Assembly requested the Secretary-

⁵⁵ G A resolution 42/220 A, sect. III, paras. 1 and 2.

⁵⁶ The report containing the action programme endorsed by the Assembly cited the conclusion that political, economic and social development is inherently limited by the absence of women in the decision-making process and that women rarely participate in the formulation and execution of the Organization programmes. Consequently, “[i]f the United Nations efforts to promote the goals of the Charter are to be fully effective, the challenge ahead is to ensure that women assume their role in all aspects of these critical areas of the Organization’s work ...” A/C.5/40/30, para. 1. For further discussion of the participation of women in the United Nations system see the Study of Article 8 in this *Supplement*.

General, the heads of the specialized agencies and other United Nations bodies to establish new five-year targets for the representation of women in their staff. The new five-year targets would review the percentage of women in each level of Professional and decision-making positions, in accordance with the criterion of equitable geographical distribution.⁵⁷

23. Reporting on measures taken in accordance with the Secretary-General’s action programme⁵⁸ and approved by the General Assembly,⁵⁹ the Secretary-General noted that the recruitment freeze would similarly prevent major improvements in the proportion of women.⁶⁰ However, the Secretary-General indicated that, where exceptions to the recruitment freeze were made, efforts would be made to select women.⁶¹ Some delegations in the Fifth Committee voiced their concerns over that practice, asserting that the principle of equitable distribution should not be disregarded in favour of improving the status of women in the Secretariat.⁶² Others argued for the removal of the recruitment freeze to assist both the geographical and “gender” balance.⁶³

2. METHODS OF RECRUITMENT

24. The freeze on external recruitment instituted by the Secretary-General had suspended recruitment through competitive examinations. The General Assembly, however, repeatedly requested that the Secretary-General lift the freeze on recruitment of external candidates at the earliest possible date and seek alternatives, making every effort to recruit successful candidates through national competitive examinations.⁶⁴ In the light of those requests, the Secretary-General instituted limited recruitment examinations in 1987

⁵⁷ G A resolution 41/111, para. 8.

⁵⁸ A/C.5/40/30, sect. III.B. This report contained an action programme including targets for Professional appointments for women. See para. 27. The action programme covered five areas: recruitment, career development, training, conditions of service, and grievance and discrimination. A detailed work plan in two phases was also outlined. See sect. IV. The report had been submitted pursuant to General Assembly resolution 39/245.

⁵⁹ G A resolution 40/258 B. A target of 30 per cent by 1990 was established for the representation of women in posts subject to geographical distribution. *Ibid.*, para. 3.

⁶⁰ A/42/234, annex, paras. 39-42. See also A/43/286, para. 75.

⁶¹ A/42/234, annex, para. 42. Consequently, notwithstanding the suspension of recruitment, the Secretary-General was able to report that the percentage of women within posts subject to geographical distribution had actually increased between 1984 and 1988, and that the percentage of women appointed to P-2 and P-3 posts subject to geographical distribution was now equivalent to the men appointed to such posts. A/43/659, annex I, table E. See also G A (43), 5th Comm., 23rd mtg., para. 42.

⁶² G A (41), 5th Comm., 33rd mtg., para. 38, and *ibid.*, 45th mtg., para. 38.

⁶³ G A (42), 5th Comm., 30th mtg., para. 55.

⁶⁴ G A resolutions 41/206 A, para. 7, and 42/220 A, sect. I, para. 2.

and 1988.⁶⁵ The Secretary-General also announced that the scope of such examinations would be broadened to include not only unrepresented and underrepresented States but also those from adequately represented States.⁶⁶

25. The question of extending the application of competitive examinations to higher-level posts was also considered. In a report to the General Assembly at its fortieth session, the Secretary-General proposed, on an experimental basis, the extension of national competitive examinations to the P-3 level.⁶⁷ However, the costs and merits of such an action were questioned by the Advisory Committee on Administrative and Budgetary Questions, which believed such an action was premature.⁶⁸ While the Group of 18 in its report had endorsed the principle of competitive examinations for posts of levels P-1 to P-3,⁶⁹ the Secretary-General noted that the use of examinations for recruitment at the P-3 level and the implementation of drafting tests at the P-4 and P-5 levels would have to await the end of the current financial difficulties.⁷⁰

26. Further to a request of the General Assembly,⁷¹ examination standards and criteria were also reviewed during the period with a view to minimizing the differences in the examination process for internal and external candidates. The Secretary-General reported that efforts to address the issue were being taken, but highlighted the existence of differences arising from the fact that while the one was a promotion exercise the other was a recruitment process.⁷²

B. Appointment of the staff

1. AUTHORITY TO APPOINT STAFF

(a) *In general*

27. During the period under review, the General Assembly repeatedly referred to Article 101 in the context of overall authority in recruitment and personnel management.⁷³ In that context, the Assembly placed emphasis on the exercise of authority on the part of the Secretary-General, and on the Office of Human Resources Management under him.⁷⁴

28. At its thirty-ninth session, the General Assembly had reiterated its request that the Secretary-General strengthen the role and emphasize the authority of the then Office of Personnel Services.⁷⁵ The Assembly repeated this call dur-

ing the period under review.⁷⁶ During the forty-first session of the Assembly, the Group of 18, citing the negative impact of political and other pressures on staff selection, recommended that the Secretary-General exercise greater leadership in personnel matters, especially through protecting the authority of officials in charge.⁷⁷ In its consideration of the issue, the Fifth Committee noted the intention of the Secretary-General "to review all delegations of authority in the personnel field to determine the possible existence of conflict or confusion and if found, to correct that situation".⁷⁸ Specifically reiterating its endorsement of recommendation 41 of the Group of 18, the General Assembly, at its forty-third session, reiterated its full support for the Secretary-General as Chief Administrative Officer of the Organization and his prerogatives and responsibilities under the Charter.⁷⁹ In his report to the Assembly at its forty-second session, the Secretary-General underscored the importance of his authority under the Charter with respect to the organization and composition of the Secretariat:

"The Secretariat is a principal organ of the United Nations and the Secretary-General, as its Chief Administrative Officer, has, under the Charter, the responsibility to manage its financial and human resources. This responsibility must not be eroded or diminished if the Secretary-General is to organize the internal structures of the house and make the necessary personnel decisions in a manner that enhances the efficiency and the effectiveness of the Organization."⁸⁰

29. A judgement of the United Nations Administrative Tribunal (UNAT) concerned the question of authority in the appointment of staff. Judgement No. 385 concerned an application to rescind a decision not to extend a fixed-term appointment.⁸¹ In his pleas, the Applicant asserted that he had a legitimate expectancy of continued employment based in part on his good performance reports during his service with the Department of Public Information, and based on his having been a handicapped individual employed in accordance with General Assembly resolution 37/53 during the International Year of Disabled Persons. Regarding the type of appointment, the Tribunal recalled its Judgement No. 205 to the effect that:

⁶⁵ G A resolutions 40/258 A, para. 1, and 41/206 A, para. 1.

⁶⁶ A/42/234, annex, para. 34.
⁶⁷ A/C.5/40/39, para. 29.
⁶⁸ A/40/7/Add.13, para. 5.
⁶⁹ G A (41), Suppl. No. 49, recommendation 43.
⁷⁰ A/43/286, para. 72.
⁷¹ G A resolution 41/206 A, para. 11.
⁷² A/42/234, para. 34.
⁷³ See, e.g., G A resolutions 40/258 A, para. 1, 41/206 A, para. 1, 42/220, sect. II, para. 2, and 43/224 A, para. 1.
⁷⁴ G A resolution 43/224 A, paras. 1 and 2.
⁷⁵ *Ibid.*, para. 2. See also G A resolution 39/245, para. 7.

⁷⁶ G A (41), Suppl. No. 49, recommendation 41. The recommendations of the Group of 18 were endorsed by the General Assembly at its forty-first session in the light of the findings of the Fifth Committee. See G A resolution 41/213, especially para. 1.
⁷⁷ A/41/795, para. 51. See also A/41/663, paras. 9 and 10.
⁷⁸ G A resolution 43/224 A, para. 1. The General Assembly also called for further implementation of recommendation 41, and referred to the implementation of the recommendations of the Group of 18, taking account, *inter alia*, of recommendation 41. See G A resolution 43/213, paras. 13(d) and 14.
⁷⁹ A/42/234, para. 4(4).
⁸⁰ AT/DEC/385.

⁸¹ AT/DEC/385.

“under Article 101 of the Charter, the power of appointment rests with the Secretary-General. The type of appointment to be offered to a staff member is within the discretion of the Secretary-General. Neither the exceptional circumstances of a staff member nor favourable recommendations for a particular type of appointment by themselves create an entitlement for such an appointment.”

30. Respecting the Applicant’s contention that his disabled status in the context of a resolution of the General Assembly had given rise to an expectancy of continued employment, the Tribunal examined the obligations of the Secretary-General under the relevant Assembly resolution, concluding:

“Improving employment opportunities could not be interpreted as implying necessarily granting a permanent appointment. Such an interpretation, in any case, would run counter to the authority recognized by the Charter in Article 101 for the Secretary-General to appoint staff members.”

Consequently by recruiting and appointing the Applicant the Secretary-General was considered to have complied with the Assembly resolution, but that did not create an expectancy of continued employment.

(b) *Appointment to special organs*

(i) *Joint Inspection Unit*

31. Some consideration was given during the period under review to the question of the appointment of inspectors to the Joint Inspection Unit (JIU). Following some criticism directed at the activities of JIU,⁸² the General Assembly, at its fortieth session, emphasized the need for JIU to fully respect the mandates and decisions of the Assembly and participating organizations, calling upon JIU to evaluate its activities and report to the Assembly.⁸³ The Group of 18 in its report also noted the need for improvement in the work of JIU.⁸⁴ Citing the fact that the quality and standards of the JIU reports were linked to the competence of those entrusted with those tasks, the Group of 18 presented recommendations designed in part to ensure that the inspectors appointed to JIU possessed the necessary qualifications.⁸⁵ Those included safeguarding the independence of members, and appointment based on equitable geographical distribution.⁸⁶ The Group of 18 further recommended that Member States, when selecting candidates for appointment as in-

⁸² See, e.g., ACC decision 1985/21. See also the comments of the Coordinating Committee for Independent Staff Unions and Associations of the United Nations System (CCISUA) A/C.5/40/44, para. 35.

⁸³ G A resolution 40/259, paras. 1 and 6.

⁸⁴ G A (41), Suppl. No. 49, sect. V.

⁸⁵ *Ibid.*, para. 55, and recommendations 63-67.

⁸⁶ *Ibid.*, para. 55.

spectors, give special emphasis to qualifications in the fields of personnel management, public administration, inspection and evaluation, with selection reflecting different disciplines.⁸⁷ The General Assembly endorsed the recommendations of the Group of 18 in the light of the findings of the Fifth Committee.⁸⁸

32. The Administrative Committee on Coordination (ACC) similarly expressed some concern regarding the procedures for nomination and appointment to JIU,⁸⁹ noting that in recent experience the consultation process for appointment to JIU had been rushed, and in some instances bypassed.⁹⁰ ACC recommended that in the selection of candidates, serving JIU inspectors should suggest areas of competence within JIU in need of strengthening prior to the selection of candidates, with each regional group proposing more than one candidate.⁹¹ At its forty-third session, the General Assembly underlined the importance of the consultation process for reviewing candidates to JIU in accordance with the statute of JIU.⁹² The Assembly invited the Secretary-General in his capacity as chair of ACC to ensure the maintenance of an efficient and effective research capability of JIU, underlining the importance of applying the highest standards in selecting candidates for appointment as inspectors, and giving special emphasis to experience in national or international administrative and financial matters, including management questions and knowledge of the United Nations or other international organizations.⁹³

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

33. Consideration given to restructuring the United Nations Institute for Training and Research (UNITAR) during the period under review included the area of personnel management and appointment of staff. While reaffirming the continuing mandate of UNITAR,⁹⁴ the General Assem-

⁸⁷ *Ibid.*, recommendation 64. The Group of 18 had also recommended that the name of JIU be changed to the Joint Inspection and Evaluation Unit to reflect the evaluation aspect of its functions. *Ibid.*, recommendation 63.

⁸⁸ G A resolution 41/213, sect. I, para. 1. See also G A resolution 42/211, para. 7. The Fifth Committee found that the recommendations, if adopted, should be implemented in a manner consistent with the statute of the Joint Inspection Unit and with due regard for the need to avoid duplication of work being done by other units. See A/41/795, para. 63.

⁸⁹ E/1989/18, paras. 28 and 210-213.

⁹⁰ *Ibid.*, para. 211.

⁹¹ *Ibid.*, para. 212. By its decision 1988/26, ACC requested that the Secretary-General bring these concerns to the attention of the President of the General Assembly. See also ACC decision 1988/9.

⁹² G A resolution 43/221, para. 14. See also G A resolution 31/192.

⁹³ *Ibid.*, paras. 12 and 13. The Secretary-General was requested to bring the resolution to the attention of the executive heads of the participating organizations of JIU. *Ibid.*, para. 15.

⁹⁴ In its resolution 40/214, the General Assembly had requested the Secretary-General to consider options for the future of UNITAR,

bly recommended restructuring, setting out a number of “parameters” for doing so. Specifically, the Assembly requested that the Secretary-General review the composition and grading of staff, including the Executive Director and, taking into account the principles of selection in Article 101, diversify the composition of staff to provide for lower-level Professionals and give priority in recruitment to staff not paid by the General Fund.⁹⁵ In its subsequent consideration of the issue, the Assembly requested that the Board of Trustees review the composition and structure of staff funded by the General Fund and make adjustments in the light of financial resources and programme activities.⁹⁶ At the same time, the Secretary-General was requested to prepare and submit to the Board of Trustees amendments to the statute of UNITAR reflecting the reorganization of management and staff, as well as procedures concerning representation on the Board of Trustees.⁹⁷ Reporting to the Assembly at its forty-third session,⁹⁸ the Secretary-General indicated proposed amendments to the UNITAR statute,⁹⁹ including a provision that the Secretary-General, in conformity with the principles laid down by the Assembly and on the recommendation of the Board of Trustees, should determine the composition and level of staff of the Institute having regard to the financial resources and programme activities.¹⁰⁰ Another amendment clarified the status of full-time fellows of UNITAR by giving them the status of United Nations officials appointed by the Secretary-General; the Secretary-General sought Assembly approval for the extension of the categories of officials included in

including its possible closure and reallocation of functions to other agencies. Reporting to the Assembly at its forty-first session, the Secretary-General had advocated the restructuring, rather than closure, of UNITAR at a reduced level of staff. See A/41/521, para. 36.

