

ARTICLE 97

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TEXT OF ARTICLE 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

INTRODUCTORY NOTE

1. Article 97 is the first Article in Chapter XV, which relates to the Secretariat, one of the principal organs of the United Nations. Reference is made therein to the composition of the staff of the Organization, the method of appointment of the Secretary-General, and the fact that the Secretary-General is the chief administrative officer of the Organization.
2. The Analytical Summary of Practice of the present study is divided into two parts. The first part relates to the staff of the Organization. While the conditions of appointment and service and the organizational structure of the Secretariat are dealt with in this Repertory under Article 101, the present study deals with certain categories of staff and other persons employed by the United Nations whose conditions of appointment and service are governed by special rules - the staff of the Office of the Registry of the International Court of Justice, and the staff of certain organs of the United Nations.
3. The second part of the present study relates to the practice which has been followed with respect to the appointment of the Secretary-General and his terms of service. As the various functions of the Secretary-General are dealt with in this Repertory under Article 98, the role of the Secretary-General as chief administrative officer of the Organization is not touched upon here.

ANALYTICAL SUMMARY OF PRACTICE

I. THE STAFF OF THE ORGANIZATION

A. Staff of the Secretariat

1. *In general*

4. Article 97 provides that the Secretariat shall comprise "a Secretary-General and such staff as the Organization may require." Members of the staff appointed by the Secretary-General to perform, under his direction, functions required by United Nations

organs or other functions within the area of responsibility 1/ of the Secretary-General, whether at Headquarters or at duty stations away from Headquarters, are governed by the Staff Regulations, 2/ adopted by the General Assembly, and, in pursuance of the Staff Regulations, by the Staff Rules 3/ enacted by the Secretary-General. 4/ The obligations of the members of the staff, their conditions of appointment and the general organization of the Secretariat are dealt with in this Repertory under Articles 100 and 101.

2. Staff governed by special staff rules

a. STAFF SPECIFICALLY ENGAGED FOR CONFERENCES AND OTHER SHORT-TERM SERVICE AT HEADQUARTERS

5. In addition to the regular staff of the Organization, persons are, from time to time, engaged at Headquarters by the Secretary-General on short-term appointments for conferences and other short-term service, normally for a period not exceeding six months. They are deemed to be members of the Secretariat, although their conditions of service are governed by separate staff rules. 5/

6. The conditions of service of staff members engaged for conferences and other short-term service outside Headquarters are regulated by the terms set forth in their letters of appointment.

1/ For example, under the terms of resolution 36 (IV), by which the Economic Commission for Europe was established, the Economic and Social Council provided that:

"16. The Secretary-General of the United Nations shall appoint the staff of the Commission, which shall form part of the Secretariat of the United Nations."

It made a similar provision under E S C resolution 37 (IV), by which the Economic Commission for Asia and Far East was established.

2/ G A resolution 590 (VI) as amended by G A resolutions 781 (VIII) and 782 (VIII).

3/ ST/SGB/94/Rev.4; ST/AFS/SGB/94/Add.1 and 2; ST/SGB/94/Add.3/Rev.1.

4/ Persons engaged by the United Nations under special service agreements are not considered members of the Secretariat. This category of personnel has been defined in rule 201.1 of the Staff Rules as follows:

"(a) Persons who are engaged on special service agreements, e.g., lecturers or other persons who perform short term service, normally for not more than one month. They will be governed by the conditions specifically provided in the agreement which each has signed."

The following clause is usually inserted in these special service agreements:

"4. Status of the subscriber.

"The subscriber shall be considered as having the legal status of an independent contractor. The subscriber shall not be considered in any respect as being a staff member of the United Nations."

5/ Rules 301.1 to 312.6 (ST/AFS/SGB/94/Add.2) apply to this category of staff members at Headquarters. Under the Staff Rules applicable to them, the staff members specifically engaged for conferences and other short-term service at Headquarters are not eligible for children's allowance, annual leave, home leave, education grant, maternity leave, repatriation grant and termination indemnity unless such payment is specified in the letter of appointment. The provisions regarding sick leave which apply to these staff members also differ from the staff rules concerning other categories of staff members.

b. TECHNICAL ASSISTANCE PROJECT PERSONNEL

7. Special staff rules 6/ have been enacted to apply to persons internationally recruited for specific service in connexion with technical assistance projects.

