ARTICLE 101

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Parabngs

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TEXT OF ARTICLE 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

INTRODUCTORY NOTE

1. Article 101 provides the cornerstone for the United Nations’ framework for the recruitment and employment of its staff; the authority of the Secretary-General to administer and the authority of the General Assembly to regulate. It is through this hermeneutic principle that the present study examines the questions that arose regarding Article 101 during the time period of 1989 – 1994.

2. The format of this study is an extension of the structure of the previous studies of Article 101, mirroring their format, headings, and sub-headings to allow for ease of reference. However, some subheadings and organization has undergone minor changes to account for the specific challenges the United Nations faced during this time period. Further, “The Status of Women” has been given its own heading to reflect the importance of this issue during the period under review.

3. The content of this study has been developed in a way to best allow the reader to not only understand what changes occurred during this period, but also how and why. For that purpose, the majority of the issues were approached in a chronological manner by sub-heading to best facilitate the reader’s understanding of the development of a particular issue. Further, substantial primary source material has been added to this study for ease of reference, and to allow the

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1 See Repertory and Supplements Nos. 1-6.

I. GENERAL SURVEY

4. In 1989, the main issues that arose were the implementation of administrative and financial reforms,\(^2\) establishment of a fully revised internal justice system,\(^3\) changes to the UN pension scheme,\(^4\) and an increase in the mandatory retirement age of staff from 60 to 62 years of age for staff members hired after January 1, 1990.\(^5\)

5. In 1990, the United Nations turned its attention to issues relating to its staff including, but not limited to, geographical distribution,\(^6\) improvement of the status of women in the Secretariat,\(^7\) and issues affecting conditions of service.\(^8\) Also, the Secretariat made significant progress in addressing concerns relating to the administration of justice through the implementation of revised disciplinary rules.\(^9\) Further, several decisions of the United Nations Administrative Tribunal (UNAT) concerning the expiration of fixed term contracts were issued at this time.\(^10\)

6. In 1991, the primary issues relating to staff continued to be the improvement of the equitable distribution of staff members on the basis of gender and geography, as well as the improvement of the status of women in the Secretariat.\(^11\) Other issues at this time related to the conditions of service for staff members of the United Nations common system,\(^12\) and continuing to improve the system for the administration of justice in the Secretariat.\(^13\)

7. In 1992, the primary focus of the United Nations (in relation to Article 101 of the Charter) was the restructuring of the Secretariat. This included the formation of new

\(^{12}\) See G A resolutions 41/213, 44/200, 44/201, 44/185A and A/44/222 & Corr.1.
\(^{13}\) G A resolution 43/224 B and 41/213.
\(^{14}\) G A resolution 44/198.
\(^{15}\) G A resolution 44/185 D. See also United Nations Yearbook, 1989, p. 884.
\(^{16}\) G A resolutions 45/239 A and 45/239 C, A/45/548.
\(^{17}\) Ibid.
\(^{19}\) G A resolutions 44/185 B, and 45/239 B, A/C.5/45/11.
\(^{20}\) See AT/DEC/482, AT/DEC/492, AT/DEC/533.
\(^{21}\) G A resolutions 45/259, and 46/100, A/C.5/46/2.
\(^{22}\) G A resolutions 46/191, 45/268.
departments, as well as the reallocation of resources (both human and monetary).\textsuperscript{14} Further, throughout 1992, the United Nations continued to push its agenda regarding the equitable distribution of staff members based on gender and geography, as well as the improvement of women's status in the Secretariat.\textsuperscript{15}

8. In 1993, the issues under consideration consisted of the restructuring of the Secretariat,\textsuperscript{16} matters related to the administration of justice in the Secretariat,\textsuperscript{17} the status of women, and changes in the methodology for determining the pensionable remuneration of staff in General Service and related categories.\textsuperscript{18}

9. In 1994, the main issues considered by the General Assembly (with regard to Article 101 of the Charter) were the modernizing of human resources management in the Secretariat,\textsuperscript{19} the continuance (and possible extension) of the national competitive examinations for recruitment,\textsuperscript{20} and issues related to the conditions of service.\textsuperscript{21}

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

10. Prior to 1989, the United Nations had made a priority of ensuring that its hiring practices conformed with the goals that the Organization had set out for itself in Article 101 of the Charter. Article 101 states, in relevant part, that “[t]he paramount consideration in the employment of the

\textsuperscript{16} G A resolution 48/224.
\textsuperscript{17} G A resolution 48/415.
\textsuperscript{18} G A resolutions 48/224, and 48/225.
\textsuperscript{19} G A resolution 49/222 A.
\textsuperscript{20} G A resolutions 49/222 and 49/222 A, A/49/445.
\textsuperscript{21} G A resolution 49/223.
staff [...] 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.”

11. During the period under review, the General Assembly adopted resolution 44/185, upon the recommendation of the Fifth Committee. Under this resolution, the General Assembly noted that there still existed discrepancies in the number of staff appointed from unrepresented and under-represented Member States versus the number of staff appointed from Member States that were considered either overrepresented or within the appropriate range of appointments (regarding positions subject to geographic distribution requirements). Thus, while certain advancements had been made, the General Assembly still believed that sufficient compliance with the geographic distribution goals set forth in Article 101 of the Charter had yet to be obtained.

12. In order to further the mission of geographic distribution, the General Assembly took the following three distinct steps: (1) the General Assembly urged the Secretary-General (when making appointments to positions subject to geographical distribution requirements) to focus on recruiting staff members from unrepresented and under-represented Member States, to help ensure that all countries were brought closer to the midpoint of their desirable ranges; (2) requested the Secretary-General to specifically focus on the senior and policy formulating positions in order to ensure an equitable distribution at those levels, and ensure that one position did not become the exclusive preserve of any one Member State or group of Member States; (3)

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24 Ibid.
25 Ibid.
26 Ibid., para. 2 states that the General Assembly urged the Secretary-General to, “make every effort to recruit nationals of unrepresented and underrepresented Member States, including candidates successful in the national competitive examinations, taking also into consideration paragraph 4 of resolution 41/206 A of 11 December 1986, in order to ensure that all such countries come closer to the midpoint of their desirable ranges[.]”
27 Ibid., para. 3, states that the General Assembly requested the Secretary-General “to take every available measure to ensure, at the senior and policy formulating levels of the Secretariat, the equitable representation of Member States, in particular of developing countries and other Member States with inadequate representation at those levels, in accordance with the relevant resolutions of the General Assembly, and to report thereon to the Assembly at its forty-fifth session, bearing in mind that no post should be considered the exclusive preserve of any Member State or group of States and with due regard to the principle of equitable geographical distribution[.]”
the General Assembly additionally made a request to the Secretary-General to ensure the equitable geographical distribution of staff in the Professional level and higher categories, within each office and department, without compromising the standards of efficiency, competence, and integrity set out in Article 101 of the Charter.28

13. In the following year (1990), the General Assembly passed resolution 45/239A that built on 44/185 (reaffirming it, as well as 33/143, 35/210, 41/213, 42/200A, and 43/224A). This resolution specifically focused on the geographic distributions of the “upper echelons of management”, including but not limited to, under-secretaries-general and assistant secretaries general.29 Specifically, the resolution requested the Secretary-General to “preserve the principles of equitable geographical distribution and rotation in the upper echelons of the Secretariat, to ensure that equal opportunity is given to candidates of all Member States when making appointments to all posts in the upper echelons”.30 In order to further this initiative, the General Assembly requested that the Secretary-General impose term limits of 10 years on both under and assistant secretaries general, based on the recommendation of the Group of High-level Intergovernmental Experts (Recommendation 54).31

14. A further request was made to the Secretary-General to provide the General Assembly with the report it had asked for in Section III, Paragraph 2, of General Assembly resolution 42/220A (three years previous), which was supposed to have been discussed at the 45th Session of the General Assembly (a report on alternative options for determining the desirable range of representation for individual member states). The General Assembly then resolved to postpone this matter until the 46th Session of the General Assembly, and to make a decision on a priority basis at that time.32 The Assembly further requested that the Secretary General put forward other methodologies for the distribution of posts subject to geographical distribution requirements in the previously requested report.

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28 Ibid., para. 4, states that the General Assembly requested the Secretary-General to “continue his efforts aimed at improving the composition of the Secretariat by ensuring a wide and equitable geographical distribution of staff in the Professional and higher categories in all main departments and offices, bearing in mind that paramount consideration shall be the necessity of securing the highest standards of efficiency, competence and integrity [.]”
29 GA resolution 45/239A.
30 GA resolution 45/239A, Section I. 7.
31 Ibid.
32 Ibid. Section III. 2.
15. In accord with the General Assembly's request, the Secretary-General submitted the aforementioned report to the 46th Session of the General Assembly during the month of August, 1991. In total, 11 different options for the determination of desirable ranges were put forward. Of these 11, the majority (8) focused on shifting the weight given to each of the three determining categories: contribution (monetary contribution to the United Nations), membership, and population. Of the three remaining alternatives, two of them were determined based on overtures of various Member States during the 1990 Administrative and Budgetary Committee debates, and involved shifts in only the membership and population factors. The final alternative was a single shift in the population factor (increasing the weight of a Member State's population to seven percent (7%)).

16. In response to the Assembly's additional request to consider different methodologies (during the 45th Session of the Assembly), the Secretary-General stated that the three criteria mentioned above (membership, population, and contribution) were all that was necessary in order to ensure proper geographic distribution, and any problems could be solved by shifting the weight given to a particular category. Further, the effectuation of any change to this methodology would require more specific guidance from the Assembly.

17. The General Assembly then took the next steps towards ensuring geographic distribution during the 47th Session of the General Assembly, on the 8th of April, 1993. Here, a resolution was passed establishing a Working Group in order to solidify the formula used to determine the equitable geographic representations of Member States in the Secretariat.

18. That report from the Chairman of the Fifth Committee was subsequently submitted as A/C.5/48/45. This report was the product of meetings held from July 19 through July 23. The topics discussed at these five meetings included the number of posts subject to geographical distribution, posts in bodies or categories to be excluded from distribution requirements, the methodology and formula to be used to determine desirable ranges, types of appointments to be

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33 A/C.5/46/2.
34 Ibid.
35 G A resolution 47/226, states in relevant part that the General Assembly, “[d]ecides to establish an open-ended Working Group of the Fifth Committee of the General Assembly, and requests its Chairman to convene a meeting of the Working Group for one week at Headquarters, in the spring of 1993, to consider the formula for the determination of equitable geographical representation of Member States in the Secretariat […] and requests the Chairman of the Fifth Committee to report thereon to the Assembly at its forty-eighth session, as an exceptional measure and without prejudice to the full implementation of Assembly resolution 46/220 of 20 December 1991[.]”
made, and how other international organizations measured the geographic representation of their membership.\textsuperscript{37} As the Working Group was unable to settle on specific conclusions during its five-day collaboration, consideration of the report was deferred until the forty-eighth Session resumed in 1994.

19. In 1994, the Secretary General submitted report A/49/445 addressing the question of how to maintain a strong core of permanent staff, while bringing in the fresh talent and skills required by operational needs. Here, the Secretary-General believed that the use of fixed-term appointments could be the best approach in several situations.\textsuperscript{38} Further, the Secretary General identified external examinations as pivotal in improving the geographic distribution of the appointments of staff members, while maintaining high employment standards.\textsuperscript{39}

2. THE STATUS OF WOMEN

20. The status of women in the United Nations has been one of several focal points for staff reform. During the period under review, the Secretary-General submitted reports on the advancement of the status of women to the 44\textsuperscript{th}, 45\textsuperscript{th}, 46\textsuperscript{th}, 47\textsuperscript{th}, 48\textsuperscript{th}, and 49\textsuperscript{th} Sessions of the General Assemblies.\textsuperscript{40} Beginning with the 47\textsuperscript{th} Session of the General Assembly (1992), the Secretary-General also began sending reports to the Commission on the Status of Women (which worked together with the Economic and Social Council to support the advancement of women in the United Nations), as well as that of the General Assembly.\textsuperscript{41}

\textsuperscript{37} Ibid.
\textsuperscript{38} A/49/445, para. 34, states in relevant part that, “[t]he basic issue is how to preserve a strong core of permanent staff while at the same time bringing in the fresh talent and skills demanded by new operational needs. This issue may best be addressed by the use of fixed-term appointments (a) where work is of a non-continuing nature; (b) where special skills are required which are not available in the Organization; (c) where the continuous funding of a post is uncertain; (d) to improve geographical or gender balance; or (e) to bring in fresh talent on a trial basis.”
\textsuperscript{39} Ibid., para. 38 states in relevant part that, “[t]he holding of external examinations in close cooperation with Member States has been instrumental in the achievement and maintenance of an improved geographical distribution in the Secretariat. These examinations have also resulted, thanks to special publicity efforts, in a significant increase in the number of women recruits: from 31 per cent in 1985 to 56 per cent in 1992.”
21. The October 1989 report to the 44th Session of the General Assembly was the fifth (5th) report of the annual series concerning the status of women in the Secretariat.\textsuperscript{42} It was noted in this report, that the number of women employed by the Secretariat had increased slightly during a period of downsizing and retrenchment.\textsuperscript{43} One of the most significant increases in the hiring of women occurred at the second director (D-2) level of employment. Here, the Secretary-General came to the conclusion that the current system in place for the advancement and promotion of women in the Secretariat was proving to be effective, as the previously set goal of a 30% increase in female promotions was comfortably exceeded.\textsuperscript{44} Additionally, a D-1 position was created, and subsequently filled by a senior female, to act as a centralized position to handle questions relating to women in the Secretariat.\textsuperscript{45}