⁹⁵ Ibid. Additional recommendations concerned the selection of the Board of Trustees.

⁹⁶ G A resolution 42/197, para. 4.

⁹⁷ Ibid. The General Assembly also appealed to the Secretary-General to give priority consideration to absorbing within the United Nations Secretariat the staff of UNITAR who would be released as a result of restructuring to ensure they did not suffer a loss of rank or benefits. Ibid.

⁹⁸ See A/43/697 and A/43/697/Add.1.

⁹⁹ A/43/697, para. 20; A/43/697/Add.1, art. III (1)(e). One change concerned the appointment of alternates to the Board. Another issue discussed concerned the Institute’s full-time fellows, for which the Secretary-General proposed an amendment. A/43/697, paras. 22-25; A/43/697/Add.1, art. VI, paras. 1 and 2.

¹⁰⁰ A/43/697/Add.1, amended articles IV(1) and V(1). The existing Statute had placed greater emphasis on the role of the Executive Director in that regard. See art. IV of the statute of UNITAR, A/6875, annexes (XXII). Under the statute, the appointment of the Executive Director shall be made by the Secretary-General in consultation with the Board of Trustees; terms and conditions of service shall be based on those of an Under-Secretary-General (art. IV). As to the staff, its appointment is made by the Executive Director. For selection of senior officials, he is to consult with the Secretary-General. The terms and conditions of service of the staff shall conform to the Staff Regulations and Rules (art. V).

the Convention on Privileges and Immunities to encompass them.¹⁰¹ The Assembly approved the proposal and reaffirmed the continuing validity and relevance of UNITAR as contained in the amended statute.¹⁰²

(iii) *United Nations Industrial Development Organization*

34. Following the approval of the Relationship Agreement between UNIDO and the United Nations formalizing its status as a specialized agency,¹⁰³ authority of appointment to UNIDO was vested in the Director-General of UNIDO in accordance with its Constitution.¹⁰⁴ UNIDO also joined the common system under the terms of the Relationship Agreement, accepting thereby provisions and decisions of the ICSC concerning appointment.¹⁰⁵

2. ELEMENTS OF APPOINTMENT

35. Consideration was given to the further definition of the terms of contract and the conditions governing the appointment of staff with respect to the mandatory age of separation from service. In the report of ICSC to the General Assembly at its forty-first session,¹⁰⁶ some support was expressed for raising the mandatory age from 60 to 62.¹⁰⁷ However, others felt that a change was not appropriate as the question of raising the mandatory age of separation from service should be considered at the same time as the question of the age of retirement.¹⁰⁸ The latter, it was asserted, fell within the mandate of the United Nations Joint Staff Pension Board. Consequently the conclusion of the Commission was to defer consideration until the questions could be examined concurrently.¹⁰⁹ The Group of 18 in its report recommended strict application of the age of 60 as a mandatory retirement age pursuant to General Assembly resolution 35/210.¹¹⁰ However, in a statement to the Fifth Committee, the representative of the Secretary-General affirmed the Secretary-General’s belief that he must retain some flexibility in respect of appointments at the highest level.¹¹¹ Consideration of the issue was subsequently undertaken by the Pension Board in the context of actuarial con-

¹⁰¹ A/43/697, paras. 24–25.

¹⁰² G A resolution 43/201, paras. 2 and 10.

¹⁰³ E S C resolution 1985/81, paras. 1 and 2; see also G A resolution 40/180. For further consideration of the establishment of UNIDO as a specialized agency, see *Repertory, Supplement No. 6*, vol. IV, under Article 57, paras. 10-15, and *ibid.*, *Supplement No. 7*, vol. IV, under Article 63, paras. 8-25.

¹⁰⁴ A/CONF.90/19, article 11(3).

¹⁰⁵ G A resolution 40/180, annex, art. 16. UNIDO also accepted the ICSC statute, which empowers ICSC to make recommendations on standards and methods of recruitment. See G A resolution 3357 (XXIX), annex, article 14.

¹⁰⁶ G A (41), Suppl. No. 30.

¹⁰⁷ *Ibid.*, para. 151.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, paras. 151 and 152.

¹¹⁰ *Ibid.*, Suppl. No. 49, sect. IV, and recommendation 52.

¹¹¹ *Ibid.*, 5th Comm., 16th mtg., para. 15.

cerns.¹¹² In that regard, the Committee of Actuaries advising the Board expressed its strong support for an increase in the mandatory age of separation from service from 60 to 62, and a similar increase in the normal retirement age under the Regulations of the Fund.¹¹³

36. UNAT similarly considered the issue of mandatory age of separation from service. In Judgement No. 343, the Tribunal considered the application of staff regulation 9.5 and General Assembly resolution 33/143 on the terms governing the mandatory age of separation from service and conditions allowing extensions. The Tribunal found that under staff regulation 9.5, extensions were to be granted according to the Secretary-General's discretion within the limits of resolution 33/143. Consequently, the Tribunal held that the recognition of extensions by virtue of resolution 33/143 or the granting of extensions to some staff members could not create an expectancy of an extension of active service for the Applicant. The Tribunal held that, as a general rule, no exceptional or discretionary decision could create an expectancy of an extension, and consequently no staff member could normally claim the existence of precedents as justification for his or her own continuation in service beyond the mandatory age of separation established under existing regulations and rules.

3. TYPES OF APPOINTMENT

(a) *In general*

37. As indicated above, at its fortieth session, the General Assembly, reaffirming the necessity of securing the highest standards in employment of Secretariat staff, decided to establish a Group of High-level Intergovernmental Experts (Group of 18) to conduct a thorough review of the administrative and financial matters of the United Nations with a view to identifying measures to further improve the efficiency of its functioning.¹¹⁴ The report of the Group of 18, presented to the Assembly at its forty-first session, put forward a number of recommendations touching on the level and category of appointments of staff in the Secretariat. Those recommendations were endorsed by the Assembly at its forty-first session in the light of the findings of the Fifth Committee subject to several qualifications,¹¹⁵ and in subsequent resolutions throughout the period.¹¹⁶

38. Overall, the Group of 18 called for a substantial reduction in staff numbers at all levels, with particular em-

¹¹² G A (43), Suppl. No. 9, paras. 39-41. This consideration was prompted by Assembly resolution 42/222 by which the Assembly requested that the Pension Board consider all possible measures to restore the actuarial balance of the Pension Fund. See sect. I, para. 2.

¹¹³ *Ibid.*, paras. 40-41.

¹¹⁴ G A resolution 40/237, para. 2(a).

¹¹⁵ See G A resolutions 41/213, sect. I. In that regard, the General Assembly called for implementation in the light of the findings of the Fifth Committee. See A/41/795.

¹¹⁶ G A resolutions 42/211 and 43/213. Further qualifications and changes were made in the light of review with respect to specific recommendations.

phasis on a reduction in the number of upper-echelon posts.¹¹⁷ Specifically, the Group called for a 25 per cent reduction in regular budget posts at the highest levels within three years and a 15 per cent reduction in total staff.¹¹⁸ In its subsequent endorsement of the recommendations, following their consideration by the Fifth Committee,¹¹⁹ the General Assembly emphasized that those percentages represented targets to be implemented by the Secretary-General flexibly without having a negative impact on programmes and the structure of the Secretariat and with reference to the principles expressed in Article 101, paragraph 3, of the Charter.¹²⁰ In subsequent reports, the Secretary-General gave guidance on how those reductions were to be implemented,¹²¹ proposing as an alternative a 12 per cent reduction in posts over the biennium for 1988-1999.¹²² Following the recommendation of the Committee for Programme and Co-ordination (CPC),¹²³ the Assembly endorsed the 12 per cent reduction, presenting guidelines for further implementation that laid particular stress on the fact that the reduction should not have a negative impact on programmes or the structure and composition of the Secretariat in relation to the principles of Article 101, paragraph 3, of the Charter.¹²⁴

39. Consideration in this regard was given to the number of appointments at different levels. One objective of the recommendations of the Group of 18 was an overall increase in the proportion of junior-level professional appointments, notably at the P-1 to P-3 levels. While the Group of 18 recommended an overall reduction in the number of staff, it recommended that the average number recruited at the junior professional level should not fall below that of previous years.¹²⁵ The Secretary-General reported to the General Assembly at its forty-second and forty-third sessions on the reduction of upper-level posts.¹²⁶

¹¹⁷ G A (41) Suppl. No. 49, recommendation 15.

¹¹⁸ *Ibid.*

¹¹⁹ See A/41/795, paras. 27-34.

¹²⁰ G A resolution 41/213, sect. I, para. 1(b). See also G A resolutions 42/211, para. 10(b), and 43/213, para. 13.

¹²¹ See, e.g., A/42/234 and A/C.5/43/1/Rev.1, chap. I.

¹²² This proposal was presented as an alternative where the demand for conference services in particular for the following biennium remained unclear. *Ibid.*, para. 26.

¹²³ See G A (43), Suppl. No. 16, para. 36. CPC particularly recommended that the Secretary-General keep in mind concerns expressed by Member States regarding proposed reductions in smaller offices. *Ibid.*, para. 37.

¹²⁴ G A resolution 43/213, paras. 9 and 13. Additional guidelines called for flexible implementation taking account of workload, and implementation in a balanced manner taking into account the recommendations of the Group of 18 for the representation of women and staff from developing countries. *Ibid.*, para. 13 (a) and (d).

¹²⁵ G A (41), Suppl. No. 49, recommendation 15(3)(d). See also recommendation 44. See as well the views of the Fifth Committee, A/41/795, para. 53.

¹²⁶ A/42/234, paras. 52 et seq.; A/C.5/43/1/Rev.1, paras. 18-20.

(b) Specific types of appointment

40. As indicated, several recommendations of the Group of 18 concerned permanent and fixed-term appointments. Principal among the overall recommendations was that the ratio between permanent and fixed-term appointments should be reviewed with the objective of having an adequate range between the two categories of appointment.¹²⁷ Specifically, the Group of 18 recommended that in order to ensure that the principle of equitable geographical distribution was reflected among Secretariat staff, at least 50 per cent of the staff of a Member State should hold permanent appointments; by the same token, the Group also recommended that no more than 50 per cent of the nationals of any one Member State should be employed on a fixed-term basis.¹²⁸ The Group of 18 noted, however, that those recommendations in particular did not enjoy the full support of the Group,¹²⁹ a fact duly noted by the Fifth Committee in its consideration of the Group's report.¹³⁰ The representative of the Secretary-General recalled to the Fifth Committee in that connection that the General Assembly in its resolution 37/126 had recommended that organizations of the common system should establish their needs for permanent and fixed-term staff on a continuing basis, but no determination of a set proportion had been established for the United Nations.¹³¹ The Assembly requested implementation of the recommendation on the proportion of fixed-term to permanent staff by the Secretary-General to the extent agreed, and taking into account its resolution 35/210.¹³² Commenting on the recommendation, ICSC reiterated its view that the ratio of permanent-to-fixed-term appointments was an issue for the legislative bodies of organizations to decide, and that those organs had the flexibility to decide such ratios according to their particular needs.¹³³

(i) Permanent appointments

41. In addition, the Group of 18 in its report also recommended that staff should be eligible for permanent ap-

¹²⁷ See G A (41), Suppl. No. 49, recommendation 57.

¹²⁸ *Ibid.*, recommendations 55 and 57.

¹²⁹ *Ibid.*

¹³⁰ See A/41/795, para. 58.

¹³¹ G A (41), 5th Comm., 16th mtg., para. 18. It was the view of the Secretary-General that the type of appointment did not in any way affect the principle of equitable geographical distribution. The representative also stated that a number of States from all regions preferred to release nationals only on secondment. *Ibid.*

¹³² See G A resolution 41/213, sect. I, para. 1(d). By resolution 35/210, the General Assembly had requested that the Secretary-General permit the replacement of posts held by staff on fixed-term contracts by staff of the same nationality for Member States whose nationals served primarily on fixed-term contracts to ensure the representation of those States (sect. I, para. 4).

¹³³ G A (40), Suppl. No. 30, para. 33.

pointments after three years of service.¹³⁴ Noting that implementation of that recommendation would alter the five-year eligibility requirement established by the General Assembly at its thirty-seventh session,¹³⁵ the Fifth Committee took note of the statement of the representative of the Secretary-General that a permanent appointment should not depend only on length of service, and that no hard-and-fast rule should be established.¹³⁶ For its part, ICSC recalled that its earlier recommendation was not intended as a minimum requirement for a career appointment, and endorsed a three-year period as an improvement.¹³⁷

42. In Judgement No. 386,¹³⁸ UNAT considered the request of an Applicant, and later that of his widow, for rescission of the decision to terminate his permanent appointment, for reinstatement and for compensation. The Applicant had been terminated under staff regulation 9.1(a) for having failed to maintain the highest standards of efficiency, competence and integrity established in the Charter under Article 101, and had received notice of termination under staff rule 109.3(a). Following consideration by the Joint Appeals Board, which decided it could not recommend rescission, the Applicant appealed to the Tribunal. UNAT recalled the established jurisprudence of the Tribunal that it could not substitute its judgement for that of the Secretary-General concerning the standards of performance or efficiency of a staff member.¹³⁹ The Tribunal also recalled its jurisprudence regarding termination of a permanent appointment, which was a decision reached by means of a complete, fair and reasonable procedure.¹⁴⁰ Consequently, the Tribunal declared that if it was to stand, the Respondent's action must be reasonable in all respects. In that connection, the Tribunal clarified that the concept of "unreasonableness" entailed that no reasonable man could have reached the same conclusion under the evidence. The Tribunal, however, found ample evidence for reasonable action; that ample notice had been given to the Applicant and the Applicant had taken advantage of every opportunity to defend himself.

(ii) Fixed-term appointments

43. Several judgements of UNAT addressed the question of the renewability of fixed-term contracts. In its Judgement No. 385,¹⁴¹ the Tribunal, recalling its Judgement No. 205,¹⁴² held that neither favourable recommendations nor compe-

¹³⁴ G A (41), Suppl. No. 49, recommendation 45.

¹³⁵ See G A resolution 37/126. See also G A (37), Suppl. No. 30, annex I, appendix II, paras. 61-67.

¹³⁶ A/41/795, para. 54. See also G A (41), 5th Comm., 16th mtg., paras. 9 and 10.

¹³⁷ G A (42), Suppl. No. 30, para. 28.

¹³⁸ AT/DEC/386.

¹³⁹ See AT/DEC/138.

¹⁴⁰ See AT/DEC/98.

¹⁴¹ AT/DEC/385.