B. Staff of certain organs

1. *The Military Staff Committee*

8. The composition and the functions of the secretariat of the Military Staff Committee, which was established under Article 47, are set forth in the draft Statute and the draft rules of procedure of that organ. 7/ The draft Statute of the Military Staff Committee provides 8/ that:

".....

"B. Secretariat

"The Secretariat of the Military Staff Committee will be organized as set forth in the document entitled 'Rules of Procedure of the Military Staff Committee and its Secretariat.'"

9. The Rules of Procedure of the Military Staff Committee and its Secretariat state 9/ that:

"Section IV

"Structure and procedure for the Secretariat

"Rule 8

"(a) The Secretariat of the Military Staff Committee shall consist of five secretaries, one from each delegation. Each Secretary shall be designated

6/ Rules 201.1 to 212.5 (ST/SGB/94/Add.3/Rev.1) apply to technical assistance project personnel, with certain exceptions enumerated in rule 201.1. Under these staff rules, the technical assistance project personnel is entitled, inter alia, aside from the regular allowances given to staff members, to a subsistence allowance during mission service, annual travel to residence, et cetera. A special annual salary scale is applicable to them. They are not entitled to a repatriation grant.

7/ At the 23rd meeting of the Security Council on 16 February 1946, it was agreed to refer a report of the Military Staff Committee by which it submitted a draft Statute and draft rules of procedure of the Military Staff Committee and its secretariat to the Committee of Experts of the Council for examination and report to the Council. It was also agreed that "pending the approval by the Council of the rules of procedure and of the statute of the Military Staff Committee, it might be authorized to carry on provisionally along the lines of the proposals which it has submitted." The Military Staff Committee has continued to function under the terms of the draft Statute and the draft rules of procedure (S C, 1st yr., 1st Series, No. 1, 23rd mtg., p. 369). See also in this Repertory under Article 47.

8/ S/421, p. 17.

9/ S/421, pp. 21-23.

by his respective delegation. They will have all the necessary technical assistants, including interpreters, to enable them to serve the Military Staff Committee and any subordinate agencies which may be decided upon by the Military Staff Committee.

"(b)

"(c) The five Secretaries will have equal rights and responsibilities. In order to co-ordinate the work of the five Secretaries and to manage the Secretariat, a Principal Secretary shall be established. Each of the five Secretaries shall hold this position in turn for the period during which a member of his Delegation acts as Chairman. The Principal Secretary will act as a co-ordinator and not as an executive. In his absence, the Secretary next to serve as Principal Secretary shall act in his stead.

"(d) The Secretariat will be an agency of the Military Staff Committee and work in accordance with such rules as may be established by the Military Staff Committee to whom it will be responsible. The Secretariat will provide liaison in routine matters between the Military Staff Committee and the Secretariat of the United Nations.

"(e)

"(i)

"(ii)

"(iii) All the civilian staff of the Secretariat shall be paid from the Budget of the United Nations at the same rates as comparable ranks in other branches of the United Nations Staff, but with the exclusive function of serving under the authority of the Military Staff Committee.

Military personnel shall be paid by their respective Governments.

"(iv) All questions relating to the terms of employment of the above staff shall be co-ordinated with the Offices of the Secretary-General of the United Nations by the five Secretaries.

The civilian staff shall be governed by the same general rules concerning terms of employment, such as pay, appointment, transportation, separation, promotion and leave of absence, as govern various other personnel under the administration of the United Nations Secretariat, subject to such temporary financial arrangements as may be necessary for civil servants of their respective governments who may be serving on temporary loan. The Military Staff Committee will determine, by agreement with the Secretary-General, in time to permit him to prepare his annual budget for submission to the General Assembly, the number and categories and rates of pay of these civilians.