22. The next year (1990), saw the adoption of a resolution by the ESC (Economic and Social Council), directed towards the improvement of the status of women in the Secretariat.\textsuperscript{46} Recalling a plethora of General Assembly resolutions and the Nairobi Forward-looking strategies\textsuperscript{47}, the ESC made two significant and pertinent requests- one to the Secretary-General, and one to Member States. The request to the Secretary-General asked him to increase the number of women employed in the United Nations in posts subject to geographical distribution (especially senior policy-level and decision-making appointments), and set a goal of 35 per cent women overall in the Secretariat by 1995.\textsuperscript{48} The request to the Member States asked the States to nominate more women for vacant positions (especially senior policy-level and decision-making appointments) and to create national rosters of women candidates to be shared with the Secretariat and the governing bodies of the specialized agencies.\textsuperscript{49}

\textsuperscript{42} A/C.5/44/17.
\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
\textsuperscript{46} ESC Resolution 1990/3.
\textsuperscript{47} G A resolutions 43/101, 43/103, 43/224 C, 43/226, 44/75, and 44/185 C.
\textsuperscript{48} ESC Resolution 1990/3, para. 3, the ESC requested “the Secretary-General to take the measures necessary to increase the number of women employed throughout the United Nations system in posts subject to geographical distribution, and to make a special effort to increase the number of women in senior policy-level and decision-making posts, in order to achieve an overall participation rate of 35 per cent of the total by 1995, without prejudice to the principle of equitable geographical distribution of posts[.]”
\textsuperscript{49} Ibid., para. 4, states that the ESC requested “that Member States continue to support the efforts of the United Nations and its specialized agencies to increase the percentage of women in the Professional category and above, inter alia, by nominating more women candidates, especially for senior policy-level and decision-making
23. In addition to the actions taken by the ESC, the General Assembly adopted resolution 45/125, on the 14 of December, 1990. This resolution was the adoption of a request to Member States of the United Nations. The resolution requested the States to support the efforts of the United Nations concerning an increase in the number (and percentage) of women in the Professional (P) Level category. The Member States were expected to do this by nominating more women candidates (particularly for vacant senior policy-level and decision-making posts), and through overall encouragement of female nationals to apply for open positions in the United Nations, and/or the creation of a database (National Roster) of qualified female candidates that would be provided to the Secretariat.

24. The next week, the General Assembly turned its attention from the Member States to the actions of the Secretary-General, and on December 21, 1990, the 45th Session of the Assembly adopted resolution 45/239C. Section 7 of resolution 45/239C was a request to the Secretary-General to include additional items in a previously requested action plan for the advancement of women to be implemented from 1991-1995.

25. In addition to these actions taken by the General Assembly, the International Service Commission (ICSC) had issued a series of recommendations listing ways to improve the employment and advancement of women in the United Nations. These recommendations included for the Secretary-General: (1) to focus on the increase in the number of female staff members at the P-5 level and above (as well as in consultant and technical advisor positions); (2) to facilitate the appointment of staff members’ spouses; (3) to establish clear objectives and monitor the implementation of those objectives; and (4) to evaluate the establishment of outreach training programs. Further, the ICSC created a working group to focus on the advancement of women in both General Service and Professional levels of employment.

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50 G A resolution 45/125 (December 14, 1990).
51 Ibid.
52 G A resolution 45/239C. The General Assembly requested the Secretary-General to include the following items in its pending action plan: “(a) a comprehensive evaluation and analysis by the Secretariat of the main obstacles to the improvement of the status of women in the Organization; (b) proposed measures to overcome the underrepresentation of women from certain Member States; and (c) a detailed programme of activities, including monitoring procedures and a timetable for their completion.”
53 A/46/30.
26. In 1991, it became apparent that the General Assembly believed more action needed to be taken in addition to the efforts showed by the Secretary-General in A/C.5/44/17 (of 1989) (regarding the steps taken to increase the status of women in Professional and Director-level employment categories). In resolution 1991/17 of the ESC, and resolution 46/100 of the General Assembly, both bodies issued missives imploring the Secretary-General to place a greater emphasis on the employment and advancement of women in the Secretariat. Resolution 46/100 was adopted without vote, and reminded the Secretary-General of the goals previously set “in resolutions 45/125 and 45/239 C of an overall participation rate of 35 per cent by 1995 and, to the extent possible, 25 per cent-in posts at the D-1 level and above by 1995[.]”\textsuperscript{54}

27. General Assembly resolution 47/93 reiterated the requests of Resolution 46/100, one year later, and added a request that greater accord be given to the increase of women from developing countries specifically. In response, the Secretary-General submitted two reports on the improvements on the status of women. One of the reports was issued to the Commission on the Status of Women (providing an update of recent statistics, and providing a status report on the execution of the previously recommended action program, as well as providing a report of the further recommendations that were made by the Steering Committee for the Improvement of the Status of Women in the Secretariat).\textsuperscript{55} A similar report was given to the General Assembly, updating them on the progress of women in the United Nations, as well as providing the details of the action plan the Secretary-General proposed implementing through the period ending in 1995. The strategies included plans for the coordination of recruitment, the hiring and advancement of women in P-3 to D-1 levels, and the setting of goals over a three year period on a department-by-department basis.\textsuperscript{56}

28. Further action taken on the issue of the status of women at the Secretariat in 1992 was a report issued by the ICSC, in which it endorsed the recommendations that had been made by its aforementioned working group.\textsuperscript{57} The recommendations involved overarching strategies, representational targets in all employment categories, and various other issues concerning the

\textsuperscript{54} G A resolution 46/100.
\textsuperscript{56} A/47/508.
\textsuperscript{57} A/47/30 & Corr. 1.
status of women in the United Nations system (including child-care, spousal employment, monitoring, and accountability).\textsuperscript{58}

29. Of the period under review, it is arguable that during 1993 and 1994 that the most action concerning the Status of Women was taken. These actions included the perennial requests to the Secretary-General, urging that greater weight be given to improving the status of women by 1995, and that greater priority be given to women during the hiring process (with a focus on increasing the number of women from developing countries).\textsuperscript{59}

30. Two further reports were submitted by the Secretary General in 1993. The report sent to the Commission on the Status of Women\textsuperscript{60} followed a similar format to the one submitted in the previous year, and included status updates on the recommendations and requests it has received from various United Nations organs. The report included updates and responses to the 1992 General Assembly resolution mentioned previously (47/93), the recommendations of the Steering Committee for the Improvement of the Status of Women in the Secretariat, as well as identifying the goals it had adopted on the recommendation of the ICSC (including emphasis on departments where women made up less than thirty-five percent (35\%) overall, or less than twenty-five percent (25\%) at the P-5 level and above).\textsuperscript{61} The Secretary-General also noted his request to the Office of Human Resources Management to prepare an action plan for attracting qualified female candidates to the United Nations, as well as increasing the number of positions available for candidates of the competitive examinations.\textsuperscript{62}

31. The Secretary-General also issued a report to the General Assembly noting the progress he had made in the increase of women in the Secretariat. The report noted that, as of June of 1993, a significant increase of the number of female staff members, but noted that 76 Members States (including 23 new Member States) had no female nationals appointed to posts subject to equitable geographic distribution.\textsuperscript{63}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{58} Ibid.
\item \textsuperscript{59} GA resolution 48/106.
\item \textsuperscript{60} E/CN.6/1993/15.
\item \textsuperscript{61} Ibid.
\item \textsuperscript{62} Ibid.
\item \textsuperscript{63} United Nations Yearbook, 1993, pp. 1220, concerning A/48/513. The report noted that, “[w]omen represented 21.1 per cent of staff promoted from P-5 to D-1. The Senior Review Group, appointed in 1990 to review promotions to the Director level, recommended two more women for D-2 posts in July 1993, bringing the number of women at that level to 11. There were 103 women at the P-5 level, up from 94 a year earlier, and women promoted from the P-4 to P-5 level during the reporting period numbered 39, out of a total of 94 promotions. Of staff
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32. The Commission on the Status of Women response to the report noted the slow progress that the Secretary-General appeared to be making in this area, and put forward a recommendation for a resolution to be adopted by the ESC. The resolution adopted by the ESC noted that the Secretary-General was making slow progress in increasing the status of women in the Secretariat, that the Secretary-General did not meet the set goal of an overall participation rate for women in posts subject to geographical distribution of 30 per cent, and that the amount of women in D-1 and higher levels remained unreasonably low. Further, the resolution urged the Secretary-General to further examine existing work practices within the United Nations system with a view to increasing flexibility so as to remove direct or indirect discrimination against staff members with family responsibilities.

33. However, this type of action was not the exclusive purview of the ESC. On 10 December 1993, the UN General Assembly adopted another resolution on the recommendation of its Third (Social, Humanitarian and Cultural) Committee. This resolution urged the Secretary-General to re-examine his work practices in order to increase flexibility and remove direct and indirect discrimination against staff members with family responsibilities. This resolution further requested the Secretary-General to ensure that his report on the improvement of the status of women in the Secretariat was submitted to the Commission on the Status of Women during the Commission’s 38th session, and included measures aimed at the prevention of sexual harassment.

promoted from P-3 to P-4 and from P-2 to P-3, 46.9 per cent and 52.7 per cent respectively were women. During the 12-month period ending 30 June 1993, 44 of the 119 staff members recruited in the Secretariat (37 per cent) were women. The report noted that 76 Member States, including 23 new Members of the United Nations, had no women nationals in posts subject to geographical distribution as at June 1993.”

64 ESC resolution 1993/9 (adopted without vote).
65 Ibid., the resolution read in part: “1. noting with concern that the goal of a 30 per cent participation rate of women in posts subject to geographical distribution by the end of 1990 was not achieved. Noting also with concern that the participation rate of women in posts at the D-1 level and above remains unreasonably low, although some welcome improvements have been made in the form of recent appointments by the Secretary-General[.]”
66 Ibid., In order to remove this discrimination, the resolution asked the Secretary-General to consider “such issues as job-sharing, flexible working hours, child-care arrangements, career-break schemes and access to training[.]”
67 G A resolution 48/106. The General Assembly specifically asked the Secretary-General to consider, “such issues as job-sharing, flexible working hours, child-care arrangements, career break schemes and access to training[.]”
68 Ibid., para. 9. The General Assembly “[a]lso requests the Secretary-General to ensure that a progress report on the status of women in the Secretariat containing, inter alia, policy measures aimed at the prevention of sexual harassment in the Secretariat, is presented to the Commission on the Status of Women at its thirty-eighth session, in
34. The following year (1994) saw much of the same from the Secretary-General, with two reports being submitted showing a steady increase in the number of women being appointed to posts throughout the Secretariat. The Secretary-General’s report to the Commission on the Status of Women that it issued in March of 1994 noted that the percentage of women in positions subject to geographical distribution rules rose nine-tenths of a percent (0.9%), from 31.1 to 32%.\(^69\) Further, it noted that the overall percentage of women in D-level posts was at roughly thirteen and sixth tenths percent (13.6%).\(^70\)

35. However, in addition to these regular reports, the Secretary-General also noted a new placement and promotion system that had come into effect in 1993, which required each office and department to provide proof to the Secretary-General of its attempts to locate and identify qualified female candidates before the filling of any vacant post. These reforms also involved the establishment of various groups within the Secretariat to oversee and ensure implementation of the Secretary-General’s strategies, and a policy was developed for properly utilizing the roster of women that Member States had provided in response to an aforementioned request by the General Assembly, for use in fulfilling positions through competitive recruitment.\(^71\)

36. The September report to the General Assembly contained much of the same statistics and updates that had been provided in its report in March, but with a shift in focus from the 1990 – 1995 plan to the 1995 – 2000 plan.\(^72\)

37. Further, the Joint Inspection Unit (JIU)\(^73\) had issued a report that was noted by General Assembly Resolution 49/222A, which was adopted without vote. The relevant portion of the JIU report (transmitted by the Secretary-General) called for greater transparency in human resources decisions, and examined the steps that were being put forward to eradicate bias against women in the hiring process. The JIU recommended that the Secretary-General continue to report on a twice-annual basis, and to increase the accountability of personnel within the programs, as well as following-up with decisions made by human resources personnel. Further, the report suggested that the current action plan be abandoned, and a replacement utilized, as well as according with the relevant rules on the delivery timetable for documentation, and to the General Assembly at its forty-ninth session.”

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\(^{70}\) Ibid.
\(^{71}\) Ibid.
\(^{73}\) A/49/176.
including the Advisory Panel on Management and Finance and the Steering Committee in the Secretary-General’s regular reviews of the Status of Women.\textsuperscript{74}

38. The additional relevant sections of 49/222A included appeals to Member States as well as the Secretary-General. The resolution reiterated the General Assembly’s previous appeal to Member States to assist the Secretariat by identifying more female candidates, encouraging women to apply for vacant positions, and maintaining a database of qualified female candidates.\textsuperscript{75} The resolution additionally noted the Secretary-General’s intention to include the actions of the Focal Point for Women in his proposed programme budget for 1996-1997.\textsuperscript{76} The General Assembly further requested the Secretary-General to enable (through the use of existing resources) the Focal Point for Women in effectively monitoring and facilitating the implementation of the strategic plan of action, and asked Member States to make voluntary contributions for those purposes.\textsuperscript{77}

3. METHODS OF RECRUITMENT

(a) Background

39. A report issued by the Joint Inspection Unit (JIU) in 1995 provides a sufficient groundwork for discussion of the period under review.\textsuperscript{78} This report looked back a number of years, and identified a series of changes that have been implemented in the Secretary-General’s recruitment methods over the several years preceding the report (the current period of review).