¹⁴² See AT/DEC/205.

tence created an entitlement to a type of employment, and that the relevance of General Assembly resolutions to the Applicant's particular employment did not give rise to a specific entitlement. That position was reiterated in subsequent judgements.¹⁴³

44. In an advisory opinion on UNAT Judgement No. 333, the International Court of Justice (ICJ) considered whether UNAT had made an error of law in sustaining the Secretary-General's decision not to offer a new appointment to a staff member with a fixed-term appointment on secondment from the Union of Soviet Socialist Republics who had resigned his position and applied for asylum in the United States of America.¹⁴⁴ In that context, the Court was prompted to consider several issues related to Article 101 and the conditions governing fixed-term appointments, including the requirements of consideration for a new fixed-term appointment or career appointment upon the expiry of the previous appointment. While the Staff Rules and the jurisprudence of UNAT established that a fixed-term appointment carried no expectation of renewal, the Applicant, citing his excellent performance reports, had raised General Assembly resolution 37/126 and Article 101 principles in support of his claim of entitlement to a new appointment and consideration for a career appointment. In that regard, the Assembly, in its resolution 37/126, had decided that "staff members on fixed-term contracts upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment".¹⁴⁵ Concurring with UNAT that that provision did not create a legal expectancy of an appointment, the majority of the Court found that the Tribunal had committed no error in law in finding that the Secretary-General had discretion in determining the offer and procedure by which reasonable consideration under the terms of the Assembly resolution were to be given.¹⁴⁶ A large part of the ICJ opinion then turned on the question of what reasonable consideration was required, and the validity of the UNAT finding that such consideration had been given.

45. In that connection, the question revolved around whether the Applicant's secondment and subsequent resignation and change in nationality were considered to be impediments in the offer of an appointment to the Applicant.¹⁴⁷ For its part, the Court cited with apparent approval the statement of the Secretary-General that he "does not consider a continuing relationship with a national Government is a contractual obligation of any fixed-term staff member – seconded or not".¹⁴⁸ Here the Court felt obliged

¹⁴³ See AT/DEC/415 and AT/DEC/422.

¹⁴⁴ See *Advisory Opinion*, p. 18.

¹⁴⁵ G A resolution 37/126, sect. IV, para. 5.

¹⁴⁶ *Advisory Opinion*, pp. 56 and 58.

¹⁴⁷ Indeed, the first question asked by the Committee on Applications for Review of Administrative Tribunal Judgements pursuant to the statute of UNAT was whether the Tribunal had failed to exercise jurisdiction in not responding to the question whether a legal impediment existed to the further employment of the Applicant in the United Nations. *Advisory Opinion*, p. 19. The Court then identified the need to reformulate the question. *Ibid.*, p. 42.

¹⁴⁸ *Ibid.*, p. 64.

to correct the Tribunal's own observation on the significance of national ties, and what UNAT, citing its own jurisprudence,¹⁴⁹ referred to as the "widely held belief" in the Fifth Committee that staff members who broke ties with their home country could no longer claim to fulfil the conditions governing employment in the United Nations.¹⁵⁰ The Court, however, observed that this "widely held belief" amounted to views which had been expressed by some delegates to the Fifth Committee in 1953 but had never materialized in a General Assembly resolution.¹⁵¹ A separate opinion stated that the view of the Fifth Committee was incompatible with the Charter, and that UNAT had been wrong in considering that view as widely held.¹⁵² While the majority considered that view obiter dictum, three dissenting opinions asserted that the Tribunal had committed an error of law in that respect; the compatibility of the application of the principle of secondment in that context with Article 101 was also questioned.¹⁵³

C. Conditions of service

1. AUTHORITY RESPONSIBLE FOR DETERMINING THE CONDITIONS OF SERVICE

(a) *In general*

46. During the period under review, the General Assembly gave particular consideration to the role and functioning of the International Civil Service Commission in defining conditions of service. In that regard, the Assembly consistently stressed the need for the harmonization of rules and practices within the organizations of the United Nations common system, expressing its concern over actions by some organizations leading to disparities in conditions of service.¹⁵⁴ At its forty-second session, the Assembly, in its resolution 42/221, consequently urged the organizations to undertake a revision of their rules and regulations to conform with ICSC decisions.¹⁵⁵

47. Note should be taken in this context of the decision of the General Assembly in the same resolution to request ICSC also to undertake a study of its own functioning.¹⁵⁶ At its forty-third session, the Assembly noted the need for such a review to include a definition of the role of the Commission with regard to the determination of the conditions of service of staff.¹⁵⁷ Particular attention was given to its functioning in respect of making recommendations regarding active service entitlements. In that connection, a JIU report to the Assembly at its fortieth session on staff costs had criticized the functioning of ICSC in establishing conditions

¹⁴⁹ See AT/DEC/326. See also A/2615 (VIII), para. 70.

¹⁵⁰ *Advisory Opinion*, pp. 65-66.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, p. 107.

¹⁵³ *Ibid.*, pp. 110-178.

¹⁵⁴ See G A resolutions 40/244, sect. IV, para. 1; 41/207, sect. VI; and 42/221, sect. VI.

¹⁵⁵ G A resolution 42/221, sect. VI, para. 3.

¹⁵⁶ *Ibid.*, sect. VIII.

¹⁵⁷ G A resolution 43/226, sect. II.

of service and determining staff entitlements,¹⁵⁸ concluding that the functioning of the Commission had led it to rely mostly on the advice and recommendations of its secretariat, which in many cases reflected the interests of United Nations staff only.¹⁵⁹ While the comments and conclusions of the report were broadly criticized,¹⁶⁰ the functioning of ICSC with respect to making recommendations for the entitlements of staff continued to be a matter of concern. The lack of transparency and the use of ad hoc measures in the system of remuneration led the General Assembly to recommend that ICSC examine its own methodology for calculating remuneration and improve its reporting.¹⁶¹ Problems in the consultation process, notably in the context of determining entitlements, led staff representatives to suspend participation in the activities of the Commission.¹⁶² For its part, the Assembly called for ICSC to make provision for the fullest possible participation of organizations and staff representatives, particularly in the context of examining conditions of service of staff and overall staff entitlements.¹⁶³

48. The question of the role of other bodies and organizations with respect to the conditions of service also arose during the period under review. The role of the Joint Inspection Unit, for example, was a matter of some debate. In a JIU follow-up report on staff costs, two inspectors asserted the Unit's own right to deal with conditions of service, such as remuneration, arguing that ICSC had no monopoly on personnel matters.¹⁶⁴ The JIU inspectors further asserted that JIU was not restricted to monitoring implementation of ICSC recommendations and decisions on policies, but that it could itself review the substantive basis upon which the Commission made its recommendations and determinations for conditions of service.¹⁶⁵ The JIU report and its recommendations were received with considerable criticism on the part of the United Nations Secretariat, as well as some bodies and organizations.¹⁶⁶ ACC in one of its decisions regretted the tone of the report. Finding many comments

¹⁵⁸ A/40/653.

¹⁵⁹ *Ibid.*, para. 75. Some delegations expressed similar views in the Fifth Committee; see G A (40), 5th Comm., 38th mtg., para. 7, and *ibid.*, 42nd mtg., para. 53.

¹⁶⁰ See comments of the Secretary-General, A/40/653/Add.1. See also comments of CCISUA, A/C.5/40/44. See further ACC decision 1985/21, sect. A, para. 5.

¹⁶¹ G A resolution 42/221, sect. I, para. 2.

¹⁶² See A/C.5/43/12 and in particular para. 13.

¹⁶³ G A resolution 43/226, sect. I, para. 2.

¹⁶⁴ A/40/653, para. 11. The JIU inspectors recommended in that regard that the Assembly should establish a Special Committee of Governmental Experts to review all aspects of remuneration. *Ibid.*, recommendation 1, paras. 75-76.

¹⁶⁵ *Ibid.*, para. 12. The JIU inspectors quoted a statement by the Secretary of the Consultative Committee on Administrative Questions (CCAQ) of ACC. See ACC decision 1984/20.

¹⁶⁶ See comments of the Secretary-General, A/40/653/Add.1. See also comments of CCISUA, A/C.5/40/44.

“unacceptable”, ACC affirmed that the General Assembly and the legislative organs had entrusted ICSC with “a central role in the regulation and coordination of the conditions of service of the United Nations common system.”¹⁶⁷ ACC went on to note that the Commission had been vested with authority to take binding decisions on specified matters and to make recommendations on a wide range of policy questions, asserting that the act of JIU of advising the General Assembly directly on matters within the province of ICSC undermined the authority of the Commission and introduced elements of uncertainty and confusion into the common system.¹⁶⁸ For its part, the General Assembly, in its resolution 40/259 on the Joint Inspection Unit, emphasized that JIU should respect the mandate, resolutions and decisions of the Assembly and other legislative organs and that it should observe established procedures. As noted above, in some subsequent decisions the Assembly also called for a review of the functioning of ICSC and in particular its decision-making process.¹⁶⁹

49. During the period under review, the role and participation of staff unions and representatives in the determination of conditions of service became an issue of concern.¹⁷⁰ The role of staff representatives had been questioned in the JIU follow-up report on staff costs¹⁷¹ as well as in the report of the Group of 18, which had called for the establishment of clear guidelines on the role and functioning of the staff union.¹⁷² Addressing that recommendation, the Secretary-General indicated that an overall review of the framework of staff-management relations would be undertaken, including organizational arrangements, and that an administrative document consolidating texts regulating staff-management relations would be issued.¹⁷³ However, the perceived lack of recognition of their role in the consultation process by which ICSC decisions and recommendations were formulated led FICSA and the Coordinating Committee for Independent Staff Unions and Associations of the United Nations System (CCISUA) to decide to suspend participation in ICSC.¹⁷⁴ In its resolution 43/226, the General Assembly, expressing its concern over this action and urging the unions to resume participation, requested that the review by ICSC of its functioning be made in consultation with the staff representatives. Affirming the role of staff representatives, the Assembly invited the ICSC “to review its rules of procedure at the earliest opportunity to allow for the fullest

¹⁶⁷ ACC decision 1985/21, sect. A, para. 5. See also the decision of ICSC in its annual report, G A (40), Suppl. No. 30, para. 93(d), as well as the preceding discussion, paras. 80-93.

¹⁶⁸ ACC/DEC/1985/21, sect. A, para. 5.

¹⁶⁹ See also G A resolutions 42/221, sect. VIII, and 43/226, sect. I.

¹⁷⁰ See E/1989/18, para. 192.

¹⁷¹ See A/40/653, sect. IV, and recommendation 4.

¹⁷² G A (41), Suppl. No. 49, recommendation 59.

¹⁷³ See A/42/234, annex, para. 54. The Secretary-General's report was noted by the General Assembly in its resolution 42/211.

¹⁷⁴ See, e.g., A/C.5/43/12.

possible consultations with organizations and staff representatives and, to the greatest extent possible, their presence in its deliberations".¹⁷⁵

50. In Judgement No. 421 of UNAT, the Applicants appealed the decision of the Secretary-General to delay application of a factor in the method of equalizing pay approved by ICSC, an action taken as a result of the United Nations financial emergency.¹⁷⁶ The Tribunal was of the view that the observance of rules adopted by ICSC was of utmost importance, noting that the mandatory nature of those rules was uncontested by the parties. The Tribunal held that it was not for the Secretary-General to revise, modify or rescind decisions adopted by ICSC in accordance with its statute and ordered rescission of the measures undertaken by the Secretary-General to delay implementation of the decision of ICSC for the time specified.

(b) Authority with respect to conditions of service of the specialized organizations

51. Arrangements for the conversion of UNIDO into a specialized agency prior to the period under review had included measures on the conditions of service of staff.¹⁷⁷ While the entry into force of the Constitution of UNIDO as a specialized agency during the period under review had placed overall authority over conditions of service under the Director-General,¹⁷⁸ a Relationship Agreement approved by the Economic and Social Council and by the General Assembly at its fortieth session included a number of provisions governing the conditions of service of UNIDO staff.¹⁷⁹ Under that Agreement, the United Nations and UNIDO had agreed to develop uniform standards of international employment and, to the extent feasible, common personnel standards, methods and arrangements.¹⁸⁰ This included agreement to consult on conditions of employment

¹⁷⁵ G A resolution 43/226, sect. II, paras. 1, 2 and 5.

¹⁷⁶ AT/DEC/421. The action was also taken by the Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA). See discussion of the introduction of the remuneration correction factor, para. 54 below.

¹⁷⁷ See G A resolution 34/96. See also report of the formal meeting on its conversion, A/38/141. For further consideration of the process of conversion, see *Repertory, Supplement No. 6*, vol. IV, under Article 57, paras. 10-15, and *ibid.*, *Supplement No. 7*, vol. IV, under Article 63, paras. 8-25.

¹⁷⁸ See A/CONF.90/19, article 11. The Constitution entered into force on 21 June 1985. It was understood during the consultations of the member States and the Secretary-General that the staffing of the new UNIDO would be determined by art. 11, para. 5, of the Constitution, A/38/141 para. 21. However, it was also agreed that further questions related to conditions of service should continue to be dealt with in accordance with existing rules and practices. *Ibid.*, para. 23.

¹⁷⁹ See G A resolution 40/180, annex, article 16. See also E S C resolution 1985/81. The General Assembly had previously sought to protect the conditions of service of existing staff and urged that staff members of the current organization be offered appointments by the new agency that preserved their acquired rights and their contractual status. G A resolution 34/96, para. 4.

¹⁸⁰ G A resolution 40/180, article 16(a).

provisions on seniority and pension rights, and acceptance of the jurisdiction of UNAT.¹⁸¹ Additionally, the Agreement provided that staff assigned to UNIDO as a United Nations organ would be offered appointments that preserved their contractual status and acquired rights.¹⁸² Under the Agreement, UNIDO also accepted the statute of ICSC and the conditions governing employment of staff in the common system.¹⁸³ The United Nations Joint Staff Pension Board also approved the admission of UNIDO to the Pension Fund with effect from 1 January 1986.¹⁸⁴

2. ENTITLEMENTS OF STAFF

52. During the period under review, the Organization continued to consider the question of staff entitlements, especially as a consequence of differing views over the methodology for the calculation of specific entitlements.¹⁸⁵ The Group of 18 in its report to the General Assembly at its forty-first session had cited the level of total staff entitlements as a matter of serious concern, recommending that the entitlements be reduced.¹⁸⁶ Consideration of the issue was undertaken by ICSC in the context of comparison with the comparator national civil service, the United States Federal Civil Service.¹⁸⁷ However, some difference of opinion emerged as to the merits of such an undertaking. Organizations of the common system and staff representatives supported the exercise,¹⁸⁸ along with some ICSC members in the light of past practice and technical validity.¹⁸⁹ Other members of the Commission expressed doubts about its utility,¹⁹⁰ and it was unable to reach consensus on undertak-

¹⁸¹ *Ibid.*, article 16(b).