"(v)

"(vi) The Secretary-General shall effect, on the nomination of the Military Staff Committee, appointment, separation, promotion and leave of absence of civilian personnel of the Secretariat of the Military Staff Committee.

"(vii) The Secretary-General shall meet the administrative and financial requirements of the Military Staff Committee in the same manner as those of other organs of the United Nations."

10. The Preliminary Budget Estimates of Expenditure, 10/ submitted to the General Assembly at the second part of its first session, pointed out that:

"The civilian secretariat of the Military Staff Committee is part of the staff of the United Nations Secretariat; however, due to the nature of the activities of the Committee, its civilian secretariat reports directly to the five secretaries of the military delegations."

The following reference to the secretariat of the Military Staff Committee appeared in the Budget Estimates for the Financial Year 1948, 11/ submitted to the General Assembly at its second session:

"The Secretariat of the Military Staff Committee serves the Committee in its various functions as defined by the Security Council. It is organized as an independent unit of the Secretariat because of the particular status of the Committee."

2. *Staff of the United Nations Children's Fund (UNICEF)*

11. General Assembly resolution 57 (I), providing for the establishment of an International Children's Emergency Fund, to be administered under policies established by an Executive Board, stated, in part, that:

"4. (a) Staff and facilities required for the administration of the Fund shall be provided to the Board by the Secretary-General.

"(b) The United Nations shall make no charge to the fund on account of staff and facilities, so long as these can be provided from the established services of the Secretariat and within the limits of the United Nations budget. If additional funds are necessary, money for such purposes shall be provided by the Fund;"

12. In the Final Report of the First Executive Board of the United Nations International Children's Emergency Fund, 12/ submitted to the Economic and Social Council at its twelfth session, the relationship between the staff of UNICEF and the United Nations Secretariat was described as follows:

"Relations with the United Nations Administration"

"While UNICEF is dependent on its own resources for its administrative budget, its international staff members are part of the Secretariat of the United Nations, and are subject to the personnel regulations governing all United Nations employees. ...

10/ A/79, p. 50.

11/ G A (II), Suppl. No. 5 (A/318), p. 44. See also G A (V), Suppl. No. 5 (A/1267), p. 77 and G A (VIII), Suppl. No. 7 (A/2403), p. 19.

12/ E S C (XII), Suppl. No. 3 (E/1908), p. 28. See also E S C (V), p. 293, annex 4 (E/459).

"Under the terms of the charter of UNICEF, the Secretary-General is instructed to provide staff and services within the limitations of the United Nations budget. Within these limits, the most co-operative and helpful assistance has been provided by the United Nations Secretariat from the beginning of the operations of the Fund. Specific services have been provided in the fields of interpretation and translation, public information, conference services, travel services, printing, transportation, etc."

13. By the terms of its Judgment No. 16, the Administrative Tribunal of the United Nations held that the staff of UNICEF form part of the Secretariat. The Administrative Tribunal stated 13/ as follows:

"Inasmuch as General Assembly Resolution 57 (I) establishing the International Children's Emergency Fund, stipulates that:

'4(a) Staff and facilities required for the administration of the Fund shall be provided to the Board by the Secretary-General.'

"It follows that the staff of the Fund, although serving in a department of the Secretariat having a special legal status and its own budget, is not employed by a body distinct from the United Nations, but forms part of the Secretariat staff.

"This principle was explicitly recognized by the Legal Department of the United Nations in a memorandum of 17 January 1952, concerning the legal status of the Fund. The memorandum states that all decisions concerning the staff of the Fund must be taken in accordance with the Staff Regulations and Rules and any special rules approved by the Secretary-General."

3. *Joint secretariat of the Permanent Central Opium Board and Narcotic Drugs Supervisory Body*

14. The International Opium Convention of 19 February 1925, as amended by the Protocol of 11 December 1946, approved by the General Assembly under resolution 54 (I), includes the following provision 14/ with regard to the administrative organization of the Permanent Central Opium Board:

"The Economic and Social Council of the United Nations shall, in consultation with the Board, make the necessary arrangements for the organization and working of the Board with the object of assuring the full technical independence of the Board in carrying out its duties under the present Convention, while providing for the control of the staff in administrative matters by the Secretary-General.