40. In the report\textsuperscript{79}, the JIU identified four (4) key changes:

\begin{itemize}
\item \textsuperscript{74} Ibid.
\item \textsuperscript{75} G A resolution 49/222A, para. 4. The General Assembly, “[a]ppeals to all Member States to support the efforts of the United Nations, the specialized agencies and related organizations to increase the participation of women in posts in the Professional category and above by identifying and nominating more women candidates with the requisite qualifications, especially for senior policy-level and decision-making posts, encouraging more women to apply for vacant posts and to sit for the national competitive examinations where applicable, and creating and maintaining national rosters of women candidates to be shared with the United Nations, the specialized agencies and related organizations[.]”
\item \textsuperscript{76} Ibid., para. 5.
\item \textsuperscript{77} Ibid., para. 6, 7.
\item \textsuperscript{78} JIU/Rep/95/1 (part 1), para. 54.
\item \textsuperscript{79} Ibid.
\end{itemize}
(i) recruitment by occupational groups;
(ii) recruitment at P-1 and P-2 levels exclusively through competitive recruitment;
(iii) introduction of competitive examinations for P-3 level posts;
(iv) setting-up of a Senior Review Group to consider candidates for D-2 posts.  

41. This re-structuring of the United Nations recruitment practices had been initiated by a General Assembly resolution that occurred three years prior to the period under review (1986). On 19 December 1986, the General Assembly issued resolution 41/213, which implemented the recommendations of a Committee on Governmental Experts tasked with evaluating the United Nations’ personnel structure in 1980. “The Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group of 18) reported to the General Assembly that the structure of the Organization had become too complex and top-heavy.”

(b) In general

42. Near the end of 1989, at the 44th Session of the General Assembly, resolution 44/200A was adopted. This resolution noted the 1986 resolution that implemented the Group of 18’s recommendations, and further noted that the implementation of these recommendations was occurring during a time of economic down-turn and crisis. As such, further steps would have to be taken in order to ensure that these recommendations were implemented in a proper way, and

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80 Ibid.
81 By its resolution 35/211 in December 1980, the General Assembly decided to establish a Committee of Governmental Experts to Evaluate the Present Structure of the Secretariat in the Administrative, Finance and Personnel Areas; see Repertory, Supplement No. 6, vol. VI, under Article 97, para. 9.
82 See United Nations Yearbook 1986, pp. 1050-1051, and GA resolution 42/211 of 21 December 1987, on the implementation of resolution 41/213. The General Assembly also adopted resolutions 41/206 A on the composition of the Secretariat, 41/206 B on the composition of the upper echelons of the Secretariat, 41/206 C on desirable ranges for the geographical distribution of staff, 41/206 D on improvement of the status of women in the Secretariat, and 41/205 on respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations.
83 High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations.
stressed the need for transparency in such implementation. On this same day in 1989, the General Assembly adopted resolution 44/201B, requesting the Secretary-General to put increased emphasis on the proper implementation of the Group of 18's recommendations.

43. It was 1990 that saw increased effort from the General Assembly for the implementation of a National Competitive Recruitment Exam (number 2 recommendation from the JIU's 1995 report), through General Assembly Resolution 45/239A. Here, the Assembly noted that the practice of holding a national competitive recruitment examination was a useful tool for recruitment from unrepresented and under-represented nations, and asked the Secretary-General to use this to fill all vacant positions at the P-1 and P-2 levels in as short a time as possible. This resolution further requested a report from the Secretary-General on implementing examinations for P-3 level positions as well.

44. The following year, during the 46th Session of the General Assembly, resolution 46/185B was adopted, at which point the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions (regarding the proposed changes to the staffing table).

45. Later, in August of 1992, the Secretary-General informed the General Assembly that competitive examinations had already been conducted, and used to fill vacant posts at the P-3 level positions for entry-level jobs. Competitive examinations for P-3 positions were first tested in Czechoslovakia, Hungary, Italy and Japan. This was further expanded when a second round of examination was held in Finland, Germany, Japan, the Russian Federation, and the United States. The job groups that took these tests were the economic, public information, statistics, and social affairs and demography groups. Successful exam candidates were then invited for oral examinations and interviews.

46. During the period under review, the General Assembly emphasized that “no post should be considered the exclusive preserve of any State or group of States”. The JIU later observed that in 1995, that resolution had yet to be fully implemented, and that despite these resolutions, the practice of replacing senior level positions with nationals of the same country remained for

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84 G A resolution 45/239A.
85 Ibid.
86 G A resolution 46/185B.
87 A/C.5/47/5.
88 G A resolution 47/226, section A.1, para. 1.
many different appointments. A further resolution adopted during the 47th Session of the General Assembly (resolution 47/226) on recommendation by the fifth committee, acknowledged the success of the national competitive recruitment exams, and requested the Secretary-General to expand the examinations to the P-3 level, to speed up the process to ensure successful candidates were offered positions without delay, to continue to recruit qualified external candidates, and expressed the General Assembly's hope that the recruitment freeze would soon be lifted.

47. Further, the 47th Session of the General Assembly established a new system of “secondment”. Here, they amended existing regulations in order to allow for the appointment of staff on secondment from government-related service. However, the Assembly recognized that in order for this to work, all parties (the Government, the United Nations, and the employee) must be in agreement with regard to both the initiation and extension of any secondment.

48. In response to these resolutions, the Secretary-General issued a report outlining his strategy to modernize the human resources divisions of the Secretariat throughout the global Organization. The components of this strategy included planning, career management capacity, performance management capacity, management culture and development skills, work-planning abilities, the delegation and decentralization of human resources authority, gender balance, recruitment rosters, and improved conditions of service.

49. It was through this report (A/C.5/49/5) that the Secretary-General introduced the newly created Performance Appraisal System (PAS), to be introduced throughout 1995, that evaluated

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89 JIU/Rep/95/1 (part 1), para. 54.
90 G A resolution 47/226, states in relevant part, that the General Assembly “[n]oting the positive results of national competitive examinations for posts at junior Professional levels as a useful tool for recruitment of highly qualified staff; 1. Requests the Secretary-General to expedite the national competitive examination process at the P-1 and P-2 levels; 2. Also requests the Secretary-General to further his efforts to introduce the competitive examination process at the P-3 level, with due regard to the promotion prospects of staff members at the P-2 level and with a maximum of efficiency and economy; 3. Further requests the Secretary-General to take all necessary measures to speed up the examination process and to ensure that successful candidates are offered positions without delay; 4. Requests the Secretary-General: (a) To continue to recruit external candidates in a manner consistent with staff regulation 4.4; (b) To ensure that the vacancy announcement bulletins are given the widest possible circulation, inter alia, by distributing them without delay to the Permanent Missions to the United Nations; (c) To ensure that the recruitment process is completed as quickly as possible while allowing sufficient time for applications to be received; 5. Expresses the hope that the Secretary-General would end the temporary suspension of recruitment as soon as possible[.]”
91 G A resolution 47/226, section A.1, para. 1.
92 A/C.5/49/5.
93 Ibid.
candidates for recruitment and promotion using the above-identified criteria. The General Assembly noticed this report, and followed-up with resolution 49/222 (Human Resources Management). First, in this resolution, the General Assembly approved the creation of a planning unit (to be placed within the Office of Human Resources Management), and authorized the use of funds for this purpose. This resolution further approved the proposals of the Secretary-General to implement the Performance Appraisal System, and requested him to make every effort to implement the system from within existing overall resources (if necessary, concentrating on implementing the system at the P-4 level and above in 1995, and implementing the system at all levels by April 1996). The General Assembly further noted that the proposed strategy involved the exploration of alternative methods of recruitment and asked the Secretary-General to monitor their implementation closely for cost and effectiveness. Additionally, resolution 49/222 also requested that the Secretary-General implement the Performance Appraisal System at the top levels of employment (including the Under-Secretary-General level), and listed several factors to be included as indicators of manager performance. Further, in regard to new recruitment efforts, resolution 49/222 welcomed the Secretary-General’s efforts to strengthen the internship and fellowship programs and noted its regret that the programmes might have been postponed (although it welcomed contributions from Member States to avoid that

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94 G A resolution 49/222, para. 2. The General Assembly, “[a]pproves the establishment of a planning unit within the Office of Human Resources Management, authorizes the use of general temporary assistance funds in the amount of 496,100 United States dollars for this purpose in 1995, and requests the Secretary-General to report thereon in the context of the final performance report for the biennium 1994-1995 and to submit a comprehensive proposal for the continued funding of this planning unit in the context of his proposed programme budget for the biennium 1996-1997[.]”

95 Ibid., para. 3. The General Assembly, “[a]lso approves the proposals of the Secretary-General for implementation of the Performance Appraisal System and requests him to make every effort to implement them from within existing overall resources, if necessary concentrating on the P-4 level and above worldwide in 1995, and to ensure that from 1 April 1996 the system is implemented at all levels[.]”

96 Ibid., para. 4. The General Assembly, “[n]otes that the strategy proposes to explore alternative ways of recruiting staff and that the Secretary General intends to implement them on a limited and experimental basis, but requests the Secretary-General to ensure that such projects are monitored and evaluated closely and in a timely manner for both effectiveness and cost[.]”

97 Ibid., para. 6. The General Assembly, “[r]equests the Secretary-General to implement the Performance Appraisal System, including at the Under-Secretary-General level, and to ensure that equal employment opportunities for staff selection and advancement, career counseling for staff and appropriate staff training and development are identified as specific performance indicators in the performance appraisal of all managers[.]”
postponement), and requested the Secretary-General continue to hold competitive examinations at the P-1, P-2, and P-3 levels.\textsuperscript{98}

50. Further, under resolution 49/222, the General Assembly also asked the Secretary General to provide it with a report on the practice of use of retirees on recruitment and promotion, and the General Assembly requested that the report be given when the 49\textsuperscript{th} Session of the Assembly resumed in 1995.

51. In 1989, the United Nations Administrative Tribunal heard a case concerning the proper announcement of vacancies.\textsuperscript{99} Here, the Tribunal held that all vacancies must be announced pursuant to the recruitment procedures that were in place at the time.\textsuperscript{100} However, in order for a staff member to bring a complaint before the Tribunal, he or she must allege that the lack of an announcement denied the staff member proper consideration.\textsuperscript{101} Thus, “the lack of advertisement would be irrelevant if it could be established that the Applicant had in fact been given adequate consideration.”\textsuperscript{102}

\textit{(c) Recruitment missions}

52. During the period under review, many recruitment missions were taken to unrepresented and under-represented Member States. The States visited during this period included Papua-New Guinea, Solomon Islands, Vanuatu, Albania, the Soviet Union, Japan, and Mongolia (each region visited in 1991, 1990, and 1989 respectively).\textsuperscript{103} No missions were sent from 1992 – 1994, in order for the JIU to properly determine the effectiveness of such missions. Because these missions were often considered an alternative to the competitive examinations, JIU sought to

\textsuperscript{98} Ibid., paras. 7, 12, 13. The General Assembly, “[w]elcomes the efforts of the Secretary-General to develop and strengthen the internship and fellowship programmes, regrets that there may be a need temporarily to postpone the implementation of these programmes, and requests the Secretary-General to make every effort to identify resources for this purpose and would welcome the contributions of Member States to that end; […] 12. Requests the Secretary-General to continue to hold national competitive examinations at the P-1 and P-2 levels as a useful tool to select the best-qualified candidates; 13. Also requests the Secretary-General to continue to hold national competitive examinations at the P-3 level, with due regard to the promotion prospects at the P-2 level and a maximum of efficiency and economy[.]”
\textsuperscript{99} AT/DEC/447
\textsuperscript{100} Ibid.
\textsuperscript{101} Ibid.
\textsuperscript{102} Ibid.
\textsuperscript{103} JIU/Rep/95/1/para. 84.
compare their cost-effectiveness, and requested reports on the costs of such missions, as well as the number of candidates that were reviewed, recommended, and finally recruited (although as of 1995, the request had remained unfulfilled).104

(d) Recruitment at the D-2 level

53. During the period under review, the Secretary-General created the Senior Review Group in order to advise the Secretary-General on the fulfilling of D-2 level posts. According to the JIU, the measure was put forward in order to fulfill three purposes: (1) to provide the Secretary-General with more structured advice when considering candidates; (2) to ensure that personnel policies and recruitment guidelines were consistently implemented; and (3) to satisfy members aspiring to such posts that their candidacies were given adequate consideration.105

(e) Recruitment during periods of freeze

54. A general freeze on recruitment was declared by the Secretary-General in 1992, and was lifted in the middle of 1994, under consistent pressure by the Member States, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and CPC. This was the second temporary freeze that was placed on recruitment during the previous eight (8) year period.106

55. After the end of this freeze, and at the 47th Session of the General Assembly, delegations in opposition to the freeze noted that the freeze had had negative effects on the equitable geographic distribution of appointments to the Secretariat. As such, the General Assembly

104 Ibid.
105 Ibid., para. 86.
106 ST/SGB/247 explained the matter thusly, “[t]he latest suspension, which concerned only external recruitment for posts in the Professional category (with regard to General Service posts and related categories maximum restraint was decreed), was explained by the necessity to reform the organizational structure of the Secretariat. The suspension was not absolute and exceptions, though limited to an absolute minimum, were allowed. The suspension did not apply to temporary recruitment for service on mission or for replacements assigned to mission duties, or to temporary assistance appointments for conference or meetings.”
attempted to rectify a portion of this impact through resolution 47/226 (relevant portions included previously).107,108

B. Appointment of the Staff

1. Authority to Appoint Staff

56. Prior to the period under review, many issues surrounding the question of who had the proper authority to appoint various staff members had been settled.109 The main focus of the General Assembly at this time was developing the internal administrative machinery to run at the highest possible level of efficiency, and to ensure it operated within the bounds of the mission of the United Nations. To that end, the General Assembly made two requests to the Secretary-General. The first request was for the Secretary-General to maintain his focus on equalizing the distribution of staff members on a geographical basis, and ensuring the recruitment of nationals from unrepresented and under-represented countries.110 The second request of the General Assembly was to build and cement the authority of the Office of Human Resources Management of the Secretariat, in accordance with the recommendations of the expert panels111 that the General Assembly had adopted.112