¹⁸² *Ibid.*, article 16(c). This provision had been specifically endorsed by ACABQ. See G A (40), Suppl. No. 7, annex, para. 63.

¹⁸³ *Ibid.*, article 16(a).

¹⁸⁴ G A (40), Suppl. No. 9, para. 105. This followed a request from the Assembly. See G A resolution 34/96, para. 5.

¹⁸⁵ In discussing the proposals of ICSC on the remuneration of staff, several delegations supported the need for a more comprehensive definition of entitlements. See, e.g., G A (40), 5th Comm., 45th mtg., para. 13, and *ibid.*, 63rd mtg., para. 6. See also JIU follow-up report cited in para. 47 above, A/40/653, chap. V, recommendation 3.

¹⁸⁶ G A (41), Suppl. No. 49, recommendation 61. The Fifth Committee considered that this recommendation necessitated consultation and consideration by ICSC prior to Assembly action; a fact readily recognized by the Chairman of the Group of 18. See A/41/795, para. 61.

¹⁸⁷ G A (41), Suppl. No. 30, paras. 75-84. The ICSC secretariat was asked to prepare a document quantifying all elements of such a comparison to this end. *Ibid.*, para. 83. The ICSC had previously recommended to the Assembly that such a comparison should be undertaken. *Ibid.*, para. 79.

¹⁸⁸ *Ibid.* See also A/C.5/41/13. See also G A (42), Suppl. No. 30, paras. 91-96.

¹⁸⁹ G A (41), Suppl. No. 30, para. 79. In that regard, some ICSC members advocated the approach adopted earlier of a total compensation comparison in two phases, first examining non-expatriate benefits, and second, expatriate benefits for both services. It was also argued that, having recommended such a comparison in the past, the Commission would damage its credibility and competence if it recommended abandonment without technical reasons. *Ibid.*

¹⁹⁰ *Ibid.*, para. 80.

ing such a comparison.¹⁹¹ Nevertheless, the General Assembly, having supported consideration of the question by ICSC at its forty-first session,¹⁹² requested that the Commission develop a methodology for examining total entitlements of staff and present its recommendations to the Assembly at its forty-fourth session.¹⁹³

53. The General Assembly, also at its forty-second session, referring to the principles of the highest standards of service and equitable geographical distribution as articulated in Article 101, paragraph 3, of the Charter, requested ICSC to begin work on a comprehensive review of the conditions of service of staff in the Professional and higher categories, and to report to it with specific reference to remuneration and entitlements of staff.¹⁹⁴ The Commission, in its report to the Assembly at its forty-third session, initially identified four preliminary areas for study on a priority basis: the basis for determining the level of remuneration, i.e. definition and identification of the comparator; the remuneration system, including the post adjustment system; motivation and productivity; and mobility and hardship incentives.¹⁹⁵ In that context, the Commission outlined options,¹⁹⁶ such as the possibility of continuing the current system of comparison with the highest-paid national civil service with respect to the basis for remuneration, incorporation of remuneration in the private sector of the comparator country, and comparison with a basket of national civil services or comparison with other international or regional organizations.¹⁹⁷ ICSC expressed the hope, however, that the General Assembly would provide directives and guidelines, without which a larger number of options entailing considerable time and resources would be involved.¹⁹⁸ The Assembly, noting that ICSC review did not contain the analysis requested, called upon the Commission to pursue the comprehensive review, adjusting its programme of work if necessary, and to report to it at its forty-fourth session.¹⁹⁹ The Assembly presented a detailed outline of principles and guidelines applicable to the major areas of study presented by ICSC:

¹⁹¹ G A (42), Suppl. No. 30, paras. 102-104.

¹⁹² G A resolution 41/207.

¹⁹³ G A resolution 42/221, sect. I, para. 4. ICSC, in accordance with its earlier decisions, reported on the margin of total compensation between the United Nations and the comparator in its report G A (43), Suppl. No. 30, paras. 25-26.

¹⁹⁴ G A resolution 42/211, sect. III, para. 1. This request followed the identification in the deliberations of the Commission of a variety of questions affecting the concept of parity of purchasing power of staff, and the formulation of a working group to deal in particular with currency fluctuations and inflation effects. See G A (42), Suppl. No. 30, paras. 174, 178, and chap. VII.D.

¹⁹⁵ G A (43), Suppl. No. 30, para. 51.

¹⁹⁶ *Ibid.*, paras. 52-69.

¹⁹⁷ *Ibid.*, para. 56. The Commission did not assess the relative merits of the options. *Ibid.*, para. 57.

¹⁹⁸ *Ibid.*, para. 70.

¹⁹⁹ G A resolution 43/226, sect. I.

“*The General Assembly,*

“ ...

“4. *Further requests* the Commission in its review to be guided by the following:

“(a) The Commission should examine all elements of the present conditions of service, and after identifying problems related to staff recruitment, retention and mobility should propose solutions to these problems;

“(b) The proposed solutions should be accompanied by an indication of their financial implications, together with an estimate of the overall costs;

“(c) The overall costs should, as far as possible, be comparable to the costs of the current remuneration system;

“(1) *Comparator*

“(a) The Noblemaire principle should continue to serve as the basis of comparison between United Nations emoluments and those of the highest-paying civil service – currently the United States federal civil service – which, by its size and structure, lends itself to such comparison;

“(b) The Commission should review how best the application of the Noblemaire principle can ensure the competitiveness of United Nations remuneration without resorting to comparison with the private sector;

“(c) In this connection the Commission should undertake a comparative study of the concept of the margin including the way in which it is intended to compensate for expatriation;

“(2) *Remuneration system*

“(a) A single worldwide salary scale should be a fundamental goal of the remuneration system. Within this framework, a review should be made of how best special recruitment needs can be accommodated. The Commission should look into the present multiplicity of salary scales with a view to their correlation and possible amalgamation;

“(b) In the context of equalizing purchasing power, the Commission should consider among other alternatives:

“(i) The division of the pay package into its major component parts,

one of which would be housing, reflecting the spending patterns of staff;

“(ii) Major simplification of the post adjustment system, including eliminating negative post adjustment, separating out the housing component, streamlining the cost-of-living survey and computation process;

“(c) The Commission should also review the rationale and magnitude of all elements of remuneration;

“(3) *Motivation and productivity*

“Consideration should be given to enhancing productivity through the introduction of incentives for merit and rewards on promotion payable on a one-time basis, coupled with less financial reward for longevity, which should be linked to a more rigorous performance appraisal system. Consideration should also be given to the introduction of administrative arrangements and of other non-monetary awards for meritorious service. The Commission should review and report on the current practice of automatic advancement to the next step without rigorous performance appraisal as well as on existing and new possible non-monetary awards for meritorious performance;

“(4) *Mobility and hardship*

“The Commission should analyse how best adequate incentives can be provided for mobility and for service in hardship duty stations. It should take into account the particular needs of those organizations whose programmes require that staff be reassigned to and from headquarters and field locations. In reviewing the scope and purpose of all the current allowances payable in cases of mobility and hardship, the entitlements provided by the comparator for non-diplomatic expatriates may serve as a general point of reference. In this respect, the Commission should, bearing in mind the different types of contractual arrangements existing in the system, review whether incentives should be provided by way of lump sums on transfers in lieu of or as well as ongoing payments in the form of allowances to compensate for hardships.”

(a) *In active service*

(i) *Remuneration*

54. Pursuant to the request of the General Assembly,²⁰⁰ the Commission re-examined the question of the desirable margin between the net remuneration of United Nations staff at the base city, New York, and that of the comparator national civil service, the United States federal civil service. It submitted recommendations on a specific range for such a margin, recommending a range of 110-120 for the net remuneration margin with a desirable mid-point of 115.²⁰¹ This recommendation was approved by the Assembly at its fortieth session on the understanding that the margin would be maintained at a level around the desirable mid-point of 115 over a period of time.²⁰²

55. With the establishment of such a margin, attention was focused on its method of determination. During the period under review, the Fifth Committee also dealt with a number of concerns over the methodology of ICSC in calculating the margin, including the elements included in the calculation and the response proposed should the margin fall outside the range.²⁰³ An ACC statement to the Fifth Committee, recalling the criticism of some Fifth Committee delegations, stated the concerns of organizations of the United Nations system, recommending that the Assembly request ICSC to provide for an objective definition and practical application of the proposed range.²⁰⁴ Following that request,²⁰⁵ the Commission, in its report to the General Assembly at its forty-second session, recommended the maintenance of the methodology currently in use with some modification for the next three years.²⁰⁶ In approving the recommendation, the Assembly nevertheless expressed its concern over the lack of transparency and simplicity in the remuneration system and the growing number of ad hoc

²⁰⁰ G A resolution 39/27, para. 1 (a) and (b).

²⁰¹ G A (40), Suppl. No. 30, paras. 117-131, and annex I. In this context, the General Assembly had stated its view that the 24 per cent margin previously proposed by ICSC between the net remuneration of staff at the base city and the comparator was too high. The Assembly requested the Commission to bear in mind the 15 per cent margin existing in past years. Assembly resolution 39/27, para. 1 (a) and (b).

²⁰² G A resolution 40/244, sect. I, para. 2.

²⁰³ See, e.g., G A (40), 5th Comm., 45th-47th and 63rd mtgs. Some delegations felt, however, that the methodology was capable of perpetual refinement, and supported the application of the methodology proposed. See *ibid.*, 42nd mtg., paras. 47-49.

²⁰⁴ A/C.5/40/41. See also the views of staff representatives, G A (41), Suppl. No. 30, para. 56.

²⁰⁵ See G A resolution 40/244, sect. I, para. 3(a) and (b). See also resolution 41/207.

²⁰⁶ G A (42), Suppl. No. 30, para. 83. Modifications pertained to the establishment of grade equivalencies between United Nations staff at the base city and the comparator, including the use of bonuses and awards in establishing the margin and use of average salaries. *Ibid.*

measures, and called upon ICSC to continue to examine the methodology in the context of the comprehensive review.²⁰⁷

56. In the determination of the relevant comparator, the Commission decided to use the United States federal civil service in Washington, D.C., as opposed to the federal civil service in New York, as, proportionately, the United States civil service employed more staff at lower grade levels in New York, so that use of New York would create technical and administrative difficulties.²⁰⁸ Although that decision received general support,²⁰⁹ it also raised the question of the application of a cost-of-living differential between Washington, D.C., and New York. While the application of such a differential was supported by the organizations of the common system²¹⁰ as well as by staff representatives,²¹¹ a majority of the Commission considered that since no cost-of-living differential was applied by the comparator between New York and Washington, D.C., no differential should be applied between the United States federal civil service in Washington and United Nations staff in New York.²¹² The General Assembly, in its resolution 41/207, requested ICSC to review the issue of a cost-of-living differential, taking into account the views expressed in the Fifth Committee, in which a number of delegations had noted the departure from the previous practice of applying a cost-of-living differential.²¹³ The subsequent ICSC recommendation to maintain the current methodology for an interim period,²¹⁴ endorsed by the Assembly at its forty-second session,²¹⁵ resulted in the continued application of the cost-of-living differential.²¹⁶

57. A related issue during the period was the post adjustment system, by which the pay of United Nations staff was equalized under the principle of purchasing power parity. Consideration of the issue had been requested by the General Assembly²¹⁷ and the organizations also advocated undertaking a study of the matter.²¹⁸ For its part ICSC offered

²⁰⁷ G A resolution 42/221, sect. I, para. 2.

²⁰⁸ G A (41), Suppl. No. 30, para. 60.

²⁰⁹ *Ibid.*, para. 55.

²¹⁰ *Ibid.*

²¹¹ See A/C.5/41/13, paras. 10, 11, 29 and 30. See also A/C.5/41/36.

²¹² G A (41), Suppl. No. 30, paras. 62 and 69(b) and (c). A minority of ICSC members argued that in employing the Noblemaire principle, by which United Nations staff were paid based on the highest-paid national civil service, a cost-of-living differential had always been applied. *Ibid.*, paras. 63 and 64.

²¹³ See A/C.5/41/SR.23-26, 28 and 44.

²¹⁴ G A (42), Suppl. No. 30, para. 83. See also G A (40), Suppl. No. 30, annex I, and paras. 54 and 55 above.

²¹⁵ See G A resolution 42/221.

²¹⁶ As noted, some aspects of the methodology initially adopted had changed, but those changes specifically excluded removal of the cost-of-living differential. See G A (42), Suppl. No. 30, paras. 83 and 84. See also G A (41), Suppl. No. 41, para. 69.

²¹⁷ G A resolution 39/27.

²¹⁸ See G A (40), Suppl. No. 30, para. 102.

several recommendations on the operation of the post adjustment system in the light of the establishment of the margin range, including freezing post adjustment classes when the margin exceeded the upper end of the desirable range,²¹⁹ consideration of the effects of currency fluctuation and inflation on the system,²²⁰ as well as measures for operation of the system in New York, the base city.²²¹ Particular consideration was given to the possible elimination of the post adjustment at the New York base.²²² The Commission noted that the disadvantages of such an elimination far outweighed the advantages and recommended to the Assembly that the post adjustment at the base be maintained for the time being.²²³ The Commission further recommended that the post adjustment index for New York be updated with increases to be linked to changes in the United States federal civil service salary scale.²²⁴ The General Assembly decided that application of those measures should not result in increases in the post adjustment at less than four-month intervals.²²⁵

58. The impact of inflation and currency fluctuations, resulting in differences in the cost of living at the base and in the field, led to efforts to find long-term solutions for achieving parity of remuneration across the United Nations system. ICSC established a working group to formulate long-term solutions.²²⁶ The Commission noted that, owing to the regressivity built into the post adjustment system, exchange rate fluctuations in local currency vis-à-vis the United States dollar directly affected take-home pay. It therefore decided on the introduction, effective 1 September 1986, of a remuneration correction factor on an interim basis which would address variations in the system.²²⁷ Further elaboration of the procedure for applying the remuneration correction factor was undertaken the following year, when a 20 per cent change in the value of the United States dollar occurred.²²⁸ In a report to the Fifth Committee, the Secretary-General stated his intention to introduce the remuneration correction factor in Geneva and Vienna at a later date than that specified by the ICSC because of the

²¹⁹ *Ibid.*, paras. 122 and 131. Agreement could not be reached on exact measures should the margin fall below the lower end of the range. *Ibid.*, para. 123.

²²⁰ *Ibid.*, paras. 132-140.

²²¹ *Ibid.*, paras. 120-122.