"The Secretary-General shall appoint the secretary and the staff of the Board on the nomination of the Board and subject to the approval of the Council."

15. The International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 13 July 1931, as amended by the Protocol of 11 December 1946, approved by the General Assembly under resolution 54 (I) provides 15/ that:

13/ AT/DEC/16, p.5, para. 8.

14/ United Nations Publications Sales No.: 1947.XI.4; article 20. The underlined text indicates the amendments introduced by the Protocol of 11 December 1946.

15/ G A resolution 54 (I), annex; article 5, para. 6 of the Convention.

"The secretariat of the Supervisory Body shall be provided by the Secretary-General of the United Nations who will ensure close collaboration with the Permanent Central Board."

16. The Permanent Central Opium Board, in its report for the year 1946, stated 16/ that:

"After consultation with the President of the Board and the Chairman of the Supervisory Body, the Secretary-General of the United Nations decided, as a matter of simplification and economy, to bring about a fusion of the secretariats of these two organs. In future, therefore, a single Secretary and a single staff will do the secretarial work both of the Board and of the Supervisory Body".

17. The Report to the Economic and Social Council on Statistics of Narcotics for 1948 and the Work of the Board in 1949, 17/ submitted by the Permanent Central Opium Board to the Council at its tenth session, contained the following extract of the arrangements made with the Secretary-General:

"Under Article 20 of the 1925 Convention, the Secretary-General shall appoint the secretary and staff of the Board on the nomination of the Board and subject to the approval of the Council. No contracts should be given, prolonged or terminated, without previous consultation with the Board or its representative. Similarly, grades, salaries and length of contracts of the members of the Board's staff should be subject to agreement between the Board and the Secretary-General.

"It is necessary that a certain proportion of the Board's staff should have the stability afforded by permanent contracts."

18. The report of the Advisory Committee on Administrative and Budgetary Questions, 18/ submitted to the General Assembly at its eighth session, included the Joint Secretariat of the Permanent Central Opium Board and the Narcotic Drugs Supervisory Body in the category entitled "Services that come under the administrative authority of the Director [of the European office of the United Nations] but are responsible in substantive matters to a Headquarters department". The report stated that "the Joint Secretariat, though grouped for convenience in this category, is responsible, as regards substantive matters, to the Opium Board and the Supervisory Body and not to a Headquarters department."

4. *United Nations Panel of Field Observers*

19. By resolution 297 B (IV), the General Assembly requested the Secretary-General to establish and maintain a list of persons qualified to assist United Nations missions in the functions of observation and supervision, such persons to be called to service in response to a specific resolution by a competent organ of the United Nations. The persons listed in accordance with the above-mentioned resolution are collectively designated the United Nations Panel of Field Observers.

20. Persons called into the service of the United Nations in accordance with the terms of the above-mentioned resolution are not considered staff members of the Organization,

16/ E/OB/1, p. 5.

17/ United Nations Publications, Sales No.: 1949.XI.11, p. 21.

18/ G A (VIII), Annexes, a.i. 39, A/2501, para. 25.

and accordingly do not form part of the Secretariat. In the preamble to resolution 297 B (IV), the General Assembly took note of the intention of the Secretary-General "to undertake the administrative arrangements for the proposed Panel"; such administrative arrangements were explained in a memorandum 19/ submitted by the Secretary-General to the General Assembly at its fourth session. The memorandum stated that:

"The Panel would consist of the names of men in the national service of Governments and recommended by these Governments. The Bureau of Personnel of the Secretariat would receive these recommendations and would select those who were qualified in accordance with standards of age, physical fitness and experience. The members of the Panel would not be called for training and would receive no compensation unless and until called upon for services as hereinafter described.

".....

"When called into service, the Panel members would receive a daily subsistence allowance, and their Governments would be reimbursed for salaries and family allowances."