2. Elements of Appointment

57. During the period under review, both the International Civil Service Commission (ICSC)113, and the United Nations Joint Staff Pension Board (JSPB) began to evaluate the mandatory age of separation (at that time sixty (60) years of age). Both the ICSC and the JSPB

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107 G A resolution 47/226.
108 JIU Rep/95/1.
109 G A resolution 45/239.
110 G A resolution 44/185.
112 G A resolution 44/185.
113 A/44/30, para. 58.
made recommendations to the General Assembly that the mandatory age of separation should be increased by two (2) years.\textsuperscript{114}

58. Through General Assembly resolution 44/185D, the General Assembly approved the amendment to regulation 9.5 of the Staff Regulations of the United Nations to take effect on January 1, 1990. As such, the mandatory separation age was increased to sixty-two (62) years of age.\textsuperscript{115} However, sixty (60) would remain as the mandatory age of separation for those staff members who were hired before this decision took effect, and as such, sixty-two (62) would only be the age of separation for those appointed to posts after the January 1, 1990 activation date.\textsuperscript{116}

59. When accepting the recommendations of the ICSC, the General Assembly noted “the changing demographic pattern of the workforce of the United Nations common system, as well as the increasing trend in some Member States towards extending the length of service of its workforce... [as well as the fact that] in a number of Member States the normal retirement age and the corresponding mandatory age of separation are higher than they are at present in the United Nations common system”.\textsuperscript{117}

3. TYPES OF APPOINTMENT

60. During the period under review, the General Assembly adopted resolution 47/226, examining the role of secondments in the United Nations staffing regime, and reaffirming that there existed inherent differences between secondments from government service and secondments between agencies within the United Nations common system.\textsuperscript{118}

\begin{footnotesize}
\begin{enumerate}
\item A/44/9, annex XIII.
\item G A resolution 44/185 D.
\item G A resolution 44/198.
\item A/56/701. See also A/44/682, para. 7.
\item G A resolution 47/226. The General Assembly, “[r]eaffirms that secondment from government service is consistent with Articles 100 and 101 of the Charter of the United Nations and that it can be beneficial to both the Organization and Member States; 2. [d]ecides that secondment from government service should, irrespective of the length of its period, be based on a tripartite agreement among the Organization, the Member State and the staff member concerned; 3. [a]lso decides that the renewal of a fixed-term appointment that extends the secondment status of a staff member seconded from government service shall be subject to agreement by the Organization, the Government and the staff member concerned; 4. [f]urther requests the Secretary-General to examine or review the possibility and desirability of achieving an appropriate flexibility between career and fixed-term appointments, taking into account the functional and structural needs of the Organization as well as the requirements of a career international civil service, and to report thereon to the General Assembly at its forty-ninth session[.]”
\end{enumerate}
\end{footnotesize}
61. In addition to addressing the issue of secondments, the United Nations (through the United Nations Administrative Tribunal, UNAT) tackled several questions concerning the expiration of fixed term contracts.

62. The first case related to this issue heard in 1990, was Judgment No. 482. This case dealt with staff members appointed to the United Nations under fixed-term contracts of five years, on secondment from their government. Near the end of the five-year contract term, the Administration, instead of submitting recommendations for a probationary appointment as permanent staff, requested that their government extend the secondment for two years. The governments refused, and the staff members’ appointments were subsequently not renewed at the end of their five-year term. The former staff members then filed claims with UNAT seeking reinstatement as staff members, citing General Assembly resolution 37/126 (stating that employees on fixed-term appointments should be given every due consideration for permanent employment, after the completion of five years’ continuous service). This case turned on the very definition of 'secondment'.

63. The Tribunal held that whether a staff member is on a 'secondment' is a matter that may be objectively determined as a secondment requires the filing of specific paperwork, and for specific agreements to be made between the government and the United Nations, including prior agreement to all the details of the staff members hiring and appointments. The Tribunal noted that this did not occur in this case. Therefore, while the Administration, as well as the staff members' governments may have claimed the existence of a secondment, the objective requirements had not been met, and therefore no secondment existed. Since there was no secondment in existence, it was not reasonable for the Secretary-General to refuse re-appointment of these staff members solely based on the objection of the home governments. It was therefore ruled that the Secretary-General exceeded the scope of his authority, and UNAT ordered that the staff members either be re-appointed, or given the sum of three years’ net base salary.\(^\text{119}\)

\(^{119}\) See also AT/DEC/686, Rebizov v. The Secretary-General, reaffirming the holding in Judgment No. 482, and finding that an employee not given consideration for a new appointment after her government denied an extension of a false secondment was beyond the scope of the Secretary-Generals authority: The secondment must be objectively proper before the staffer member’s government can have a say in their continued employment.
64. The second major decision relating to types of appointments during the period under review was Judgment No. 492, from November 2, 1990. This judgment concerned the “replacement practice” of the Secretary-General, asserting that whenever a specific post became vacant, the outgoing staff member was always replaced by a national of a specific group of Member States, in direct contradiction of Article 101, paragraph 3, requiring an equitable, geographic distribution of postings.

65. In this case, the claimant contended that the Secretary-General engaged in the practice of replacing staff members on fixed term contracts with candidates of the same nationality, in violation of the Charter (as stated above), and the policies issued by the International Civil Service Commission (ICSC) requiring nondiscrimination and equal treatment.

66. The United Nations, in its defense, stated that the claimant was considered for the post of Director of her Division, and that (in this specific case) it was allowable to replace fixed-term staff members with those of the same nationality under resolution 35/210, which stated in relevant part that it was allowable “to continue to permit replacement by candidates of the same nationality within a reasonable time-frame in respect of posts held by staff members on fixed-term contracts, whenever this is necessary to ensure that the representation of Member States, whose nationals serve primarily on fixed-term contracts, is not adversely affected”.¹²⁰

67. The Tribunal held that, “in accordance with the practice followed since 1964, as confirmed by General Assembly resolution 35/210 of 17 December 1980, a Soviet national was to be appointed to the post of Director of the Division. The Legal Counsel concluded that such an appointment was in the interest of the United Nations. The Tribunal does not contest his conclusion.” The Tribunal further stated that “in the very particular circumstances of this case, even the most serious consideration of the Applicant given in all good faith, could not have had any effect. It could not have led anywhere. The entire exercise therefore proceeded as if the Applicant had not been considered.”¹²¹ Therefore, UNAT decided that the decision of the Secretary-General on the report of the Joint Appeals Board gave the Applicant partial accord for this oversight by placing on record her outstanding career in her official status file, and further ordered the Secretary-General to pay the Applicant monetary damages.¹²²

¹²⁰ G A resolution 35/210.
¹²¹ AT/DEC/492.
¹²² See also AT/DEC/499.
A similar situation arose in Judgment No. 533, Arain v. the Secretary-General. This again was a case where the claimant objected to a D-level position being filled using the replacement procedures of 35/210 (explained above), instead of the Vacancy Management Procedures mandated by Article 101 of the Charter (requiring full and fair consideration for all staff members, regardless of nationality). Here again, UNAT found that reliance on resolution of 35/210 was allowed, but that the Administration must take into account the primary objectives of the United Nations in the maintenance of geographic diversity, and giving full opportunity for every candidate for the position. This case, in combination with Judgment No. 492, firmly established a limit on the permissible use of resolution 35/210, restricting it to only when there exists true danger of the adverse effects described in 35/210 (above). Therefore, it was only by finding the risk of adverse effects outweighed the paramount importance of adherence to Article 101 that a fixed-term replacement should be made to a national of the same state as the previous incumbent pursuant to resolution 35/210.

During the period under review, the UNAT went to some lengths to ensure proper support of staff members holding fixed-term contracts for lengthy periods of time, thus protecting them from possibly arbitrary decisions. In Judgment No. 626, (November 12, 1993), a staff member serving under a series of fixed-term contracts for over twenty-years was transferred to a position for which he had no experience or qualification. Subsequently, when his job performance was sub-par, he was dismissed. Here, UNAT found that the Administration was the sole cause of the claimant’s struggles in his position, and their failure to support him properly was the cause of the end of his appointment. Therefore, since the primary cause of the sub-par performance was the Administration’s poor decision-making and lack of staff support, reinstatement or compensation was ordered.

Overall, the period under review showed a strong focus by the Administrative Tribunal on protecting non-permanent staff members from improper or ill-considered actions by the Secretary-General, as well as a continued emphasis on equitable distribution of positions and ensuring merit-based promotions.
C. Conditions of Service

1. AUTHORITY RESPONSIBLE FOR DETERMINING THE CONDITIONS OF SERVICE

71. During the period under review, the General Assembly requested (through resolution 43/226) that the International Civil Service Commission (ICSC) create a comprehensive review of the conditions of service at the P-level and higher categories of employment. The General Assembly specifically requested a focus on four areas: (1) the comparator, (2) the system of remuneration, (3) motivation and productivity, and (4) mobility and hardship. However, as of December 21, 1989, the action of the ICSC had been limited to deciding the format of the report, and the setting of procedures for the conduct of work during sessions. In light of this, the General Assembly asked the Secretary-General (after consulting with ICSC) to review the functioning of the ICSC, and to submit a report including the views of the ICSC on the matter. The General Assembly further noted that the on-going work of the ICSC should continue as planned.

72. In the ICSC report, the Commission reviewed its working methods, the role of the Commission in the review of its functioning, and the format of its reports. The ICSC further stated that even though the General Assembly had tasked the Secretary-General (together with the Administrative Committee on Coordination, (ACC)) with consulting with the ICSC when it began its review, the ICSC believed that it should be involved of all stages of the review.

73. In May of 1990, the ACC requested that the Consultative Committee on Administrative Questions (CCAQ) prepare the following in regards to ACC's review of the ICSC: a preliminary discussion paper for the ACC to consider in 1990 (in consultation with staff representatives and the ICSC), and a report on the review for the ACC to consider in 1991.

123 A/44/30, para. 10.
125 Ibid., para. 1
126 Ibid.
127 A/45/30, para. 12.
128 Ibid.
130 A/45/30.
74. The General Assembly took note of the ICSC’s arguments for the ICSC to be involved in its own review process, and issued resolution 45/241 in which the General Assembly acquiesced to the tri-partite working group compromise. In July 1991, the ACC submitted its review of the ICSC to the General Assembly, through A/46/275. The report identified 13 areas of ICSC’s mandate with respect to which it made recommendations, but did not recommend a change in the ICSC’s statute. The ICSC’s report to the 46th Session of the General Assembly summarized this review process, and acknowledged the importance of the role of its interlocutors in improving the functioning of the ICSC.

75. The ICSC also made an effort to enumerate some of the changes it had made on its initiative, including opening certain sections to interlocutors, improving the formats of their reports, and the establishment of more working groups to handle important technical issues. General Assembly resolution 46/191, adopted on recommendation of the Fifth Committee, reaffirmed the role of the General Assembly as the central body in the elaboration of the conditions of service for the United Nations common system as a whole, as well as the role of the ICSC as the independent technical body responsible for the regulation and coordination of those conditions of service. This resolution further reaffirmed that the ICSC should be guided

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131 The ICSC argued that under article 6 of its statute, the ICSC was created to be an independent and impartial agency, and therefore should not be subject to review by those who it was created to be independent from.
132 GA resolution 45/241. The General Assembly reaffirmed “the independence and impartiality of the International Civil Service Commission in the performance of its functions, as envisaged in article 6 of its statute; 2. [e]xpresses its satisfaction with the establishment of a more active dialogue between the Commission and representatives of organizations and of staff, inter alia, through tripartite working groups[.]
133 A/46/275.
134 A/46/30, states in relevant part, “1. [t]he International Civil Service Commission (ICSC) welcomed the constructive review of its functioning and the opportunity to comment on the document prepared by the Consultative Committee on Administrative Questions (CCAQ) and approved by the Administrative Committee on Coordination (ACC). Given its primary responsibility to preserve and strengthen the common system, the Commission viewed the recent requests by the General Assembly to improve its working methods as a timely means of achieving that end. […] 18. In conclusion, the Commission attached great importance to maintaining the cohesiveness and unity of the common system. It recognized its own responsibility to contribute to the strengthening of the common system by demonstrating an understanding of the organizations’ constraints in carrying out its recommendations and decisions and by exhibiting flexibility, where possible, towards the differing needs of the organizations. The Commission also underscored the role of its interlocutors in improving its functioning and the notion of joint accountability since, in the final analysis, it could only function as effectively as was made possible by the interested parties.”
135 Ibid., para. 16.
136 Ibid., para. 11.
137 Ibid., para. 4.
138 GA resolution 46/191, para. 1. The General Assembly, “[r]eaﬀirms the central role of the General Assembly with regard to the elaboration of the conditions of service for the United Nations common system as a
by the principles previously set forward in the agreements between the United Nations and the other Organizations of the common system, and the principles set forward in the statute of the ICSC in order to develop a single unified international civil service.\textsuperscript{139} The General Assembly also took note of the report by the ACC, and affirmed the validity of the statute of the ICSC.\textsuperscript{140} The Assembly further noted the improvements that have taken place within the ICSC, and encouraged the ICSC to examine further improvements in its functioning in order to become more responsive to the needs and concerns of the various organizations of the common system.\textsuperscript{141}

76. General Assembly resolution 49/223 was issued on December 23, 1994,\textsuperscript{142} and was the final evaluation of the ICSC during the period under review. The primary purpose of this resolution was for the General Assembly to express its satisfaction with the work of the Commission. The General Assembly then lauded the Commission for the establishment of a more active dialogue between the Commission and the representatives of other organizations and staff, and further noted that the ICSC had introduced new working methods that allowed for the full participation of the Coordinating Committee for International Staff Unions and Associations of the United Nations System in the work of the ICSC.\textsuperscript{143}

\textsuperscript{139} Ibid., para. 2. The General Assembly, “[r]eaffirms also that in the exercise of its functions, the Commission shall be guided by the principles set out in the agreements between the United Nations and the other organizations of the common system and in the statute of the Commission as accepted by those organizations, which aim at the development of a single unified international civil service through the application of common personnel standards, methods and arrangements[.]”