²²² G A resolution 40/244, sect. I, para. 4. The General Assembly requested ICSC to report no later than its forty-second session. *Ibid.* The Advisory Committee on Post Adjustment Questions (ACPAQ) presented a detailed study on the matter to ICSC. See G A (41), Suppl. No. 30, para. 128. See further G A (42), Suppl. No. 30, paras. 177-178.

²²³ G A (42), Suppl. No. 30, paras. 177-178.

²²⁴ G A (43), Suppl. No. 30, paras. 17-24.

²²⁵ G A resolution 43/226, sect. III.A, paras. 1 and 2.

²²⁶ G A (42), Suppl. No. 30, para. 174.

²²⁷ G A (41), Suppl. No. 30, paras. 125 and 126. The measure had already been undertaken by two organizations of the common system.

²²⁸ See G A (42), Suppl. No. 30, paras. 170-173.

financial crisis in the United Nations.²²⁹ In its Judgement No. 421,²³⁰ UNAT overturned the decision of the Secretary-General. While granting that automatic post adjustment movement was not a rule or binding principle, the Tribunal nevertheless found that the post adjustment freeze was not operative until ICSC ratification, and ordered rescission of the freeze for the four months prior to the ICSC decision to ratify the freeze.²³¹

59. During the period, specific attention was given to the active service entitlements of particular categories of staff. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended that changes in the net remuneration rather than gross salary of the Secretary-General be linked with the retirement allowance.²³² The recommendation was endorsed by the General Assembly in its resolution 41/209.

(ii) Allowances and benefits

60. The question of allowances and benefits was consistently raised by various bodies in the context of evaluating staff entitlements.²³³ The General Assembly, at its forty-first session, had called for a review of the internal control of allowances and benefits.²³⁴ In subsequently calling for a comprehensive review of the conditions of service, the Assembly requested that specific consideration be given to incentives for merit and rewards on promotion, as well as the development of administrative arrangements and non-monetary awards for service.²³⁵

61. Particular attention was also given to allowances and benefits for staff at difficult duty stations. In its resolution 43/226, the General Assembly called for specific consideration to be given allowances for mobility and hardship, reflecting concern over conditions of service in the field. Measures undertaken in that regard included enhanced education grants for staff with children in areas with non-existent or inadequate educational facilities;²³⁶ assignment allowances,²³⁷ as well as ad hoc measures for particular duty stations.²³⁸

²²⁹ A/C.5/41/22, para. 13.

²³⁰ AT/DEC/421.

²³¹ By a recorded vote, the Assembly at its forty-first session approved the charging of additional expenditures resulting from the judgement against the overall balance for the biennium. See G A resolution 41/209, sect. VIII. The Secretary-General indicated that he would delay payment of the amount – estimated at some US\$ 2 million in light of the financial situation. A/C.5/41/35.

²³² A/41/7/Add.11.

²³³ See G A (41), Suppl. No. 49. See also G A (41) Suppl. No. 30, paras. 55-57.

²³⁴ G A resolution 41/176. See also A/42/437.

²³⁵ G A resolution 43/226, sect. I, para. 4.

²³⁶ G A resolutions 42/221, sect. IV, para. 1, and 43/226, sect. III.B. See also G A (41), Suppl. No. 30, para. 153.

²³⁷ G A (42), Suppl. No. 30, paras. 210-211. See also G A resolution 42/221, sect. III, para. 4.

²³⁸ See, e.g., G A (40) Suppl. No. 30, para. 200; G A (42), Suppl. No. 30, paras. 221-224. The Assembly expressed its concern over ad hoc measures in its resolution 42/221.

62. Non-financial incentives and benefits, which also formed part of the guidelines identified by the General Assembly for review, were also considered. Such non-financial measures had been advocated by staff representatives.²³⁹ Specific measures included amending the staff rules governing maternity leave to allow for greater flexibility in the light of the emphasis on improving the situation of women in the Secretariat.²⁴⁰

(b) After service

(i) Pensions

63. Concern over the mounting cost of the pension system immediately prior to the period under review prompted extensive consideration of the level of benefits for Professional and higher categories of staff during the period under review.²⁴¹ Following its approval of a new scale for pensionable remuneration at its thirty-ninth session, the General Assembly had requested ICSC and the Pension Board to cooperate in reviewing the methodology for the determination of pensionable remuneration.²⁴² In suspending operation of the automatic interim adjustment procedure, the Assembly had also called upon ICSC and the Pension Board to cooperate in re-examining its operation.²⁴³

64. Consideration of the changes to pension benefits highlighted differing views on the level and determination of pensionable entitlements. While the General Assembly expressed concern over the level of pension benefits, the Chairman of the Pension Board stated that the levels of pension benefits had not been and were not excessive, asserting that after-service pension was the most important factor in determining the ability of the United Nations to recruit and retain staff of the calibre and geographical distribution called for by Article 101.²⁴⁴ Specific differences emerged during the consideration of the methodology for determining pensionable remuneration as called for by the Assembly. In its report to the Assembly at its forty-first session,²⁴⁵ ICSC presented recommendations on methodology for pensionable remuneration linked to net remuneration and staff assessment.²⁴⁶ While welcoming the gen-

²³⁹ See A/C.5/40/59.

²⁴⁰ A/C.5/42/24, annex IV; A/C.5/42/3, annex I; ST/SGB/Staff Rules/1/Rev.6/Amend.3. See also G A decision 42/456.

²⁴¹ See G A resolution 38/233. See also observations of the Pension Board, G A (41), Suppl. No. 9, para. 68.

²⁴² G A resolution 39/246, sect. II, para. 6. The changes were implemented by amendment to Appendix A of the Staff Rules. See ST/SGB/Staff Rules/1/Rev.6/Appendix A/Amend.1. See also A/C.5/40/5, para. 12.

²⁴³ G A resolution 39/246, sect. II, para. 5.

²⁴⁴ G A (41), Suppl. No. 30, para. 18.

²⁴⁵ In its report to the fortieth session, ICSC had observed that because of anticipated changes in the comparator United States civil service pension scheme possibly necessitating full review, it would await release of the United States scheme to review the methodology. G A (40), Suppl. No. 30, para. 23.

²⁴⁶ G A (41), Suppl. No. 30, para. 31. ICSC drew to the attention of the Assembly that the methodology based on this linkage would imply Assembly control over the two most important elements.

eral approach of linkage to net remuneration, the Pension Board stated that it could not associate itself with the ICSC recommendations.²⁴⁷ It identified in that context what it considered to be a number of shortcomings related to: the definition of the margin range of pensionable remuneration with the comparator; the exclusion of price differentials between New York and Washington, D.C.; the use of less than the total percentage of net remuneration; and the failure to reflect the special characteristics of the international civil service.²⁴⁸ For its part, the ACABQ observed that the difference of views created a situation not intended by the Assembly when it had asked the two bodies to cooperate.²⁴⁹ A new scale of pensionable remuneration was approved by the General Assembly at its forty-first session with effect from 1 April 1987,²⁵⁰ but the situation resulted in a call by the Assembly for further review of the methodology on the part of ICSC, with the “full cooperation” of the Pension Board.²⁵¹ The Assembly approved a further revision in 1988, following its approval of amendments to the Staff Regulations regarding staff assessment rates.²⁵²

65. Regarding the automatic interim adjustment procedure, which remained suspended into the period under review,²⁵³ ICSC and the Pension Board concurred that with effect from 1 April 1987, the scale of pensionable remuneration for Professional and higher categories of staff should be adjusted on the same date as the adjustment of net remuneration of officials of the same category in New York based on a specific ratio.²⁵⁴ The General Assembly

²⁴⁷ Ibid., Suppl. No. 9, paras. 36 and 39.

²⁴⁸ With reference to the last issue, the Pension Board noted such special characteristics as shorter periods of contributory service and fewer opportunities for promotion. Ibid., para. 31. See also G A (41), Suppl. No. 30, para. 15.

²⁴⁹ A/41/795, para. 16.

²⁵⁰ G A resolution 41/208, sect. I, para. 16. See also Secretary-General on amendments to the Staff Rules, A/C.5/42/3, para. 6, and ST/SGB/Staff Rules/1/Rev.6/Amend.3, appendix A.

²⁵¹ This call reflected the Pension Board recommendation. See G A (41), Suppl. No. 9, para. 41. Commenting on the apparent compromise, the president of FICSA pointed out that the absence of cooperation between ICSC and the Pension Board had resulted in a scale based on no methodology, and omitting several important factors such as compensation for service-related injuries or death. As a consequence, FICSA itself underscored the need for longer preparation of a sound methodology. A/C.5/41/13, para. 21, and G A (42), Suppl. No. 30, para. 11.

²⁵² See G A resolution 42/221, sect. II, and annex. See also A/C.5/43/6, para. 8, and ST/SGB/Staff Rules/1/Rev.6/Amend.4, appendix A.

²⁵³ G A resolution 40/245, sect. I, para. 3. See also G A resolution 39/246, sect. II, para. 5.

²⁵⁴ G A (41), Suppl. No. 30, para. 32. Since active service remuneration was adjusted on a net basis and pensionable remuneration was determined on a gross basis, the Commission determined that the adjustment ratio should reflect a 4.1 per cent adjustment in net remuneration for every 5 per cent change in pensionable remuneration. Ibid., para. 40. See also *ibid.*, Suppl. No. 9, para. 47 and annex IX.

approved the proposal, without retroactive effect, with effect from 1 April 1987.²⁵⁵

66. Efforts to change the pension system in that regard also highlighted legal issues concerning pensionable entitlements of staff. Confronting several cases concerning changes to pension benefits arising from the current financial crisis, UNAT, in its Judgement No. 405, stated that “economy measures, no matter how necessary they may be in the current situation, must not be allowed to lead, cumulatively, to the deterioration of the international civil service.”²⁵⁶ The Tribunal was further prompted to underscore the legal basis for the pension benefits of staff in the context of Article 101, stating:

“[The Pension Fund] is under the obligation to maintain an effective and just retirement pension system. This system, being of a statutory nature, may, of course, be altered from time to time, without retroactive effect. But these modifications must not be arbitrary. They must be in conformity with the object of the pension system. They must promote implementation of the principles laid down in the Charter of the United Nations (Article 101, para. 3).”²⁵⁷

67. Of particular concern here was the preservation of acquired rights, and there remained some question as to what constituted an acquired right in this context. Delegations in the Fifth Committee called for more careful consideration and definition of “acquired rights”.²⁵⁸ The question was particularly relevant in the context of the consideration of transitional measures for those negatively affected by implementation of the new scale of pensionable remuneration introduced in 1985. In approving the new scale for pensionable remuneration at its thirty-ninth session, the General Assembly had not approved the transitional measures proposed by ICSC to protect staff whose pensions were negatively affected by implementation of the new scale,²⁵⁹ calling instead for recommendations on compensatory

²⁵⁵ G A resolution 41/208, sect. I, paras. 2 and 4.

²⁵⁶ See AT/DEC/405. See also G A (43), Suppl. No. 9, para. 49.

²⁵⁷ See AT/DEC/404.

²⁵⁸ See G A (40), 5th Comm., 45th mtg., para. 28, and *ibid.*, 46th mtg., para. 18.

²⁵⁹ The ICSC recommendation was:

“[staff members] in service prior to 1 January 1985 whose pensionable remuneration on 31 December 1984 is higher than the amount applicable as of 1 January 1985 would retain their pensionable remuneration as at 31 December 1984 until such time as it is overtaken by the new scale described below. For staff members receiving promotions or step increases after 1 January 1985, the pensionable remuneration amount determined in accordance with the new scale should be compared with the amount applicable as of 31 December 1984, and the higher of these two amounts should be used.” G A (39), Suppl. No. 30, para. 47. The Pension Board concurred in this recommendation. Ibid., Suppl. No. 9, para. 73.

measures, taking legal aspects into account.²⁶⁰ The Pension Board ultimately recommended, and the Assembly approved,²⁶¹ compensatory measures based on final average remuneration.²⁶² In that connection, the Pension Board observed that the judgements of UNAT, ILOAT and the Administrative Tribunal of the International Bank for Reconstruction and Development did not provide a detailed and consistent definition of what constituted “acquired rights”, but noted that it was the practice of the comparator civil service, when introducing major changes in the condition of employment, to apply the new conditions to newly recruited staff, while employees already in service were given the option of retaining the earlier conditions.²⁶³ Addressing the overall question of inequality of benefits between those separated or separating currently, and those separating later, pursuant to the request of the General Assembly,²⁶⁴ the Pension Board concluded that the inequality was the unavoidable result of the conscious decision of the Assembly to change the system for calculating benefits while protecting acquired rights.²⁶⁵ The Pension Board decided neither to take nor to recommend to the Assembly the taking of any measures, noting that examples of such inequalities existed in the comparator civil service as well.²⁶⁶

68. In the context of the consideration of the lump-sum commutation of pension benefits, the General Assembly continued to request the Pension Board to consider the application of a uniform discount rate to the calculation of lump-sum commutation of benefits, which would apply to all periods of service, as opposed to the current practice of applying a composite rate by which each change in the discount rate was applied only prospectively.²⁶⁷ However, in its report to the Assembly at its forty-first session, the Pension Board maintained that changes in the discount rate should continue to apply prospectively and in a composite form, citing legal as well as administrative considerations.²⁶⁸ Before a working group of the Fifth Committee,

²⁶⁰ G A resolution 39/246, sect. II, para. 3.

²⁶¹ G A resolution 40/245, sect. II, para. 2.

²⁶² The Pension Board in fact recommended the compensatory measures based on pensionable remuneration itself originally proposed by ICSC as optimal. See G A (40) Suppl. No. 9, para. 62, and G A (39) Suppl. No. 9, para. 73. The protection of final average remuneration was presented as an alternative with which eight Pension Board members did not concur. *Ibid.*, paras. 74 and 75.

²⁶³ G A (40), Suppl. No. 9, para. 67.

²⁶⁴ G A resolution 40/245, sect. II, para. 4. This also reflected the continuing concern prompting transitional measures.

²⁶⁵ G A (41), Suppl. No. 9, para. 78. For its part, the General Assembly took note of the Pension Board decision and requested it to keep the situation under review. G A resolution 41/208, sect. II, para. 3.

²⁶⁶ *Ibid.*, paras. 78 and 79. This decision concerned those receiving United States dollar benefits.

²⁶⁷ G A resolution 40/245, sect. II, para. 3, and 39/246, sect. I, para. 5. See also G A (40), Suppl. No. 9, paras. 36-38.