5. *The secretariat of the Technical Assistance Board*

21. Under the terms of Economic and Social Council resolution 222 (IX), paragraph 3, as amended by resolution 433 (XIV), the Executive Chairman of the Technical Assistance Board (TAB) was to be appointed by the Secretary-General, "after consultation with the executive heads of the participating organizations". Under paragraph 4 of the same resolution, it was provided that the secretariat of TAB was to be under the supervision of the Executive Chairman.

22. Some members of the secretariat of TAB 20/ who were not members of the Secretariat of the United Nations or of the specialized agencies participating in the Expanded Programme of Technical Assistance have been appointed by the Executive Chairman of the Board. Other members have been seconded from the Secretariat of the United Nations or from the participating specialized agencies. 21/

19/ G A (IV), Suppl. No. 13 (A/959), pp. 6 and 7.

20/ The secretariat of TAB consists of the headquarters office which comprises the Executive Office of the Chairman, the Administrative Management and Field Services Division, Programme and Financial Management, and the resident representatives in the field and their staff.

21/ E S C resolution 222 (IX), para. 4, as amended by E S C resolution 433 (XIV), provides that:

"Whenever the need arises, the Executive Chairman shall make arrangements whereby the executive heads of the participating organizations may assign members of their staffs to the secretariat of the Technical Assistance Board."

The Manual of Personnel Policies and Procedures for the Expanded Programme of Technical Assistance (ST/SGB/94/Add.3/Rev.1), provides, in the chapter entitled "Regular Staff Members assigned to the Expanded Programme of Technical Assistance", under Article 101, entitled "Retention of Rights", that:

"Regular staff members of participating organizations shall, on being detailed, seconded or transferred to posts paid from the Special Account, retain such rights and benefits as shall be determined by that organization.

CONDITIONS

In the case of an inter-agency transfer, retention of rights of a staff member shall be subject to agreement between the two agencies."

6. *Staff of the Office of the United Nations
High Commissioner for Refugees*

23. The Statute of the Office of the United Nations High Commissioner for Refugees, 22/ adopted by the General Assembly under resolution 428 (V), contains the following provisions:

"13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General.

".....

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

".....

"(c) Their conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

".....

"20. The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure, other than administrative expenditures relating to the functioning of the Office of the High Commissioner, shall be borne on the budget of the United Nations, and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions."

24. The Office of the High Commissioner for Refugees has been described in the annual report of the Secretary-General 23/ submitted to the General Assembly at its sixth session as "having, under the terms of its Statute a direct responsibility to the General Assembly and a semi-autonomous relationship to the Secretary-General."

25. In its report 24/ to the General Assembly at its eighth session, the Advisory Committee on Administrative and Budgetary Questions submitted the following remarks:

".....

"(ii) The Advisory Committee is informed that, as regards the de jure position, the Secretary-General construes the statute as making the High Commissioner for Refugees directly responsible to the General Assembly, and not to himself, in respect of administrative as well as substantive matters, even though the necessary budgetary provision under section 20a is allotted by the Secretary-General. For practical purpose, however - as the Advisory Committee is further informed - the Office of the High Commissioner forms a fully integrated part of the United Nations Secretariat. The administrative and financial services of the European Office, for

22/ G A resolution 428 (V), annex.

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

24/ G A (VIII), Annexes, a.i. 39, p. 32, A/2501.

example, act in the same capacity on behalf of the High Commissioner, advising him on the decisions to be taken in accordance with staff and financial regulations and rules and generally conducting, subject to his authority, the administrative and financial business of his office (including that relating to the extra-budgetary funds under his control)."

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

26. Resolution 302 (IV), by which the General Assembly established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), read, in part, as follows:

".....