\textsuperscript{140} Ibid., paras. 3, 4.

\textsuperscript{141} Ibid., para. 5. The General Assembly, “[t]akes note with appreciation of the improvements that have taken place in the functioning of the Commission, and encourages the Commission to pursue further improvements in its functioning, with a view to enhancing its responsiveness within the common system to the concerns and needs of the different organizations[.]”

\textsuperscript{142} G A resolution 49/223.

\textsuperscript{143} Ibid.
77. As previously discussed, during the period under review, the General Assembly (through resolution 43/226) had asked the International Civil Service Commission (ICSC) to complete a comprehensive review of P-level and higher categories’ conditions of service. This review was to make specific note of: (1) the comparator; (2) the remuneration system, (3) motivation and productivity, and (4) mobility and hardship.\textsuperscript{144}

78. Under the auspices of that review, the General Assembly later issued resolution 44/198 in response to the ICSC’s reports. This resolution authorized the implementation of a mobility and hardship allowance,\textsuperscript{145} as well as an assignment grant,\textsuperscript{146} and the provisions related to the reimbursement of boarding costs (contained in paragraph 329 of the Report of the International Civil Service Commission for the Year 1989), assuming that the entitlement would be paid on the fourth (4\textsuperscript{th}) assignment, and only if the staff member served in at least two separate field duty stations.\textsuperscript{147} The General Assembly further made provisions for certain allowances to be created or adjusted for staff members. These allowances included a children's allowance in respect to disabled children, the calculation of the commutation of unused annual leave, and the scale of separation payments.\textsuperscript{148}

79. During the 45\textsuperscript{th} Session of the General Assembly, the Secretary-General issued two reports on proposed amendments to the Staff Rules.\textsuperscript{149} These consisted of a myriad of changes on a wide variety of staff issues, including but not limited to, boarding costs for the education grant, disabled children allowances, the creation of additional steps in the P-2 through P-5 levels, separation payments, home leave, post adjustment amounts, promotion and salary policies, mission salary, mobility and hardship (referencing the above General Assembly resolution), and

\textsuperscript{144} A/44/30.
\textsuperscript{145} G A resolution 44/198, referencing A/44/30, referred to the Hardship Allowance “as outlined in paragraphs 313 to 322 and 328 of volume I of the report of the Commission[...].”
\textsuperscript{146} Ibid., referencing the assignment grant described in, paras. 323 to 327.
\textsuperscript{147} G A resolution 44/198 (referencing A/44/30).
\textsuperscript{148} Ibid. The General Assembly, “[e]ndorses, with effect from 1 July 1990, the recommendations contained in chapter IX of volume II of the report of the Commission and the consequential amendment to the Staff Regulations of the United Nations, with respect to: (a) The children's allowance in respect of disabled children, as outlined in paragraph 429 (e); (b) The calculation of the commutation of unused annual leave, as outlined in paragraph 433 (d); (c) The scale of separation payments, as outlined in paragraph 453 (g)].”
the Join Appeals Board. Both of these reports were recognized in resolution 45/452.

80. Over the remaining course of the period under review, a number of further entitlements were created and/or adjusted. During the 47th Session of the General Assembly, dependency allowances were created, which increased the amount staff could receive for their dependents, and the methodology for developing the education grant for staff members was revised. The 48th Session of the General Assembly oversaw the introduction of a language incentive and the 49th Session of the General Assembly once again adjusted both the dependency allowances and the education grant.

81. In 1994, the United Nations Administrative Tribunal issued a judgement on a case concerning the proper interpretation of Staff Rule 109.5 (concerning the repatriation grant). In this case, the Tribunal held that, “relocation and the consequent payment of the repatriation grant

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150 Ibid.

151 G A resolution 47/216 (adopted, without vote, on recommendation of the Fifth Committee). The General Assembly, “[r]ecalling section I.G, paragraph 4, of its resolution 44/198, by which it requested the International Civil Service Commission to reconsider the methodology for the determination of dependency allowances in the light of the tax practices of the comparator; […] 1. Approves, with effect from 1 January 1993, an increase of 21 per cent in the children’s allowance and an increase of 50 per cent in the secondary dependant’s allowance, and the recommendations of the International Civil Service Commission in respect of eligibility criteria and the maintenance of the local-currency entitlement system; 2. Notes that the Commission will review the level of dependency allowances every two years, in order to ensure, inter alia that all relevant changes in tax and social legislation have been taken into consideration; […] V. Education grant. Recalling section III.B, paragraph 2, of its resolution 43/226 of 21 December 1988, by which it approved as an interim measure the recommendations of the International Civil Service Commission for the management of the reimbursement of expenses under the education grant on the basis of different currency areas, 1058 Administrative and budgetary questions 1. Endorses the revised methodology for the determination of the education grant as contained in annex VII to the report of the International Civil Service Commission; 2. Approves increases in the maximum reimbursement levels in five currency areas, as recommended by the Commission in paragraph 252 of its report[.]”

152 G A resolution 48/224 (on recommendation of the Fifth Committee). The General Assembly, “[r]ecalling its resolution 2480 B(XXIII) of 21 December 1968, section III, paragraph 2, of its resolution 38/232 of 20 December 1983 and section LA of its resolution 47/216, 1. Decides that organizations wishing to introduce the language incentive scheme to promote linguistic balance should do so within the parameters set out in the report of the International Civil Service Commission and in this regard requests all United Nations organizations to pay particular attention to the situation of staff members whose mother tongue is not an official language of the United Nations [.]”

153 G A resolution 49/223 (adopted without vote on recommendation of the Fifth Committee). The General Assembly, “[r]ecalling section II.F, paragraph 2, of its resolution 47/216, in which it noted that the International Civil Service Commission would review the level of dependency allowances every two years. Noting the review by the Commission of dependency allowances reflecting relevant changes in tax abatement and social legislation at the seven headquarters duty stations since 1991, as contained in paragraphs 182 to 192 of its report, 1. Approves, with effect from 1 January 1995, an increase of 10.26 per cent in the levels of the children's and the secondary dependant's allowances; […] V. Education grant. Recalling section IV, paragraph 1, of its resolution 47/216, in which it endorsed the revised methodology for the determination of the education grant, Approves increases in the maximum reimbursement levels in seven currency areas as well as other adjustments to the management of the reimbursement of expenses under the education grant, as recommended by the International Civil Service Commission in paragraph 273 of its report[.]”

154 AT/DEC/656.
were contingent upon the location of the duty station and not the location of the staff member’s residence.\footnote{155}{Ibid.}

\textit{(a) In active service}

\textit{(i) Remuneration}

\textit{(a) In general}

82. Prior to the period under review, the General Assembly (through resolution 41/208, section I, paragraph 6) requested the International Civil Service Commission (ICSC) to cooperate with the United Nations Joint Staff Pension Board (JSPB) in completing a full review of the scales of pensionable remuneration for the P-levels of staff and higher, in order to monitor the level of the scale so that it may be adjusted between comprehensive reviews.\footnote{156}{A/45/30, para. 20.} During the period under review, the General Assembly requested that this review was to specifically focus on: (1) recommendations on the remuneration structure; (2) considerations set out in paragraphs 34 to 41 of volume I of the ICSC report;\footnote{157}{A/44/30, paras. 50-51.} and (3) “the desirability of establishing a margin range between pensionable remuneration of staff... and staff in comparable grades in, the comparator civil service...”\footnote{158}{A/45/30, para. 20.}

83. In 1990, the ICSC issued the report of its 55\textsuperscript{th} Session, making a series of recommendations to the 45\textsuperscript{th} Session of the General Assembly.\footnote{159}{Ibid.} Most of the recommendations of the ICSC were an affirmation of then existing procedures. The ICSC recommended: (1) that income replacement in New York should continue to be used for determining the amount of pensionable remuneration for the P-level and higher categories; (2) that the scale of pensionable remuneration previously established in 1987 should continue; and (3) that the interim adjustment procedures in place at that time should continue.\footnote{160}{Ibid., para. 38, states that, “[t]he Commission decided to recommend to the General Assembly that: (a) Income replacement in New York should continue to be used as the basis for the methodology for the determination of pensionable remuneration of the Professional and higher categories of staff. The relationship between pensionable remuneration amounts for United Nations officials in the Professional and higher categories and for their counterparts in the United States federal civil service would also have to be borne in mind; (b) The methodology}
continued application of the net remuneration margin range (110-120) when determining the appropriate margin range for pensionable remuneration.\textsuperscript{161}

84. In response to the recommendations offered by the ICSC, the General Assembly adopted resolution 45/241 on December 21, 1990. In this resolution, the General Assembly asked the ICSC to reconsider comprehensively the remuneration applied to Assistant-Secretary-Generals (ASGs) and Under-Secretary-Generals (USGs) taking into account the remuneration levels of equivalent positions in the comparator civil service, as well as other allowances for the comparator positions, housing, and pension levels.\textsuperscript{162}

85. Further, the General Assembly noted many of the other recommendations of the ICSC, including a possible freeze of post adjustment in 1991.\textsuperscript{163} The General Assembly further requested that the ICSC pay specific attention to programs being implemented in the United States, and to evaluate how those programs might help the United Nations avoid a prolonged freeze for the period under review. Specifically, ICSC was asked to track the development of the margin and the impact of potential changes in the United States’ federal civil service pay levels resulting from the Federal Employees Pay Comparability Act of 1990.\textsuperscript{164}

86. In fulfilling the request of the General Assembly in resolution 45/241, the ICSC issued its next report with a focus towards the remuneration [and entitlements] ASGs and USGs.\textsuperscript{165} The ICSC stated that it was not possible to find equivalencies in the comparator civil service for the positions of ASGs and USGs.\textsuperscript{166} However, ICSC was able to recommend a seven to eleven (7 to 11) percent increase in remuneration levels, suggested that department heads should have discretion to issue housing allowances to ASGs and USGs, and the installation of a system where the United Nations could subsidize 75% of the rent of ASGs and USGs (up to a specific threshold), instead of a limit of maximum allowable rents.\textsuperscript{167}

\textsuperscript{161} Ibid., para. 38.
\textsuperscript{162} GA resolution 45/241.
\textsuperscript{163} Ibid.
\textsuperscript{164} Ibid.
\textsuperscript{165} A/46/30, para. 160.
\textsuperscript{166} Ibid.
\textsuperscript{167} Ibid.
87. The restructuring of the remuneration scales for P-level staff and higher had an unanticipated side effect on the members of the Joint Inspection Unit (JIU). In A/C.5/45/75, the Secretary-General noted that this restructuring increased the number of steps at the D-1 and D-2 levels (from four steps to six).\textsuperscript{168} Further, the Secretary-General noted that the intent of an earlier JIU statute was to place its inspectors at the highest level of remuneration, and therefore proposed that all new inspectors be placed at step 6, instead of step 4. The General Assembly declined to take any action on this report until the advent of the 46\textsuperscript{th} Session of the General Assembly.\textsuperscript{169}

88. During the 46\textsuperscript{th} Session of the General Assembly, the International Telecommunication Union (ITU) Administrative Council took unilateral action contrary to the norms of the common system by\textsuperscript{170} authorizing a Special Post Allowance (SPA) for all its staff at its headquarters.\textsuperscript{171} In response to this, through resolution 46/191\textsuperscript{172} the General Assembly requested the ICSC to assess the impact of the ITU’s action on the common system, and propose measures to “enforce and enhance respect for, and adherence by, all organizations to the common system of salaries, allowances and conditions of service[.]”.\textsuperscript{173}

89. The ICSC, fulfilling the request of the General Assembly issued ICSC report 1992, which expressed the deep regret of the ICSC concerning the unilateral action taken by the ITU, which ran contrary to the norms that existed in the common system at that time. The report further stated that the ICSC deplored the fact that not only had the first installment already been paid out under ITU Staff Regulation 3.8(b) after the ICSC and the General Assembly expressed their opposition, but also that a second installment had been proposed. Finally, the ICSC recommended that the General Assembly mandate that all organizations, when holding meetings

\textsuperscript{168} A/C.5/45/75.
\textsuperscript{169} Ibid.
\textsuperscript{170} See United Nations Yearbook 1992, p. 1068, states that, “In 1991, (GA res. 46/191 A) the General Assembly had deplored the decision of the International Telecommunication Union (ITU), in applying its staff regulation 3.8 (b), to grant a special post allowance to headquarters staff of the Professional and higher categories, contrary to the norms of the common system.”
\textsuperscript{171} GA resolution 46/191.
\textsuperscript{172} Ibid.
\textsuperscript{173} Ibid., A/47/30, para. 30.
pertaining to the purview of the ICSC (i.e. meetings concerning salaries, allowance, benefits, and other conditions of employment), invite the ICSC to participate in those meetings. 174

90. These views were endorsed by the General Assembly in resolution 47/216. 175 In this resolution the General Assembly urged the governing bodies and executive heads of all organizations to ensure the ICSC was invited to be represented at all of the meetings discussed in the recommendations above. 176

91. During its 48th Session, the General Assembly was able to turn its attention to its regular perennial business with regards to remuneration. Resolution 48/225, issued on December 23, 1993, on the recommendation of the Fifth Committee, adopted the recommendations made by the ICSC in its 1993 report. In this report, the ICSC addressed a modification to the income replacement approach to take effect at the first adjustment of the salary scale on or after 1 April 1994, the implementation of a common staff assessment scale, and the use of that scale for determining pensionable remuneration. 177

92. Nearing the end of the period under review, the Secretary-General submitted report A/C.5/48/37/Add.1 to the General Assembly. The purpose of this report was to recommend amendment to staff rules as they applied to Secretariat staff members engaged for short-term service (the 500 series). 178 By removing the minimum duration for a short-term assignment, the new rules allowed for appointments of extremely limited duration for specific, short-term

174 Ibid. The ICSC, “[r]eiterates its deep regret concerning the unilateral action by ITU which was contrary to the norms of the common system; (b) deplores the fact that not only had the first installment of SPA under Staff Regulation 3.8(b) been paid after the Commission and the General Assembly had expressed strong opposition to such action, but that it was now proposed to pay a second installment; […] (f) [Recommends] that the General Assembly should make it mandatory for all organizations to invite the Commission to be represented at meetings where proposals pertaining to salaries, allowances, benefits and other conditions of employment were discussed[…]”

175 GA resolution 47/216, para. 3.

176 Ibid.

177 A/48/30, states that, “[t]he Commission decided to recommend to the General Assembly the income replacement approach using 66.25 per cent of the net pensionable salary for determining the pensionable remuneration of the General Service and related categories of staff. The revised procedure should be implemented on the occasion of the first adjustment of the salary scale on or after 1 April 1994 and subsequent adjustments of pensionable remuneration should be made on the basis of a 1-to-1 interim adjustment procedure. The Commission also decided to recommend that the procedure outlined under paragraph 44 should be used to determine a common staff assessment scale, with two separate sets of rates (single and dependent) in 1996. The common staff assessment scale should be introduced in 1997 to determine the pensionable remuneration of all categories of staff.”

projects (i.e. election monitoring). Additionally, this report also adjusted the pensionable remuneration and salary rates to the appropriate levels for the year.