²⁶⁸ G A (41), Suppl. No. 9, para. 67. See also G A (40), Suppl. No. 9, para. 43.

the Legal Counsel had similarly observed that the application of a uniform rate raised questions of acquired rights and of the violation against retroactive changes in employment conditions, pointing out that until recently the diminution of a sum of money calculated on the basis of service already accomplished had been prohibited as the sum was regarded as an acquired right. Consequently, the Legal Counsel also concluded that discount rates could only apply prospectively.²⁶⁹ However, ACABQ in its observations reiterated its view that acquired rights were not necessarily implicated in questions related to calculation of the discount rate.²⁷⁰ During the debates in the Fifth Committee, some delegations supported the ACABQ view,²⁷¹ while others believed that the Pension Board argument for a composite rate had been substantiated.²⁷² The General Assembly continued to approve changes in the lump-sum commutation “without retroactive effect”.²⁷³ Subsequent approval of measures such as the protection of benefits from inequalities caused by currency fluctuations were made with the proviso that such measures would not constitute an acquired right.²⁷⁴

69. Legal questions also arose in the context of the consideration of a ceiling on the pension levels of senior officials.²⁷⁵ In that connection, the General Assembly at its thirty-ninth session had requested the Pension Board to consider the amount and the level paid to senior officials in terms of benefits.²⁷⁶ While reiterating its view that imposing a ceiling on the level of pension benefits of officials at the Under-Secretary-General, Assistant Secretary-General and D-2 levels was not desirable,²⁷⁷ the Pension Board noted the repeated requests and the strongly held views in the Assembly in favour of such a ceiling, and proposed as an alternative that a maximum accumulation of 60 per cent of the

²⁶⁹ *United Nations Juridical Yearbook, 1985*, p. 138. See also G A (41), Suppl. No. 9, paras. 60 and 65.

²⁷⁰ A/40/848, para. 7. See also A/30/608, para. 10.

²⁷¹ See, e.g., G A (40), 5th Comm., 37th mtg., para. 42, and *ibid.*, 45th mtg., para. 23.

²⁷² See *ibid.*, 45th mtg., para. 32, and *ibid.*, 48th mtg., para. 55.

²⁷³ G A resolution 41/208, sect. II, para. 2.

²⁷⁴ G A resolution 42/222, sect. II, para. 2. In that regard, continuing consideration as given to a cap by which a devaluation of the United States dollar would not increase benefits payable to retirees beyond 20 per cent. See G A resolutions 40/245, sect. II, para. 6, and 41/208, sect. II, para. 4. See also G A (40), Suppl. No. 9, para. 61, and G A (41), Suppl. No. 9, para. 89.

²⁷⁵ See G A (40), Suppl. No. 9, para. 49.

²⁷⁶ G A resolution 39/246, sect. I, para. 7. The Pension Board observed that a further limitation on lump-sum commutations over an above the one third limit would be actuarially disadvantageous. G A (40), Suppl. No. 9, para. 53.

²⁷⁷ G A (40), Suppl. No. 9, para. 50. See also G A (39), Suppl. No. 9, paras. 34-37. In that regard, the Pension Board had pointed out that the introduction of lower levels of pensionable remuneration for senior officials in the 1985 scale would reduce their pension benefits and that capping the level of those benefits below the amounts resulting from application of the Fund regulations would be arbitrary.

final average remuneration be instituted, and that a new paragraph inserted into article 28 of the Regulations of the Fund.²⁷⁸ The Pension Board observed that both the legal concerns and those regarding the undesirability of linking benefit entitlements to lower-level officials could be met if the ceiling was expressed in terms of a maximum accumulation lower than that stipulated in the Regulations of the Fund and was applicable only to those not already serving at the higher-level posts.²⁷⁹ The General Assembly approved the alternative recommendation of the Pension Board, and amended the Regulations of the Fund with the new article 28(d) applicable as of 1 April 1986.²⁸⁰ In a proposal submitted to the Assembly at its forty-first session, ICSC recommended that an equal level of pensionable remuneration be established for the Assistant Secretary-General and Under-Secretary-General levels.²⁸¹ The Pension Board, however, considered the recommendation to be in conflict with the principle of income replacement underlying the new methodology for determining pensionable remuneration, and concluded that pensionable remuneration for the Under-Secretary-General should continue to be higher than that of the Assistant Secretary-General.²⁸² In its resolution 41/208, the General Assembly specifically recognized a higher pensionable remuneration for Under-Secretary-Generals over Assistant Secretary-Generals as an element of the structure of pensionable remuneration.

70. Other matters under consideration during the period under review included the question of inequalities in benefits resulting from currency fluctuations between the United States dollar and benefits payable in local currency. The Pension Board recalled its earlier recommendation, approved by the General Assembly, to use an average rate rather than a spot rate of exchange, but noted that that did not protect against the problem of a protracted period of a rise or fall of the dollar.²⁸³ Reviewing the situation before the forty-second session of the Assembly, the Pension Board further recommended the use of a “floor” to protect

²⁷⁸ G A (40), Suppl. No. 9, para. 51. The Pension Board observed that the views favouring a ceiling might exist for reasons outside the competence of a technical body such as the Pension Board. *Ibid.*

²⁷⁹ *Ibid.* The Pension Board proposal was that:

“Notwithstanding the provisions of (b) and (c) above, and except for a participant at the level of Assistant Secretary-General, Under-Secretary-General or their equivalent prior to 1 January 1986, the benefit payable at the standard annual rate to a participant at any one of those levels shall not exceed 60 per cent of the final average remuneration at the date of separation for the level in accordance with article 1(h)(i) or (ii).”

Eight members of the Pension Board disagreed with the alternative recommendation. *Ibid.*, para. 52.

²⁸⁰ G A resolution 40/245, sect. II, para. 7, and annex.

²⁸¹ G A (41), Suppl. No. 30, para. 36.

²⁸² *Ibid.*, Suppl. No. 9, paras. 43 and 44. Indeed, the Pension Board had welcomed the ICSC recommendation of linking pensions to net remuneration, and its endorsement of the principle of income replacement.

²⁸³ *Ibid.*, para. 80.

against the erosion of local currency benefits.²⁸⁴ The recommendation was approved by the Assembly in its resolution 42/222. Moreover, the Assembly sought to limit the amount of lump sum commutation in addition to altering the method of calculation.²⁸⁵ Under the Regulations of the Fund, a retiree might normally commute not more than one third of the benefit. To address the concerns expressed in the Fifth Committee, the Pension Board recommended a further limitation on the amount, and the consequent amendment of the Regulations of the Pension Fund.²⁸⁶ The Assembly endorsed the Pension Board recommendation of a further limitation on the lump-sum commutation without retroactive effect.²⁸⁷

71. By an amendment to the Staff Rules, staff on short-term appointment who met the requirements of the Regulations of the Pension Fund were allowed to participate in the Fund, provided that participation was not excluded by their terms of appointment.²⁸⁸

(ii) *Other after service entitlements*

72. Pursuant to a request of the General Assembly,²⁸⁹ the ICSC undertook a comprehensive review of after-service health-care coverage with particular attention to locally recruited staff, identifying in particular two issues: uniformity of after-service health insurance eligibility criteria and the availability of coverage for participants in in-service schemes.²⁹⁰ As regards the former issue, the Commission noted that the criteria varied between organizations of the system.²⁹¹ Commenting on the situation, staff representatives emphasized the need to harmonize eligibility criteria.²⁹² ICSC similarly endorsed the principle that eligibility criteria for after-service health insurance should be established to ensure that staff with identical qualifications were determined eligible under different schemes of organizations of the United Nations system.²⁹³

²⁸⁴ G A (42), Suppl. No. 9, paras. 62, 69, and annex XI. See also G A (43), Suppl. No. 9, paras. 72-73.

²⁸⁵ G A resolution 40/245, sect. II, para. 3. See also G A resolution 39/246. Several delegations in the Fifth Committee had expressed concern over the potential level of lump-sum payouts. See G A (40), 37th mtg., paras. 37-38.

²⁸⁶ The Pension Board recommended amendment of article 28(g) of the Fund to limit the amount that may be commuted to be equivalent to the amount payable to a participant retiring on the same date at age 60 after 35 years of service and a final average remuneration equal to a P-5, step X. G A (41), Suppl. No. 9, para. 69.

²⁸⁷ G A resolution 41/208, sect. II, para. 2.

²⁸⁸ See A/C.5/42/3, annex II. See also ST/SGB/Staff Rules/1/Rev.6/Amend.3.

²⁸⁹ G A resolution 38/232.

²⁹⁰ G A (40), Suppl. No. 30, paras. 154-164.

²⁹¹ *Ibid.*, para. 157.

²⁹² *Ibid.*, paras. 159 and 160. FICSA stated that full uniformity was not necessary, but harmonization was important to facilitate staff mobility.

²⁹³ *Ibid.*, para. 163. This followed the recommendation of the Chairman of CCAQ. *Ibid.*, para. 158.

73. As regards the issue of availability, ICSC noted that all organizations provided after-service health insurance coverage to separating staff, with the exception of staff covered under Appendix E of the Staff Rules, i.e., locally recruited United Nations staff at field duty stations.²⁹⁴ The Commission recommended that after-service health insurance should also be provided to locally recruited staff covered under the provision, with a consequent reformulation of Appendix E to permit a contributory after-service benefit structure comparable to other schemes of the common system.²⁹⁵ The recommendation was approved by the General Assembly at its fortieth session on the understanding that the Secretary-General would report on the financial implications of reformulating the scheme to make it comparable to other health insurance schemes.²⁹⁶ Addressing the matter, ACABQ pointed out that such a reformulation involved not only an extension of coverage to former staff members, but also revising the benefit structure to make it contributory on the part of staff.²⁹⁷ The revised plan presented by the Secretary-General would replace the scheme under the same terms of eligibility – and Appendix E of the Staff Rules – at all duty stations where it was applicable, but would include after-service coverage to former staff members (and their eligible family members) upon retirement at age 55 or above provided they had been enrolled in the new scheme prior to separation from service and provided that they had participated for at least five years in the new scheme or its predecessor.²⁹⁸ Among the changes under the new plan was removal of the annual maximum reimbursement (except for dental and psychiatric outpatient service) and an increase in the percentage of reimbursement, with 75 per cent of the financing of the premiums by the Organization and 25 per cent by the participants.²⁹⁹ The General Assembly, in its resolution 41/209, approved the proposed arrangement.³⁰⁰ The measure was implemented by an amendment to the Staff Rules, with staff covered under the former plan

²⁹⁴ *Ibid.*, para. 156. Staff under this provision are locally recruited staff in the General Service and related categories appointed for three months or more. Such staff, their spouse and unmarried children under 25 are de facto participants in the Medical Expense Assistance Plan (MEAP), a non-contributory plan entirely financed by the Organization which does not contain a provision for after-service coverage. See A/C.5/41/7, para. 2.

²⁹⁵ G A (40), Suppl. No. 30, para. 162.

²⁹⁶ G A resolution 40/258 A, para. 8.

²⁹⁷ See A/41/7/Add.5.

²⁹⁸ A/C.5/41/17, paras. 10 and 11. A subsidy from the Organization would only be available to those with at least 10 years' participation in the plans. *Ibid.* Coverage also included those in receipt of a periodic disability from the Pension Fund.

²⁹⁹ *Ibid.*, paras. 16-20.

³⁰⁰ The Advisory Committee indicated its understanding that as the proportion of retirees covered by the plan increased, it might be necessary to increase premiums. Representatives of the Secretary-General confirmed that the matter would be kept under review, and that any increase would be shared equally between the Organization and the participants. See A/41/7/Add.5.

to be covered under the new contributory plan effective 1 September 1987.³⁰¹

74. In a memorandum to the Under-Secretary-General for Special Political Affairs, the Office of the Legal Counsel considered the practice of ex gratia payments by the United Nations for former members of the United Nations Emergency Force.³⁰² The case in question involved a former member of the United Nations Emergency Force in the Sinai Desert. Observing that the Office of the Under-Secretary-General for Administration and Management must decide initially on the appropriateness of an ex gratia payment, the Legal Counsel cited the fact that the Financial Regulations and Rules of the United Nations stipulated that an ex gratia award required an initial determination by the Office of the Legal Counsel that no legal liability existed on the part of the Organization. Regarding such compensation, the United Nations would compensate troop-contributors to a United Nations peacekeeping force for death or disability awards made to beneficiaries as prescribed under national legislation. In that connection, the Legal Counsel cited the principle that compensation payments for service-incurred death or disability must be made in the first instance by the troop-contributing State, a principle explicitly embodied in the precedent of various regulations governing United Nations emergency and peacekeeping forces.³⁰³

D. Disciplinary measures

1. JOINT DISCIPLINARY COMMITTEE

75. The Joint Disciplinary Committee (JDC) in its considerations during the period under review focused on reforming and streamlining its procedures. ACABQ, in its report to the General Assembly at its fortieth session, identified the urgent need for such action in terms of simplifying the administrative procedures that led to appeals by staff. To that end, it recommended that the Secretary-General analyse and report on remedies, focusing on simplifying rules and procedures to facilitate the staff's understanding of their rights and obligations.³⁰⁴ In that regard, consideration was given to measures to enhance the role and authority of JDC, primarily in the context of reforms in the administration of justice within the United Nations, as discussed below.³⁰⁵ A special session of the Staff-Management Coordination Committee met to consult on a thorough revision of the redress and disciplinary systems,³⁰⁶ and a study was undertaken to develop a system of rules, procedures and

³⁰¹ A/C.5/42/3, para. 5, and ST/SGB/Staff Rules/1/Rev.6/Amend.3.

³⁰² *United Nations Juridical Yearbook*, 1987, p. 200.

³⁰³ See ST/SGB/UNEF/1, article 40. See also ST/SGB/UNFICYP/1, article 39.

³⁰⁴ G A (40), Suppl. No. 7, paras. 67-73. See also G A resolution 40/252 approving the ACABQ recommendation.

³⁰⁵ See, e.g., A/C.5/41/14, A/C.5/42/28, A/C.5/42/37 and A/C.5/43/25.

³⁰⁶ A/C.5/42/28, para. 9.

sanctions with provisions for appeals directly from JDC to UNAT rather than to the Joint Appeals Board.³⁰⁷ A fully revised disciplinary process together with proposed changes in the Staff Rules was planned for promulgation by early 1989.³⁰⁸

76. Reporting on amendments to the Staff Rules, the Secretary-General outlined changes that included updating and clarifying the composition of JDC, including the constitution of different committees, and of committee panels at different United Nations offices.³⁰⁹ The Secretary-General further outlined a number of administrative measures to strengthen the participation and authority of JDC, including the assumption by the Under-Secretary-General for Administration and Management of direct responsibility for the administration and functioning of JDCs and their secretariats.³¹⁰ For its part, the General Assembly welcomed the improvement in the internal justice system, and called upon the Secretary-General to implement the improved disciplinary rules and procedures.³¹¹

77. UNAT in its Judgement No. 377 upheld the discretion of the Secretary-General to accept, in whole or in part, the recommendations of JDC.³¹² Similarly, in Judgement No. 424,³¹³ UNAT considered a case involving the summary dismissal of the Applicant. The Tribunal rejected the contention that in cases involving summary dismissal for serious misconduct, the Secretary-General must refer the matter to JDC as a matter of due process; and that the Secretary-General was bound by its recommendations. Citing staff regulation 10.2 and staff rule 110.3(a) and past precedent, the Tribunal stated that there were no such requirements: the Secretary-General had discretion in following the recommendations of JDC if he had reasonable grounds for doing so, and JDC was not under an obligation to review a summary dismissal.

2. REQUIREMENTS FOR DISCIPLINARY ACTION

78. In Judgement No. 386 of UNAT, the Applicant appealed against a decision to terminate his permanent appointment under staff regulation 9.1(a) for having failed to maintain the standards of efficiency, competence and integ-

³⁰⁷ *Ibid.*, para. 11. See also A/42/286, para. 90, and A/C.5/43/25, para. 14.

³⁰⁸ A/C.5/42/28, para. 11.

³⁰⁹ A/C.5/41/2, para. 7, and annex. Staff representatives were convinced that no additional joint disciplinary committees should be constituted, since referral to boards at smaller duty stations would be a step backwards in the cause of due process. A/C.5/41/39, para. 6.

³¹⁰ A/C.5/43/25, para. 13. Additionally, under JDC a presiding officer at the Assistant-Secretary-General level was appointed for the first time, and all cases previously referred to JDC were placed before duly constituted panels.

³¹¹ G A resolution 43/224 B.

³¹² See AT/DEC/377. See also AT/DEC/210, cited therein.

³¹³ AT/DEC/424.

ity established in the Charter.³¹⁴ His performance reports and his acceptance of outside employment without prior clearance were adduced as factors in the disciplinary action. Among the Applicant's contentions was that the charges against him should have been the subject of disciplinary proceedings, and that the Secretary-General should not have avoided taking disciplinary proceedings by resorting to termination under the Staff Regulations. The Tribunal, however, cited its prior jurisprudence, noting that:

"Although the Administration may not substitute one ground for another as a basis for administrative action, where there are several grounds available to it, it is not obligatory on its part to rely on all such grounds; it may rely on one or more of them. In the present case, the Administration could have relied on either of two grounds, namely, unsatisfactory services due to irregularity of attendance or unauthorized outside employment. The Tribunal is therefore unable to infer from the Respondent's reliance on unsatisfactory services instead of on unauthorized outside employment as a ground for termination that the action taken was vitiated by extraneous motives."³¹⁵

In the absence of proof of such a motive, the Tribunal would not substitute disciplinary grounds for the administrative one that had been applied.

E. Recourse available to staff members

1. IN GENERAL

(a) Organizational measures

79. At the outset of the review period, ACABQ highlighted problems in the administration of justice within the United Nations,³¹⁶ problems subsequently underscored in evaluations undertaken by other independent bodies.³¹⁷ For its part, the General Assembly repeatedly called for consideration of the problems, requesting that the Secretary-General report on proposals for reform.³¹⁸

80. Regarding adjudication of appeals, concern was raised over the procedure and the process of examination, as discussed below.³¹⁹ For its part, UNAT itself drew attention to problems in the procedure of staff appeals leading to cases before it when it expressed concern at the increasing volume of litigation requiring longer sessions.³²⁰ Continuing

³¹⁴ AT/DEC/386.

³¹⁵ See AT/DEC/157.

³¹⁶ G A (40), Suppl. No. 7, paras. 67-76.

³¹⁷ See G A (41), Suppl. No. 49, recommendation 60. See also A/41/640.

³¹⁸ G A resolutions 40/252, 40/258 A, 41/213, 42/220 and 43/224 B.

³¹⁹ See discussion below, especially in relation to Judgement No. 370 of UNAT (para. 91). See also A/40/653 and Add.1.

³²⁰ See G A (40), Suppl. No. 7, para. 68 and discussion below. See also A/INF/42/7.

consideration was given to differences between UNAT and ILOAT³²¹ with regard to structure and practices. In that context, the General Assembly had called for review and consultation on the feasibility of establishing a single administrative tribunal.³²²

81. It was, however, with respect to the administrative process prior to formal adjudication that specific problems were cited. Of particular concern were the extensive delays in the process and the review of appeals by staff to various bodies, notably the Joint Appeals Board (JAB).³²³ While the backlog of cases before JAB was singled out as one issue, a proliferation of procedures and differing grievance mechanisms was identified as another.³²⁴ In highlighting the various problems, ACABQ recommended to the Secretary-General that he analyse the problem and report on steps to be taken to remedy the situation, outlining as areas needing attention:

“(a) Simplifying rules and procedures so that the staff can more easily inform itself of its rights and obligations. In this way, misunderstandings and appeals as a result of confusion over the proper interpretation of complex texts can be minimized;

“(b) Identifying those aspects of staff administration which give rise to an inordinate number of appeals, with a view to reform in those areas;

“(c) Streamlining the appeals procedures so as to provide for (i) quick settlement of minor disputes prior to the appeals stage, (ii) a mechanism to reject applications of review that are frivolous, and (iii) a more efficient handling of cases that reach the Joint Appeals Board and the Administrative Tribunal.”³²⁵

The recommendations of ACABQ were endorsed by the General Assembly in its resolution 40/252. Similarly, the Group of 18 in its report had cited the need to simplify and render more efficient and less costly the system of administration of justice, calling for immediate implementation of the ACABQ recommendations.³²⁶

82. Some difference of views emerged with regard to the degree of reform needed. Certain bodies, such as JIU, proposed more far-reaching and significant changes to the process of appeals by staff.³²⁷ The need for more far-reaching

³²¹ See A/40/471.

³²² G A resolution 42/217 and decisions 40/465, 41/447 and 43/452. The issue is further discussed below.

³²³ G A (40), Suppl. No. 7, para. 69. See also A/C.5/40/59, sect. IV.

³²⁴ G A (40), Suppl. No. 7, para. 69. See also A/C.5/41/39 and A/C.5/42/28.

³²⁵ G A (40), Suppl. No. 7, para. 72.

³²⁶ G A (41), Suppl. No. 41, recommendation 60. The recommendations of the Group of 18 were generally endorsed by the Assembly in its resolution 41/213, sect. I.

³²⁷ See A/41/640.

reform was also recognized by staff bodies.³²⁸ JIU in a report highlighted the informal system of mediation and conciliation together with the judicial functioning of UNAT as the main merits of the current appeals system.³²⁹ It proposed a formalized conciliation mechanism through the establishment of an Ombudsman, already the subject of consideration,³³⁰ coupled with a two-stage judicial process in which a judicial court of claims would replace JAB followed by appeal to UNAT.³³¹ A similar recommendation was made in a Separate Opinion to the advisory opinion of the International Court of Justice rendered in the case concerning the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*.³³² It was the opinion of the Secretary-General, however, that, while some JIU proposals such as the Ombudsman were worth pursuing, the existing recourse system should remain in place.³³³ In that connection, the Secretary-General stated the Administration's position that adjudication must be regarded as a last resort, and that the emphasis must be shifted back from its current focus on litigation to the search for administrative settlements in accordance with fairness and equality of treatment.³³⁴ “Only when the internal processes of justice have failed to resolve a problem should the issues come before a body which functions independently of the Secretary-General.”³³⁵ The Secretary-General added his concern that the involvement of external bodies on a day-to-day basis with staff complaints and appeals “would undermine the authority of the Secretary-General to ensure management standards, including those of justice and fairness”.³³⁶

83. Consequently the emphasis of the Secretary-General's measures was on reforming and strengthening the existing internal administration of appeals. Such measures included

³²⁸ A/C.5/41/39, paras. 5-12.

³²⁹ A/41/640, paras. 93 and 94.

³³⁰ *Ibid.*, paras. 69-70 and recommendation 2. See further discussion below.

³³¹ *Ibid.*, paras. 71-84. Further proposals concerned imposing costs on unsuccessful Applicants and disciplinary measures for officials applying unfounded decisions. See recommendations 3 and 4.

³³² See *Advisory Opinion*, p. 78 (Sep. Op. Elias).

³³³ A/C.5/41/14, para. 41. In that regard, it was the view of the Secretary-General that other JIU proposals appeared to rest on misconceptions about the pre-judicial and advisory nature of the recourse system that preceded consideration by UNAT. The Secretary-General indicated that discussion of the “administration of justice” was misleading at the current stage as the system prior to UNAT existed primarily to advise the Secretary-General on administrative decisions – not as a preliminary judicial stage. *Ibid.*, paras. 31 and 32.

³³⁴ A/C.5/42/28, para. 9. See also A/C.5/43/25, para. 4.

³³⁵ *Ibid.* The Under-Secretary-General for Administration and Management also observed that care should be taken against unnecessary changes, underscoring the need to prove that the current system with revisions was not yielding results. A/C.5/42/SR.31, paras. 3 and 4. For comments of ACABQ, see G A (42), Suppl. No. 7, paras. 9 and 10.

³³⁶ A/C.5/43/25, para. 4.

increased staff participation in the appeals process;³³⁷ the establishment of a joint working group to draw up a code with a system of rules and procedures; proposed revisions to the Staff Regulations and Rules;³³⁸ and enhancement of the role of existing appeals bodies such as JDC and JAB by centralizing their role under the Under-Secretary-General for Administration and Management.³³⁹ Noting the reduction in the backlog of cases under administrative appeal and welcoming the improvement in the internal justice system, the General Assembly, at its forty-third session, requested the Secretary-General to establish a fully revised system by the end of 1989, and endorsed the Secretary-General's plans and proposals for putting into place revised disciplinary rules as well as appellate procedures at the earliest stage.³⁴⁰

(b) *Procedural requirements*

84. ACABQ in its recommendations, which were endorsed by the General Assembly, emphasized a simplification of the rules and procedures concerning disciplinary measures and appeals.³⁴¹ The development of a code embodying these rules and procedures was similarly supported by staff representatives.³⁴² To that end, pursuant to a decision of the Staff-Management Coordination Committee at a special session, a joint working group was set up to examine the disciplinary process and draw up a system of rules, procedures and sanctions for misconduct, proposing any revisions of the Staff Regulations and/or the Staff Rules as necessary.³⁴³ The Secretary-General reported that, following submission of the conclusions of the working group, the approach of the proposals had been accepted in principle, and that a fully revised disciplinary process along with necessary amendments to the Staff Rules related to discipline and appeals would be promulgated by early 1989.³⁴⁴ At the same time, appeals procedures were also extended to apply to staff members on short-term appointment by amendment to the Staff Rules.³⁴⁵

85. Decisions of UNAT in that context gave explicit recognition to an obligation on the part of the Administration to provide for a clear and expeditious resolution of appeals by staff members. In several judgements, UNAT awarded

³³⁷ A/C.5/41/4, A/C.5/42/28 and A/C.5/43/25.

³³⁸ A/42/286, para. 90, and A/C.5/43/28.

³³⁹ In that regard, JDC and JAB would incorporate other specialized appeals bodies, and would be distanced from offices taking decisions resulting in appeals through placement under the Under-Secretary-General's office. See A/C.5/43/25. See also paras. 75-77 and 86-87 of the present study.

³⁴⁰ G A resolution 43/224 B.

³⁴¹ See G A (40), Suppl. No. 7. The Group of 18 in its report also called for revisions of the Staff Regulations and Rules to clarify personnel policy. G A (41), Suppl. No. 49, recommendation 42.

³⁴² See A/C.5/42/37, para. 36.

³⁴³ A/C.5/42/28, para. 11. See also A/C.5/43/25, para. 14.

³⁴⁴ A/C.5/43/25, para. 14.

³⁴⁵ See A/C.5/42/3, annex II. Rules 311.1 and 311.2 were amended accordingly. ST/SGB/Staff Rules/1/Rev.6/Amend.3.

damages to applicants despite rejecting their appeals on the merits because of inordinate delays and procedural defects on the part of the Administration.³⁴⁶ Following its prior jurisprudence, the Tribunal asserted that successive delays on the part of the Administration were abusive and bordered on a denial of due process, entailing the responsibility of the Administration.³⁴⁷ However, the Tribunal also found that the Applicant could also be held responsible for delays and defects. In Judgement No. 348, the Tribunal found that the obligation under the Staff Rules to supply relevant personal information upon appointment imposed an obligation to ensure that such information was correct.³⁴⁸ Consequently, the Tribunal found that the Applicant could be held responsible for waiting too long to correct personal records.³⁴⁹

2. AUTHORITY OVER APPEALS

(a) *Joint Appeals Board*

86. During the period under review, consideration was given to the role and function of the Joint Appeals Board, primarily in the context of efforts to reform the administration of justice, prompted in part by the large backlog of cases before the Board. In a report to the General Assembly at its fortieth session, ACABQ cited the urgent need to simplify administrative procedures leading to appeals by staff, and recommended that the Secretary-General report on remedies, focusing on streamlining appeals procedures so as to, inter alia, provide for a more efficient handling of cases reaching JAB.³⁵⁰

87. An initial question focused on the status of the Board itself. Citing questions regarding the role of JAB, JIU proposed replacing it with a judicial court of first instance to handle adjudication of appeals objectively and within a legal setting.³⁵¹ However, it was the view of the Secretary-General that the current system of recourse should remain in place, underscoring, as indicated above, the need to strengthen the authority of the internal recourse system.³⁵² The Secretary-General asserted that the shortcomings of the Board related to delays in the disposition of cases, not fundamental procedural defects,³⁵³ and outlined a number of

³⁴⁶ See AT/DEC/327, AT/DEC/353 and AT/DEC/386.

³⁴⁷ See AT/DEC/327.

³⁴⁸ See AT/DEC/348.

³⁴⁹ See also AT/DEC/386, in which the Tribunal reduced compensation for delays on the part of the Administration in the light of "dilatatoriness" on the part of the Applicant.

³⁵⁰ G A (40), Suppl. No. 7, para. 72. The Assembly endorsed the recommendation in its resolution 40/252.

³⁵¹ A/41/640, para. 60. The proposal was supported by staff representatives, who, while noting that the Board had achieved a reduction in its backlog, pointed to the need for more fundamental changes. A/C.5/41/39, para. 9.

³⁵² A/C.5/41/14, para. 41. See also G A (42), 5th Comm., 31st mtg., paras. 3 and 4; A/C.5/43/25, para. 4; and discussion above.