(b) After service

(i) Pensions

93. At the 44th Session of the General Assembly, resolution 44/199 recalled the Assembly’s previous request to the International Civil Service Commission (ICSC). In 41/208, the General Assembly had requested that the ICSC work together with the United Nations Joint Staff Pension Board (JSPB) to create a review of the current method of determining the amount of pensionable remuneration (for the staff in P-level categories and above), and to recommend adjustments therein.

94. This report was submitted to the General Assembly during the 45th Session of the General Assembly in A/45/30. In this report, the Commission recommended: (1) that income replacement in New York should continue as the basis for pensionable remuneration for P-level and higher categories; (2) that the net remuneration margin range should be used for calculating pensionable remuneration; and (3) adjustments to the scale of pensionable remuneration.

95. It was on 21 December 1990, during the 45th Session of the General Assembly, that these recommendations were adopted in resolution 45/242. The General Assembly Resolution 45/241 (the immediately preceding resolution) in turn served as the inception for the next step in the

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179 Ibid.
180 Ibid.
181 G A resolution 41/208, para. 6.
182 G A resolution 44/199.
183 A/45/30, states that, “(a) [i]ncome replacement in New York should continue to be used as the basis for the methodology for the determination of pensionable remuneration of the Professional and higher categories of staff. The relationship between pensionable remuneration amounts for United Nations officials in the Professional and higher categories and for their counterparts in the United States federal civil service would also have to be borne in mind; […] (e) [t]he margin range of 110-120 applicable to net remuneration should also apply for pensionable remuneration; […] (g) [o]n each occasion the pensionable remuneration margin was calculated, the income replacement ratios applicable over the three-year period ending as at 31 December of the margin year would also be calculated for both the comparator and the United Nations system and reported to the General Assembly; (h) [f]ollowing a review of the replacement ratios, the Commission, make appropriate recommendations to pensionable remuneration margin had lower limit of the margin range, as with the Assembly; (i) [b]earing in mind the considerations in the subparagraph (h) above, the scale of pensionable remuneration for the Professional and higher categories of staff in effect as at 31 December 1990 should be used to make adjustments in accordance with the existing provisions of article 54 (b) of the Pension Fund Regulations falling due after 1 January 1991.”
General Assembly's comprehensive review. Here, they requested the ICSC to review the method of salary surveys for the G-level and related types of appointment, and report to the Assembly’s 47th Session.

96. Further, in the implementing resolution of the recommendations of the ICSC (45/242), the General Assembly turned its attention to the International Labor Organization (ILO) and asked it to consider similar changes to its staff regulations, to ensure that it adopts similar language to the staff rules to maintain uniformity with the other organizations that were part of the United Nations Joint Staff Pension Fund.184

97. However, the uniformity would not come to pass. The ILO, along with the International Telecommunication Union (ITU), subsequently passed non-uniform regulations185, and the General Assembly responded by stating its concern about the potential impact of these decisions on the United Nations common system and the United Nations pension system.186 In this resolution, the Assembly expressed its deep concern and regret at the unilateral actions of the ITU and ILO, without due regard for their obligations under the United Nations common system, and reaffirmed that the conditions of service of staff members employed within the United Nations common system should be in accordance with the aim of establishing a unified international civil service.187 The Assembly also emphasized the obligations of all the organizations of the United Nations common system to consult and fully cooperate with the ICSC and the JSPB (on matters within their respective purviews), and requested that the ICSC and the JSPB to examine the basis of the decisions made by the ILO and ITU (and to report thereon).188

98. At its following session, the General Assembly then endorsed the findings of the JSPB and the ICSC in regards to the pensionable remuneration of staff at the G-level or similar, and subsequently approved the proposed modification of the pension system in resolution 47/203.189

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184 G A resolution 45/242, para. 3.
185 The ILO established a voluntary thrift benefit fund and the ITU unilaterally implemented a pension purchasing power insurance protection plan and granted a Special Post Allowance to headquarters staff at the P and D levels.
186 G A resolution 45/268.
187 G A resolution 45/268.
188 Ibid.
189 G A resolution 47/203, paras. 1, 3.
It was during its 48th Session that the General Assembly was able to publish an implementing resolution stemming from the cooperation of the JSPB and ICSC. The final change to the pension program during the period under review came during the 49th Session of the Assembly. Here, the General Assembly increased the maximum number of years of creditable service; approved the latest pensionable remuneration scale for P-level categories and above; lowered the “120 percent cap” provision to one hundred and ten percent (110%); and also approved modifications to the scale of pensionable remuneration in the Professional level and higher categories, as well as the pension adjustment system for G-level and related categories of staff.191

100. During the period under review, the United Nations Administrative Tribunal issued judgements on cases regarding pensions. In one case, the Tribunal heard a case concerning whether changes to the pensions system after a staff member’s separation from service could constitute a violation of the principal of equal rights. In this case, the applicant (who separated from service in 1981) argued that he should have been paid in accordance with the provisions of

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190 G A resolution 48/25. The General Assembly, “1. [a]pproves the recommendations made by the International Civil Service Commission that the income replacement approach, applying 66.25 per cent of the net pensionable salary, should be used to determine the pensionable remuneration for staff in the General Service and related categories, and that the revised methodology should be implemented on the occasion of the first adjustment of the salary scale, on or after 1 April 1994, subject to the transitional measures applied on the occasion of the introduction of the 1992 staff assessment scale; […] 3. [a]pproves the recommendation that subsequent adjustments of pensionable remuneration, until the introduction of the common staff assessment scale in 1997, should be made on the basis of a 1:1 interim adjustment procedure; […] 5. [r]equests the Commission, in close cooperation with the United Nations Joint Staff Pension Board, as part of the comprehensive review in 1996 of the methodology to determine the pensionable remuneration and consequent pensions of staff in the Professional and higher categories, to develop a common staff assessment scale for the determination of the pensionable remuneration of all categories of staff using the procedure approved in paragraph 4 above and reflecting the latest available tax rates; […] [d]ecides that, following the introduction of the common staff assessment scale in 1997, the income replacement approach should be used to determine the pensionable remuneration of staff in the General Service and related categories on the occasion of comprehensive salary surveys, with subsequent adjustment of pensionable remuneration between comprehensive surveys to be made on the basis of a 1:1 interim adjustment procedure[.]”

191 G A resolution 49/224. The General Assembly stated that, “[...]with effect from 1 July 1995, the application to staff in the General Service and related categories of the longer-term modification of the pension adjustment system that entered into effect on 1 April 1992, the consequential revisions in the schedule of cost of-living differential factors and the schedule for special adjustments for small pensions under section E of the pension adjustment system, and the consequential changes in the pension adjustment system, as set out in annex II to the present resolution[.]” […] “II. Approves, with effect from 1 April 1995, amendments to article 54 of the Regulations of the United Nations Joint Staff Pension Fund, as set out in annex I to the present resolution, to include the latest scale of pensionable remuneration for staff in the Professional and higher categories, to define the pensionable remuneration of ungraded officials and of participants in the Field Service category and to include references to, and place limitations on, the extent to which merit and/or longevity step increments are deemed to be pensionable”

192 AT/DEC/514.

193 Ibid.
interim measures in effect for those who separated from service between 1987 and 1990, and to deny him those benefits was a violation of equal rights. Here, the Tribunal noted that the change in pension benefits by the General Assembly was in accordance with the Charter and principles of human rights. Further, “[d]iscussing the role of the General Assembly in developing and making changes in a Pension Adjustment System, the Tribunal, quoting Judgement No. 378, *Bohn, Coeytaux and Vouillemont* (1986), and Judgement No. 379, *Gilbert, Hyde, Ishkinazi and Michel* (1986), pointed out that modifications "must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members." The Tribunal concluded that the interim measures did not conflict with the above statement, and therefore the application was rejected in its entirety.

101. In another case, a question was brought before the Tribunal concerning whether the General Assembly had the authority to make retroactive changes to the system of pensionable remuneration. Here, the Tribunal observed that there existed an obligation to maintain an effective and just pension system. Therefore, as long as the modifications to the system maintained an effective and just system, and upheld the principles laid down in Article 101 of the Charter of the United Nations, and were not arbitrary, then the General Assembly had the authority to make retroactive changes to the system. Since the Tribunal found none of those violations in this case, the application was denied in its entirety.

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194 Ibid.
195 Ibid.
196 Ibid.
197 AT/DEC/546.
198 Ibid.
199 Ibid.
200 Ibid.
201 Ibid.
D. Disciplinary measures

102. Prior to the period under review, the General Assembly, together with the Group of 18, had authorized the Secretary-General to establish a fully revised internal justice system.\(^{202}\) It was in 1989, that the Secretary-General issued A/C.5/44/9, a list of proposed revisions to the existing staff rules, which creates a new Chapter X (concerning disciplinary measures and procedures). These proposed rules, based largely on the recommendations from ACABQ, contained the following notable alterations:

1. It provided a description of unsatisfactory conduct.\(^{203}\)
2. It allowed all staff, who has been accused of misconduct, to be entitled to have their case considered by a Joint Disciplinary Committee.\(^{204}\)
3. The new Chapter X allowed for flexibility that would allow certain cases to be referred to a JDC at a different duty station, and for creating ad hoc JDCs to hear cases at duty stations that did not normally have a standing JDC.\(^{205}\)
4. The new Chapter X regulated the use of appeals in opposition of summary dismissals, provided for increased flexibility in what disciplinary measures the JDC were allowed to recommend be imposed, and specified which actions became available to the Secretary-General (including recovery of monetary damages, penalties, or assessments).\(^{206}\)
5. The proposed rules provided clarifications surrounding the issue of suspensions.\(^{207}\)
6. It also introduced a position described as a “Presiding Officer” of the JDC, and detailed this position.\(^{208}\)

103. The General Assembly acknowledged these improvements of the Secretary-General, as well as noted a reduction of the backlog of pending cases, and other overall improvements in the internal justice system (substantively and procedurally) in resolution 44/185 B. That resolution

\(^{202}\) GA resolution 43/224B, pursuant to the ratified recommendations of the Group of 18 in resolution 41/213.
\(^{203}\) A/C.5/44/2, Staff Rule 110.1 entitled Misconduct.
\(^{204}\) Ibid., Staff Rule 110.4 entitled Due Process.
\(^{205}\) Ibid., Staff Rule 110.5 entitled Joint Disciplinary Committees.
\(^{206}\) Ibid., Staff Rule 110.3 entitled Joint Disciplinary Measures.
\(^{207}\) Ibid., Staff Rule 110.2.
\(^{208}\) Ibid., Staff Rule 110.6.
endorsed the report of the Secretary-General, gave the Secretary-General the green light to proceed “without delay” in putting the revised rules into effect, and asked the Secretary-General to continue his work and begin focusing on the improvement of informal procedures to bring about amicable settlements of staff grievances. The Secretary-General next reported to the General Assembly, keeping them apprised of the ongoing improvements and status of implementations through A/C.5/45/11 (in response to a request made in resolution 44/185B).

104. In A/45/806, the ACABQ recognized the considerable progress the Secretary-General achieved in the administration of justice, particularly the elimination of the backlog of pending appeals. ACABQ recommended that the Secretary-General should continue on his path of reform, and asked the Secretary-General to establish an effective system for informal settlements of staff grievances, as well as a well-functioning disciplinary system.209

105. Once given the approval of the General Assembly, the Secretary-General implemented the new Chapter X of the Staff Rules. In the August of 1991, the Secretary-General issued ST/AI/371, implementing the proposed changes, and established an expeditious procedure for the constitution of ad hoc joint disciplinary committees and ensured that the basic requirements of due process were afforded to staff members against whom misconduct was alleged.210

106. Further, during the period under review, specific attention was paid to the promotion of gender equality through the establishment of provisions protecting staff members from sexual harassment. Three issuances were made concerning sexual harassment: “promotion of equal treatment of men and women in the Secretariat and prevention of sexual harassment”211, “guidelines for promoting equal treatment of men and women in the Secretariat”212, and “procedures for dealing with sexual harassment”.213 Moreover, in ST/AI/379 defined sexual harassment as “[a]ny unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. It is particularly

209 A/45/806.
210 ST/AI/371.
211 ST/SGB/253.
213 ST/AI/379.
serious when behavior of this kind is engaged in by any official who is in a position to influence the career or employment conditions of the recipient of such attentions”.