³⁵³ A/C.5/41/4, para. 35. It was also felt that the creation of an Office of Ombudsman as discussed below would decrease appeals by

reforms to enhance the authority and structure of JAB through increased staffing, the assumption of direct responsibility by the Under-Secretary-General for Administration and Management for the appellate process,³⁵⁴ and an end to the proliferation of JABs away from Headquarters.³⁵⁵ The Secretary-General also announced a policy measure to the effect that, while JAB reports would continue to be advisory, as a matter of practice, the Secretary-General would accept unanimous recommendations as long as they did not impinge on major questions of law or principle.³⁵⁶ With a view to mitigating the problems cited by UNAT arising from the long delays in replies by the Administration to appeals before JAB, the Secretary-General outlined administrative and procedural arrangements, including in particular the application of strict time limits.³⁵⁷ Many of the reforms were welcomed by staff representatives.³⁵⁸ For its part, having considered the report of the Secretary-General,³⁵⁹ the General Assembly requested the Secretary-General to continue to improve procedures for resolving disputes and appeals, taking steps to ensure the objective and expeditious resolution of cases.³⁶⁰ While some issues were raised over terminology,³⁶¹ the Assembly, welcoming the improvement in JAB, endorsed the report of the Secretary-General and called upon him to implement the rules and procedures called for therein.³⁶²

(b) *The role of other bodies*

88. As noted above, the period under review saw consideration given to the role of other administrative bodies in the context of reform of the administration of justice. An initial consideration in reforming the administration of justice system had been the question of the establishment of an Office of Ombudsman to facilitate the informal mediation and settlement of disputes prior to adjudication.³⁶³ Recall-

creating a more effective informal grievance mechanism. A/C.5/40/38, para. 34.

³⁵⁴ A/C.5/42/28, para. 11. The Under-Secretary-General assumed direct responsibility as from 1 February 1988.

³⁵⁵ A joint working group would be established to consider the process of amalgamating existing special appeals bodies with JAB. *Ibid.*

³⁵⁶ A/C.5/42/28, para. 10.

³⁵⁷ See A/C.5/43/25.

³⁵⁸ See G A (42), 5th Comm., 30th mtg., para. 63.

³⁵⁹ A/C.5/43/25.

³⁶⁰ G A resolution 42/220 B.

³⁶¹ See comments of the staff representatives calling for further attention to substantive and procedural matters, notably that time limits for appeals should be interpreted by JAB with maximum flexibility. A/C.5/43/27, para. 43. See also comments of ACABQ, that the Secretary-General define "frivolous" appeals to avoid subjective rejections. A/43/7/Add.4, paras. 3 et seq.

³⁶² G A resolution 43/224 B. The related report of ACABQ was also endorsed, including the recommendation that the Secretary-General report proposals at the earliest possible stage for revisions in the Staff Rules. A/43/7/Add.4, para. 6.

³⁶³ G A resolution 39/245. See also A/C.5/39/23.

ing generally the provisions of Article 101 on the necessity of securing the highest standards, the General Assembly continued to request that the Secretary-General study the feasibility of establishing an Office of Ombudsman in his efforts to guarantee to staff a just and expeditious resolution of disputes.³⁶⁴ The establishment of such an office was supported by staff representatives,³⁶⁵ as well as by JIU inspectors.³⁶⁶ The Secretary-General initially reported that the establishment of such an office with access to all levels of the Secretariat would be feasible.³⁶⁷ However, it subsequently became apparent that some differences existed with regard to structure and modalities. Staff representatives, for example, sought to have selection of the Ombudsman made by ICJ.³⁶⁸ In comments to the Fifth Committee, the Under-Secretary-General for Administration and Management subsequently reported that there was for the time being no consensus on the establishment of an Office of Ombudsman.³⁶⁹ While emphasizing that the idea had not been abandoned, the Under-Secretary-General stated that the focus was on getting the existing machinery, notably the discrimination and grievance panels, to work.³⁷⁰ Nevertheless, a number of delegations in the Fifth Committee expressed their continued support for the establishment of such an office.³⁷¹

3. UNITED NATIONS ADMINISTRATIVE TRIBUNAL

(a) *Legal status of the Administrative Tribunal*

89. Consideration of the administration of justice touched on the question of the legal status of UNAT. Notable in that context was ongoing consideration given to merging UNAT with ILOAT.³⁷² To that end, the Secretary-General prepared a series of reports on the feasibility of establishing a single administrative tribunal, comparing procedures, identifying differences and proposing possible amendments to the statute of UNAT.³⁷³ Throughout the period, consultations were

³⁶⁴ G A resolution 40/258 A, para. 7; see also resolution 42/220 B.

³⁶⁵ A/C.5/40/59, paras. 22 and 23. An additional proposal was for the establishment of an office for the administration of justice within the Executive Office of the Secretary-General. *Ibid.*

³⁶⁶ A/41/640, para. 96 and recommendation 2.

³⁶⁷ A/C.5/40/38.

³⁶⁸ A/C.5/40/59, paras. 22 and 23.

³⁶⁹ G A (42), 5th Comm., 31st mtg., para. 3.

³⁷⁰ *Ibid.* The Secretary-General also indicated that consideration of the role of discrimination and grievance panels would continue in his report on reform and renewal of the United Nations. See A/42/234. See also discussion above on the nature of reforms to the administration of justice.

³⁷¹ G A (42), 5th Comm., 32nd mtg., para. 5; *ibid.*, 34th mtg., para. 55; *ibid.*, 35th mtg., para. 10. The Chairman of ACABQ requested that the Secretary-General provide information on consultations between staff and the Administration on the establishment of the Office. G A (42), Suppl. No. 7, annex.

³⁷² Consideration of the issue had been initiated in 1978. See G A resolution 33/117, sect. I.

³⁷³ See, e.g., A/40/471, A/42/328 and A/43/704.

held on the matter.³⁷⁴ At its forty-second session, bearing in mind the technical, legal and administrative aspects, the General Assembly decided to include in its agenda a sub-item on the harmonization of the statutes, rules and practices of the two Tribunals.³⁷⁵ Following a further report from the Secretary-General outlining proposed amendments to the statute of UNAT based on the consultations,³⁷⁶ the Assembly called for written comments from Member States.³⁷⁷

90. During the period under review, in a report to the General Assembly at its forty-first session, JIU proposed that JAB be replaced by a court of first instance – a court of claims – rendering UNAT an appeals court at the second level of judicial proceedings.³⁷⁸ While the Secretary-General did not act upon the proposal, consideration was given to altering the rules governing review and appeals from UNAT, including more specific regulation of the status of appeals from the Tribunal.³⁷⁹

(b) Competence of the Administrative Tribunal

91. By its Judgement No. 370, UNAT had held that the manner of suspension pursuant to a General Assembly resolution of an increase in post adjustment by ICSC was invalid for failure of proper procedure and ordered the Secretary-General to rescind the suspension or make payment of equivalent compensation.³⁸⁰ Noting that the financial implications of the UNAT decision were in excess of US\$ 2 million, the Secretary-General stated his intention to delay payment until 1987 in the light of the current financial situation of the Organization.³⁸¹ The cost and consequences of the judgement prompted consideration and concern within the Fifth Committee,³⁸² which prepared a draft resolution requesting that the Secretary-General delay implementation of the decision.³⁸³ In a further draft the Secretary-General would have been requested to study the feasibility of limiting the competence of UNAT to cases involving less

³⁷⁴ See A/C.5/41/8 and G A resolution 42/217.

³⁷⁵ G A resolution 42/217, para. 2.

³⁷⁶ A/43/704, annex I.

³⁷⁷ G A decision 43/452.

³⁷⁸ A/41/640, paras. 57-64, and recommendation 3. See also discussion below in the context of the case concerning the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*.

³⁷⁹ See A/C.5/41/14, para. 38. See also A/40/471, sect. G, A/42/328, sect. G, A/43/704, annex I. In that regard, consideration was also given to provide for review of UNAT judgements in respect to decisions of the Pension Board. See A/40/471, para. 87-89, and A/42/328, paras. 90 and 92.

³⁸⁰ AT/DEC/370. In that context, the Tribunal observed that a meticulous adherence to the Commission's rules of procedure was a necessity, particularly in a matter of such importance affecting the interests of thousands of staff members.

³⁸¹ A/C.5/41/35.

³⁸² G A (41), 5th Comm., 35th, 36th, 38th and 39th mtgs.

³⁸³ A/C.5/41/L.6.

than \$200,000.³⁸⁴ While the delegations of some Member States expressed concern at the judgement and some support for the former proposal,³⁸⁵ other delegations were concerned over the legal implications of taking such an action.³⁸⁶ As it had not been possible to achieve consensus on the matter, the sponsors agreed to defer action to some future session when there was more time.³⁸⁷

92. In a number of judgements of UNAT, the Tribunal pronounced upon its own competence with regard to personnel matters. In several decisions, the Tribunal reaffirmed its position that it could not substitute its judgement for that of the Secretary-General in matters concerning the determination of the professional requirements of service. In Judgements Nos. 409 and 418, UNAT reiterated its jurisprudence that the determination of promotions and appointments was a matter within the discretion of the Secretary-General, and that the Tribunal could not interfere absent a mistake of law or fact, omission or consideration of extraneous matters.³⁸⁸ UNAT would not interfere with the judgement of the Secretary-General on standards of performance or the determination of rules governing staff conduct.³⁸⁹

(c) The question of appeals from judgements of the Administrative Tribunal

93. While the question of the status of UNAT and the circumstances governing appeals therefrom arose in the context of reform of the administration of justice, there was continuing criticism of the rules and procedures governing appeals from UNAT decisions during the period under review.³⁹⁰ Particular concerns centred on provisions allowing Member States that were not parties to a case to initiate review before the International Court of Justice, and the procedure whereby a Committee of the Assembly – the Committee on Applications for Review of Administrative Tribunal Judgements – considered and approved the decisions of a judicial body before requesting an advisory opinion. With regard to the latter, one alternative proposed by the Secretary-General was to have a judicial panel composed of the Presidents of UNAT and ILOAT, and chaired

³⁸⁴ A/C.5/41/L.6/Rev.1.

³⁸⁵ G A (41), 5th Comm., 35th mtg., paras. 63-64, 67 and 79.

³⁸⁶ *Ibid.*, paras. 66, 69 and 70.

³⁸⁷ *Ibid.*, 39th mtg., para. 15. By a recorded vote, the General Assembly agreed to the Secretary-General's proposal to charge the expenditures related to the judgement against overall appropriations retained as a result of suspension of the Financial Regulations. See G A resolution 41/209, sect. VIII.

³⁸⁸ See AT/DEC/409 and AT/DEC/418.

³⁸⁹ See AT/DEC/386 and AT/DEC/410.

³⁹⁰ See A/40/471, sect. G; A/42/328, sect. G; and A/41/640. See also discussion below of the decision of ICJ. See further A/C.5/39/7, paras. 70-84.

by an appointee of ICJ.³⁹¹ Article 11 of the statute of UNAT provided:

“1. If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including any one who has succeeded to that person’s rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction or competence vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such a Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement, make a written application to the Committee to request an advisory opinion of the International Court of Justice on the matter.

”2. Within thirty days from the receipt of an application under paragraph 1 of this article, the Committee shall decide whether or not there is a substantial basis for the application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person referred to in paragraph 1.”

Additional changes to the UNAT statute were considered, notably in the context of harmonization with the statute of ILOAT.³⁹²

94. ICJ itself had occasion to review the process and character of appeals from UNAT judgements in the context of its own advisory opinion of UNAT Judgement No. 333.³⁹³ In its opinion, the Court examined the basis upon which it gave such an opinion on the Judgement of UNAT.³⁹⁴ In that regard, the Court cited as well-established that its power to give an opinion was permissive and of a discretionary character, noting that it was equally well-established that the reply of the Court to a request for an opinion represented its participation in the activities of the United Nations and should not, in principle, be refused.³⁹⁵

³⁹¹ A/40/471, paras. 82 and 83. See also A/C.5/41/14, para. 38.

³⁹² A/43/704, annex I, revised article 11.

³⁹³ See *Advisory Opinion*, p.18

³⁹⁴ The Court first reviewed the various sources that comprised the legal basis for its advisory opinion in article 11 of the UNAT statute as well as Article 96 of the Charter and Article 65 of the Statute of ICJ. See *Advisory Opinion*, pp. 29-34. The Court noted that a request for an advisory opinion in accordance with the Statute and Charter presupposed that the questions which the Committee on Applications put to the Court were legal questions and arose in the scope of activities of the requesting organ. *Ibid.*, pp. 30-31.

³⁹⁵ *Ibid.*, pp. 31-32.

95. Given the Court’s identification of the Tribunal’s less than clear handling of the questions and contentions put to it, an initial issue was the Court’s ability to look beyond the strict terms of the question put to it by the Committee on Applications. The Court decided it was entitled to consider all the legal questions at issue.³⁹⁶ The Court also identified its duty to point out any error on a question of law related to the Charter whether or not it affected the disposal of the case. The majority opinion accordingly corrected a point in the Tribunal’s opinion as to the significance of national ties, though the Court nevertheless considered the Tribunal’s opinion obiter dictum.

96. In considering the decision of the Tribunal itself, the majority opinion emphasized repeatedly that, though the Court might be called upon to review the substance of a decision where a question of an error of law was raised, its role was not to retry the case before the Tribunal or consider whether the Tribunal could have proceeded differently, but rather to determine whether there was a contradiction between the Tribunal’s interpretation and the provisions of the Charter.³⁹⁷ However, some judges in separate and dissenting opinions argued that the role of the Court was to consider the merits of the case and the validity of the Tribunal’s judgement thereon.³⁹⁸ Several judges also took specific issue with the review procedure itself.³⁹⁹ Specifically, the judges cited the review procedure whereby the Committee on Applications was called upon to discharge a duty normally given to a legal body, while being convened and functioning in a manner that was non-judicial.⁴⁰⁰ The judges proposed the establishment of a court of first instance with UNAT assuming appellate functions.⁴⁰¹

****F. Organization of the Secretariat**

³⁹⁶ *Ibid.*, p. 42.

³⁹⁷ *Ibid.*, pp. 33, 58 and 63.

³⁹⁸ *Ibid.*, pp. 89-91 (Sep. Op. Oda) and pp. 115-188 (Diss. Op. Schwebel).

³⁹⁹ *Ibid.*, pp. 74-82.

⁴⁰⁰ *Ibid.*, pp. 77-78 (Sep. Op. Elias)

⁴⁰¹ *Ibid.* See also p. 109 (Sep. Op. Ago). A similar recommendation was made by JIU; see A/41/640, paras. 57-64 and recommendation 3, and the discussion above.