107. Also during the period under review, the United Nations Administrative Tribunal issued several decisions concerning the rights of staff during disciplinary proceedings. During the consideration of this case, “the Tribunal recalled its Judgement No. 300, Sheye (1982), in which the Tribunal established its competence to review disciplinary matters” only in certain exceptional conditions, e.g., in case of “failure to accord due process to the affected staff member before reaching a decision.” The Tribunal further decided that the breach of due process would void any decision ab initio (from the beginning). The second decision of note issued by the Tribunal concerned the authority of the Secretary-General to impose disciplinary measures. Here, the Tribunal held that, “[i]f the Secretary-General concludes, after proper examination, that a staff member's conduct is unsatisfactory, as stated in staff regulation 10.2, he may impose any of the disciplinary measures prescribed in staff rule 110.3. The recommendations of the JDC and similar bodies are advisory and the Secretary-General can go beyond them if, after proper and unbiased consideration, he decides that a more severe penalty is needed either in the interest of the United Nations or for failure by a staff member 'to observe the standards of conduct expected of an international civil servant'.

E. Recourse available to staff members

1. IN GENERAL

108. In the period under review, the General Assembly (in responding to ACABQ report A/45/806), requested that the Secretary-General turn his focus towards the resolution of staff claims prior to hearing by an administrative body. Specifically, the General Assembly requested the Secretary-General to establish an Ombudsman office in addition to reviewing the function of the United Nations Administrative Tribunal (UNAT), the Committee on Applications for Review of Administrative Tribunal Judgements, and the Panel on Discrimination and Other Grievances,

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214 Ibid., para. 2.
215 AT/DEC/551
216 Ibid.
217 AT/DEC/558
218 Ibid.
along with other issues that were brought to the attention of the United Nations by Member States during its 45th Session.\textsuperscript{219}

109. The ACABQ report brought to the attention of the General Assembly the sharp increase in staff grievances that the Secretary-General began to receive shortly after the implementation of the new staff rules. While the Secretary-General was able to successfully eliminate the backlog of pending appeals, the number of requests for review of administrative decisions had almost doubled (the first step in contesting a decision). From 1985 – 1989, the yearly average was roughly 155 appeals.\textsuperscript{220} In the first 10 months of 1990, the Secretariat had already received 314 requests for review.\textsuperscript{221} These numbers were the impetus that necessitated a means to facilitate compromises through an informal process.

110. The Secretary-General reported to the General Assembly about several options for reforming the internal justice system of the United Nations that focused on promoting an earlier resolution of staffing disputes. A primary component of these reforms was to be the creation of mediation panels offered through the Office of the Ombudsman. The goals identified in this report were set forth in Paragraph Four (4) of A/C.5/49/13, and included such objectives as an emphasis on earlier resolution of issues, the impartiality of administrative review, and the introduction of an option for binding arbitration.\textsuperscript{222}

111. The role of the Ombudsman was to offer mediation panels, appointed jointly from existing staff/management machinery in order to resolve claims before they became a formal appeal. Thus, the Ombudsman would offer services to staff with “claims, grievances, and discrimination issues”\textsuperscript{223} prior to a complaint being formally raised. As such, the Ombudsman was not meant to act as an intermediary between parties after a claim has been filed in order to

\textsuperscript{219} G A Resolution 45/239B.
\textsuperscript{220} A/45/806.
\textsuperscript{221} Ibid.
\textsuperscript{222} A/C.5/49/13, para. 4, identifies the objectives in full: “(a) [e]mphasis on early reconciliation and resolution; (b) [e]stablishment of ombudsman mediation panels at Headquarters and overseas offices of the Secretariat with the appointment of a full-time coordinator; (c) [e]mphasis on impartiality of the administrative review function; (d) [d]ecrease in the number of steps relating to the administrative review; (e) [t]ransformation of JAB into an arbitration board; (f) [e]xternal recruitment of the arbitration board’s chairperson; (g) [o]ption of binding arbitration available at the arbitration board, where both parties agree; (h) [a]ppointment of a legal officer to assist the Panel of Counsel; (i) [t]ransformation of JDC into a disciplinary board; (j) [p]roposed change in title from "United Nations internal system of justice" to "Internal system for reconciliation at the United Nations Secretariat world wide".”
\textsuperscript{223} A/C.5/49/13, Section III.
reach an agreement, but was meant to solve the problem before the formal steps of an appeal ever became necessary.224

2. AUTHORITY OVER APPEALS

(a) Joint Appeals Board (JAB)

112. The Secretary-General noted that the steady increase in the number of pending cases before the Headquarters JAB had been a matter of serious concern placing a critical strain on the management of the administrative justice system.225 For the Secretary-General, it had become imperative to reduce the backlog by streamlining the processes for appeals, while maintaining a high standard of justice. It was the balancing of these two factors that led to A/C.5/44/9. In this report, the Secretary-General noted that the policy of accepting unanimous decisions from the Joint Appeals Board was being maintained, except where a major question of law or principle was involved.226 While maintaining this standard, the Secretary-General reported that, as of October 1989, the case backlog was no more than 30 cases, and the average time an appeal took had been reduced from several years to roughly five months.227

113. Additionally, the Secretary-General had established a series of panels to investigate discriminatory treatment throughout the United Nations system.228 These panels were not created to supplant the role of the JAB, but merely to supplement it, as it offered staff members a more informal way to yield unobtrusive results, with quicker dispositions.229

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224 Ibid.
226 Ibid.
227 Ibid.
228 Ibid., para. 16, established panels at Headquarters (ST/Al/246) as well as at Geneva (for the United Nations Office at Geneva (UNOG), the Economic Commission for Europe (ECE), the United Nations Conference on Trade and Development (UNCTAD), and the Office of the United Nations Disaster Relief Co-coordinator (UNDRO) and at the Headquarters of the United Nations Industrial Development Organization (UNIDO), the Economic and Social Commission for Asia and the Pacific (ESLAP), the Economic Commission for Latin America and the Caribbean (ECLAC), the Economic Commission for Africa (ECA), the Economic and Social Commission for Western Asia (ESCWA), and the United Nations Environment Programme (UNEP), ST/Al/246/Add.1.
229 A/C.5/44/9, para. 17.
114. Prior to the period under review, the General Assembly invited Member States to submit written comments concerning proposals designed to harmonize the statutes, rules and practices of UNAT and the International Labor Organization Administrative Tribunal (ILOAT).\textsuperscript{231} By September of that year, the Secretary-General had received substantive comments on the proposals from Member States. The Secretary-General then issued a report on the written comments received from the Member States (concerning the harmonization of the statutes, rules and practices of UNAT and ILOAT).\textsuperscript{232} In light of the comments from the Member States, and on the recommendation of the Fifth Committee, the General Assembly decided to retain the existing statute of the Administrative Tribunal of the United Nations.\textsuperscript{233} However, the General Assembly requested that the Secretary-General return to the matter, taking into account the aforementioned written concerns of the Member States.\textsuperscript{234}

115. During the 48\textsuperscript{th} Session of the General Assembly, on the recommendation of the Sixth Committee, the Secretary-General was asked to review Article 11 of the UNAT statute\textsuperscript{235} and provide a report on its adequacy.\textsuperscript{236} This issue of the adequacy of Article 11 was raised by several Member States\textsuperscript{237} through letter A/48/232.\textsuperscript{238} The report was to be considered during the 49\textsuperscript{th} Session of the Assembly.\textsuperscript{239}

116. The Secretary-General, in report A/C.6/49/2 found that the criticism of Article 11 was not unfounded. The Secretary-General reported that allowing Member States to ask for advisory

\textsuperscript{230} See AT/DEC/673. It should be noted that, during the period under review, a decision of the United Nations Administrative Tribunal was issued that held that when the appropriate procedures were not followed in the disciplining of staff members, those staff members have recourse to the Tribunal.

\textsuperscript{231} GA Dec. 43/452, A/C.5/44/1 & Add. 1.

\textsuperscript{232} A/C.5/44/1 & Add. 1.

\textsuperscript{233} GA decision 44/413.

\textsuperscript{234} Ibid.

\textsuperscript{235} Article 11 provided for the establishment of a committee on applications for review of Administrative Tribunal judgements, which was authorized to request advisory opinions of the International Court of Justice.

\textsuperscript{236} GA decision 48/415.

\textsuperscript{237} Australia, France, Benin, and Ireland.

\textsuperscript{238} A/48/232. The letter “pointed to criticism that the existing procedure [relating to Article 11] was not adequate. In the opinion of some delegations, the procedure should be abolished and replaced with a practical mechanism for resolving staff employment problems.”

\textsuperscript{239} See United Nations Yearbook 1993, p. 1233.
opinions from the ICJ after a final decision of UNAT had led to confusion and criticism, which supported the view that the best solution would be to abolish the Article.240

117. At its 50th Session of the General Assembly, having taken note of the report of the Secretary-General, decided to consider the deletion of Article 11 of the statute of the Administrative Tribunal of the United Nations and “any consequential amendments relating thereto, in the light of the progress made during its [49th] session on the reform of the internal system of justice in the United Nations Secretariat.”241

118. During the period under review, the United Nations Administrative Tribunal issued Judgement No. 564, concerning review of the Tribunal’s decisions. In this case, the Tribunal discussed articles 11 and 12 of the UNAT statute.242 Under article 12 of the UNAT statute, the Tribunal noted that it may correct "clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission".243 Further, the Tribunal noted that, “this provision [article 12] must be interpreted strictly, because article 11 of the statute allowed a person in whose case a judgement had been rendered the right to contest it by applying to the Committee established by paragraph 4 of article 11”, on the grounds that the Tribunal "has exceeded its jurisdiction or competence […] has failed to exercise jurisdiction 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.”244

F. Organization of the Secretariat

1. REORGANIZATION OF THE SECRETARIAT

119. During the period under review, two separate waves of reorganization were undertaken in the Secretariat. The first was initiated prior to the period under review by General Assembly resolution 41/213 dated 19 December 1986 endorsing recommendations made by the Group of

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241 A/C.6/49/L.21
242 AT/DEC/564
243 Ibid.
244 Ibid.
18 to further improve the efficiency of the administrative and financial functioning of the United Nations. The second wave began in 1992 on the initiative of the new Secretary-General.

120. In April 1989, in relation to the first attempt at reorganization, in the Secretary General’s final report on the implementation of resolution 41/213, the Secretary-General stated that measures had to be taken that hampered the implementation of resolution 41/213 while the Secretariat faced one of its most serious financial crises. The staff reductions made during that time were the result of financial restrictions, as opposed to a planned implementation of the resolution.

121. However, the implementation of resolutions 42/211 and 43/213 were not completely stymied, and despite the circumstances in which the Secretariat found itself, several reforms took place. Among these reforms was the development of a clearer distribution of responsibilities among a number of organizational entities, as well as the fact that several departments substantially reviewed their structure in order to enhance or maintain their capacity to deliver mandated programmes (while simultaneously implementing previously recommended post reductions). Additionally, an integrated information system was developed in the administrative area, but it was not likely to show short term results. The General Assembly’s stance on this issue was to encourage the Secretary-General and Member States to intensify their efforts to fulfill whichever provisions they could under resolution 41/123 that fell within the purview of each such entity.

122. Moreover, the Secretary-General discussed the recommendations of the Group of 18 in his aforementioned report. The Secretary-General noted the proposed target of 1,465 posts (roughly 13%) for possible abolition by the end of 1989. The Secretary-General stated that the abolition of these posts would change the volume of programmed activities, but that they would not reduce the overall role of the organization, due to technological innovations, streamlined procedures, and the implementation of new processes for recruitment. However, the Secretary-

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246 Ibid.
247 Ibid.
248 Ibid.
249 Ibid., para. 53.
250 Ibid., para. 53, states in part that, “[t]echnological innovations, improved management procedures, consolidation of programmes and units, and rigorous standards for recruitment should, if actively supported by Member States, enhance the productivity and efficiency of a smaller Secretariat.”
General did note that the goal to decrease the Department of Conference Services by fourteen percent (14%) would require a substantial reduction in the amount of meetings and conferences to be held. Otherwise only a ten percent (10%) cut would be possible without substantial disruption of the conference schedule.\textsuperscript{251}

123. Following this report by the Secretary-General, the General Assembly issued resolution 44/200A (on December 21, 1989) which recognized that the implementation of resolution 41/213 had taken place during a persistent financial crisis. This resolution also reaffirmed that all Member States must honor their financial obligations (as set out in the Charter) promptly and in full. Finally, the Secretary-General and Member States were encouraged to intensify their efforts to implement the provisions of resolution 41/213 that fell within each of their purviews.\textsuperscript{252}

124. By the subsequent resolution (44/201B), the General Assembly made requests to the Secretary-General to continue his efforts in implementing these changes over the following two years (1990 and 1991), and to mark four additional high-level appointments for discontinuation. In a subsequent report issued in the spring of 1990, it was stated that the administrative reforms programme that had begun in 1986 had been largely implemented.\textsuperscript{253} Specifically addressing recommendation 15 in the aforementioned report, the Secretary-General noted that the requests and goals set by the General Assembly should be rational targets for the Secretary-General to keep in mind when making specific cuts, but that the reaching of those targets should not come at the cost of program effectiveness.\textsuperscript{254} As such, the final cuts, as agreed upon by both the Secretary-General and the General Assembly, were to be the thirteen percent (13%) overall reduction in workforce that the Secretary-General had previously advocated, but only a ten percent (10%) reduction in the conference and library services, the highest percentage allowable to still maintain the full number of conferences, as stated previously by the Secretary-General.\textsuperscript{255}

125. Many Member States issued responses to the above-discussed report.\textsuperscript{256} On the whole, the Member States noted that reform was a process that could take some time, and that the reorganization of the Secretariat must respond to changes taking place within the in-
126. In 1992, the new Secretary-General began the second wave of restructuring in the Secretariat. This included the creation of departments and offices, the redeployment of posts (shifting some posts between agencies), and a redistribution of resources throughout the Organization for that period’s budget (through 1993). At the start of 1992, the Secretary-General issued A/46/882, making public a number of changes to the structure of the Secretariat. These were to take effect beginning March 1992. In this announcement, the Secretary-General noted that the need for the restructuring of the Secretariat was evident, and it had been made more so at a time of fundamental changes to the world. Further, the stated goal of these changes was addressed: “[T]o consolidate and streamline the Organization's activities into well-defined functional categories aimed at ensuring effective implementation of the objectives of the Charter and or the mandates entrusted by the policy-making organs”.

127. A/46/882 outlined the main aspects of restructuring as described below, as well as noted that the implications of the first restructuring phase would be presented to the General Assembly as a revised program budget estimate for 1992-1993. This outline set forth the establishment of a Department of Political Affairs, the establishment of a Department of Peace-Keeping

governmental bodies it encapsulated. At the same time, the General Assembly supported the Secretary-General, and stated that strengthening the Organization's effectiveness requires the joint efforts of both the Secretariat and the Member States, and was an ongoing process, and reiterated that the Secretary-General should continue to review the Organization's efficiency annually (and report to the General Assembly accordingly).
Operations (which would incorporate the former Office of Special Political Affairs), established the Department of Humanitarian Affairs, incorporated the Department of Conference Services into the Department for Administration and Management, and integrated the Office for Ocean Affairs and the Law of the Sea into the Office of Legal Affairs.

128. Later in the period under review, the Secretary-General issued note A/47/753, which created three new departments: the Department for Policy Coordination and Sustainable Development, the Department for Economic and Social Information and Policy Analysis, and the Department for Development Support and Management Services.

129. The Department for Policy Coordination and Sustainable Development was designed to provide support for the policy functions and coordination responsibilities of the Economic and Social Council (and its included bodies). The Department for Social Information and Policy Analysis was to focus on the receipt, analysis, and distribution of economic and social statistics, and to analyze long term trends or project effectiveness. Finally, the Department for Development Support and Management Services was to act as a hub for management and technical services working across sectors.

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265 Ibid., para 7, sets forth the “[e]stablishment of the Department of Peace-keeping Operations which incorporates the former Office of Special Political Affairs. It is headed by an Under-Secretary-General, and will now be reinforced by an Assistant Secretary-General.”

266 Ibid., para 9, states that, “[v]arious units were incorporated in the Department of Economic and Social Development, headed by an Under-Secretary-General: Office of the Director-General for Development and International Economic Cooperation; Department of International Economic and Social Affairs; Department of Technical Cooperation for Development; Centre for Science and Technology for Development; and, United Nations Centre on Transnational Corporations.”

267 Ibid., para. 12, states that, “[t]he Department of Humanitarian Affairs was established under the direction of an Under-Secretary-General based in New York. This Department would draw on the resources of the Office of the United Nations Disaster Relief Coordinator and would consolidate existing offices which deal with complex emergencies. The secretariat of the International Decade for Natural Disaster Reduction would become an integral part of this Department. The Under-Secretary-General would work closely with organizations and entities of the United Nations system, as well as the International Committee of the Red Cross, the League of Red Cross and Red Crescent Societies, the International Organization for Migration and relevant non-governmental organizations. At the country level, the Under-Secretary-General would maintain close contact and provide leadership to, the Resident Coordinators on matters relating to humanitarian assistance. He would also assume responsibility for all emergency relief activities at present being undertaken by the Secretariat of the United Nations.”


269 Ibid., para. 14.

270 A/47/753.
130. This announcement also set out the Secretary-General’s wish to redeploy several high-
level posts from administrative to substantive functions, and the elimination of four Assistant-
Secretary-General administrative and management posts.\textsuperscript{271}

131. When the 46\textsuperscript{th} Session of the General Assembly resumed, it adopted (without vote) resolution 46/232, aimed at reinvigorating the Secretariat. Through resolution 46/232, the General-Assembly approved the start of a further process of restructuring and streamlining of the Secretariat, to be initiated by the Secretary-General.\textsuperscript{272} In resolution 47/212, the General Assembly also stressed that the restructuring should conform to the objectives and guidelines/principles set out in resolution 46/232 and should involve close consultation with Member States and relevant inter-governmental bodies.\textsuperscript{273} The resolution also reaffirmed the role of the General Assembly, regarding the structure of the Secretariat (including the creation, suppression, and redeployment of posts that were financed from the Organization’s regular budget), and requested that the Secretary-General provide the Assembly with comprehensive information on all decisions related to high-level posts and their equivalents.\textsuperscript{274}

132. In the Secretary General’s subsequent report, (A/C.5/47/88), he concluded that the restructuring would lead to a significant reduction of high-level posts (13), as well as leaving three posts vacant, pending further action.\textsuperscript{275} The Sixteenth report of the ACABQ,

\textsuperscript{271} Ibid.

\textsuperscript{272} G A resolution 46/232. The General Assembly, “[a]pproves the launching by the Secretary-General of a further process of restructuring and streamlining of the Secretariat, in the exercise of his responsibilities as Chief Administrative Officer of the United Nations, in the framework of the Charter of the United Nations and the relevant resolutions of the General Assembly[.]”

\textsuperscript{273} G A resolution 47/212, para. 1.

\textsuperscript{274} Ibid., para. 2. The General Assembly, “[r]eaffirms the role of the General Assembly with regard to the structure of the Secretariat, including the creation, suppression and redeployment of posts financed from the regular budget of the Organization, and requests the Secretary-General to provide the Assembly with comprehensive information on all decisions involving established and temporary high-level posts, including equivalent positions financed from the regular budget and extrabudgetary resources [.]”

\textsuperscript{275} See United Nations Yearbook, 1993, pp. 1209, identified proposals, “to abolish the USG post in the Department of Economic and Social Development, the USG post of the Executive Director of the United Nations Centre for Human Settlements (UNCHS), following [the Secretary-General’s] decision to place the Centre and the United Nations Environment Programme (UNEP) under common direction, and four Assistant Secretary- General (ASG) posts in the Department of Administration and Management (DAM), one each in the Department of Political Affairs (DPA) and the United Nations Conference on Trade and Development; to downgrade the USG post of the head of the Department of Public Information to the ASG level and the ASG post of the head of the International Trade Centre (ITC) to the D-2 level; and to create an ASG post to head the Centre on Human Rights and a temporary ASG post for the Secretary-General of the Fourth (1995) World Conference on Women. He announced his intention to study the possibility of introducing a D-3 senior career level for selected managerial responsibilities, equivalent to an ASG in terms of emoluments”.

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A/47/7/Add.15, March 1993, further stated that the ACABQ believed a clear statement of an overall restructuring plan and a time frame for its implementation was necessary. Further, the ACABQ stated that the Secretary-General’s report should have shown how the changes he proposed would benefit the Secretariat, and how the restructuring would achieve the previously stated goals of the Assembly.276

133. Further, ACABQ sought a more detailed explanation of the three proposed departments, including their components, structure, and operation. ACABQ expressed the view that more justification was necessary before the approval of shifting or eliminating high-level positions, or the creation of entire departments.277

134. The proposals of the Secretary-General, regarding the high-level posts were approved through A/RES/47/21 B on 6 May 1993, with some modification. First, the General Assembly decided to defer action on the proposal to abolish four high-level posts in the Department of Administration and Management, and requested the Secretary-General to reconsider the proposals in order to ensure that the most senior officials in that Department have a level of authority consistent with that of the most senior officials in other areas of the United Nations.278

Secondly, the General Assembly requested the Secretary-General to urgently pursue an agreement with the Director-General of the General Agreement on Tariffs and Trade on the appointment of an Executive Director of the International Trade Center.279 Third, the General Assembly decided to defer action on the proposal to abolish to Under-Secretary-General post in

276 A/47/7/Add. 15, states that, “[the ACABQ] believes that there is a need for a clear statement of an overall restructuring plan and a time-frame for its implementation. The report of the Secretary-General should have demonstrated how the proposed changes would, in fact, better enable the Secretariat to respond to the relevant intergovernmental decisions, particularly General Assembly resolution 41/213 of 19 December 1986 and to the programme mandates entrusted to it by the Member States, and how the restructuring would achieve the management aim of a “more responsive, cost-effective, streamlined Secretariat” (A/C.5/47/88, para. 7).”

277 Ibid.

278 GA resolution 47/21B. The General Assembly, “(a) [d]ecides to defer action on the proposal of the Secretary-General to abolish the four high-level posts in the Department of Administration and Management and, in this regard, requests him to reconsider his proposals relating to these posts with a view to ensuring that the most senior officials of that Department have a degree of authority that is equivalent to that of the most senior officials in other areas of the United Nations, taking into account the observations and recommendation of the Advisory Committee and the views expressed by Member States[.]”

279 Ibid. The General Assembly, “(b) [r]equests the Secretary-General to pursue as a matter of urgency his efforts to agree with the Director-General of the General Agreement on Tariffs and Trade on a prompt appointment to the post of Executive Director of the International Trade Centre UNCTAD/GATT at its present level[.]”
the United Nations Centre for Human Settlements (Habitat), and asked the Secretary-General to reconsider his proposal.280

2. REORGANIZATION OF THE DEPARTMENT OF ADMINISTRATION AND MANAGEMENT

135. The Department of Administration and Management had been a major priority for restructuring by the Secretary-General, and a detailed analysis of his overall plan was given voice through A/C.5/48/72, Secretary General Report (23 May 1994). Paragraphs 1 through 4 of this report provided a background to the current submission,281 and paragraph 5 noted previous recommendations of the Secretary-General.282

136. Subsequent to paragraph 5 of this report, the Secretary-General put forward his proposals for the restructuring of the upper echelons of the Department of Administration and

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280 Ibid. The General Assembly, “(c) [d]ecides to defer action on the proposal of the Secretary-General to abolish the post of Under-Secretary-General of the United Nations Centre for Human Settlements (Habitat) and requests him to reconsider his proposal and to report in the context of the proposed programme budget for the biennium 1994-1995 on future secretariat support arrangements for the United Nations Environment Programme and Habitat, including the question of separate senior management arrangements for Habitat, taking into account the views and recommendations of the Commission on Human Settlements, the Governing Council of the United Nations Environment Programme and the Economic and Social Council and the views expressed by Member States[.]

281 A/C.5/48/7, paras. 1 – 4, state that, “[t]he Secretary-General submitted to the General Assembly at its forty-eight session his proposals for the Organization’s high level posts for the biennium 1994-1995 (A/C.5/48/9 and Corr.1 and Add.1). 2. In that report, the Secretary-General set out the concepts underlying his approach towards the exercise of managerial responsibility within the Organization and addresses, inter alia, the management structure of the Department of Administration and Management, including the disposition of the four Assistant Secretary-General posts in the staffing table (See A/C.5/48/9, paras.10-13). 3. In its review of that proposal, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) expressed concern regarding a number of the features of the planned reorganization of the Department and requested the Secretary-General to submit a report further elaborating and justifying the proposal. 4. In section II, paragraphs 1 to 3, of its resolution 48/230 of 23 December 1993 on revised estimates […], while approving the proposals related to the establishment of the Office for Inspections and Investigations, the General Assembly decided to continue the current arrangements as contained in the report of the Secretary general pending review of the issue at its resumed forty-eight session.”

282 Ibid., para. 5, states that, “[i]n section V, paragraphs 1 and 2, of the same resolution, the General Assembly took note of the Secretary General’s report on high level posts (A.C.5/48/9 and Corr.1 and Add.1) and endorsed (A/48/7/Add.2), in particular the recommendation that Secretary General should resubmit his proposals for the senior structure of the Department of Administration and Management, taking into account the relevant views and decisions of the General Assembly and the need to elaborate upon and fully explain and justify those proposals.”
Management. These proposals were later taken into consideration by ACABQ, which agreed that the management style\textsuperscript{283} of the Secretary-General ought to provide an effective approach that allows for creative problem solving.\textsuperscript{284}

137. The General Assembly subsequently adopted resolution 48/491 without vote, on recommendation of the Fifth Committee. At its 98\textsuperscript{th} plenary meeting, with regard to the Department on Administration and Management, the General Assembly decided to accept the proposals made by the Secretary-General, “subject to the observations and recommendations of the Advisory Committee as contained in its report, including the observation regarding the provisional redeployment of the Assistant Secretary-General post referred to in paragraph 9 of the report of the Advisory Committee[.]”\textsuperscript{285} Further, the General Assembly made the request of the Secretary-General to review the current staffing levels of the department from the D-1 level down, and reflect on how the changes would affect the budget for 1996-1997.\textsuperscript{286}

\textsuperscript{283} A/48/7/Add.13, para. 8, describes the proposed management style as follows: “[t]he representative of the Secretary-General explained his concept of a "front office" to the Committee in which he and the Assistant Secretaries-General would work in close proximity and would participate collectively in decision-making. The Advisory Committee agrees that this management style may prove an innovative approach to creative problem solving; however, the Committee trusts that clear lines of authority and accountability will be maintained.”

\textsuperscript{285} G A resolution 48/491, states that the proposals of the Secretary-General had been adopted, “subject to the observations and recommendations of the Advisory Committee as contained in its report, including the observation regarding the provisional redeployment of the Assistant Secretary-General post referred to in paragraph 9 of the report of the Advisory Committee[.]”

\textsuperscript{286} Ibid.