"9. Requests the Secretary-General to appoint the Director of United Nations Relief and Works Agency for Palestine Refugees in the Near East in consultation with the Governments represented on the Advisory Commission;

"(a) The Director shall be the chief executive officer of the United Nations Relief and Works Agency for Palestine Refugees in the Near East responsible to the General Assembly for the operation of the programme;

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

27. In his annual report 25/ to the General Assembly at its fifth session, the Secretary-General made the following observations on the assistance given to UNRWA by the United Nations Secretariat and the administrative relationship:

"Agreement has been reached on the working relationship between the new Agency and the United Nations Secretariat, the Agency operating under its own set of financial rules and regulations and normally selecting and appointing its own staff in accordance with the staff rules and regulations applicable to United Nations missions. The departments of the Secretariat provide services, as needed and wherever possible, and assist the Agency in maintaining necessary contacts with the specialized agencies. In addition, the Secretary-General is prepared to initiate the solicitation of financial and other contributions to the Agency from Governments."

In his annual report 26/ to the General Assembly at its seventh session, the Director of UNRWA referred to the composition and conditions of employment of the staff in the following terms:

"The Agency's entire operations, including the expanded new programme for the provision of means of self-support for refugees as well as the continuing relief operation is administered by a staff consisting of 140 international staff members and approximately 6,000 Palestinians...."

25/ G A (V), Suppl. No. 1 (A/1287), p. 137.

26/ G A (VII), Suppl. No. 13 (A/2171), p. 11.

"With respect to the terms of employment of international staff members in the Agency as they relate to the staff rules and regulations of the United Nations, agreement has been reached with Headquarters for the granting of temporary-indefinite status to all international employees, together with accompanying benefits, with the exception of participation in the United Nations Pension Fund."

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

28. The status of the staff of the United Nations Korean Reconstruction Agency (UNKRA) is similar to that of the staff of UNRWA. By resolution 410 A (V), the General Assembly provided that the Agent General was to select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Agent General and the Secretary-General were to agree upon as being applicable. The Secretary-General was requested, after consulting the United Nations Commission for the Unification and Rehabilitation of Korea and the Advisory Committee, to appoint the United Nations Agent General for Korean Reconstruction, and the Agent General was authorized to appoint one or more Deputy Agents General in consultation with the Secretary-General.

29. Concerning the provisional staff rules of UNKRA, the following observation was submitted 27/ by the Agent General to the General Assembly at its seventh session.

"Provisional staff rules for UNKRA were prepared by the Agent General and submitted to the Secretary-General in accordance with the relevant provisions of General Assembly resolution 410 (V). They were approved by the Secretary-General and came into force on 3 September 1951, retroactive to 1 May 1951. In general, the staff rules of UNKRA follow closely those of the United Nations Secretariat, but have been modified, as the operations of UNKRA have dictated, to take into account the temporary existence of the Agency and the need to provide special arrangements for personnel in Korea."

C. *Staff of the Office of the Registry of the International Court of Justice*

30. Under the terms of Article 21 (2) of the Statute of the International Court of Justice, the Court appoints its Registrar "and may provide for the appointment of such other officers as may be necessary."

31. The method of appointment of the Registrar is laid down in Article 14 of the Rules of Court 28/ under which it is provided that:

"1. The Court shall select its Registrar from amongst candidates proposed by members of the Court.

".....

"3. The election shall be by secret ballot and by an absolute majority of votes.

".....

".....

27/ G A (VII), Suppl. No. 19 (A/2222), p. 24, para. 209.

28/ Acts and documents concerning the organization of the Court, I C J, Series D., No. 1, Second edition (May 1947), p. 54.

"6. The Court shall appoint a Deputy-Registrar to assist the Registrar, to act as Registrar in his absence and, in the event of his ceasing to hold the office, to perform the duties until a new Registrar shall have been appointed. The Deputy-Registrar shall be appointed under the same conditions and in the same way as the Registrar."

On assuming their duties, the two above-named officials make a declaration which is set out in Article 15 of the Rules.

32. Under Article 17 of the Rules of Court, officials of the Registry, other than the Deputy Registrar, are appointed by the Court on proposals submitted by the Registrar.

33. Article 18 (2) of the Rules of Court provides, with respect to the Regulations for the staff of the Registry that:

"2. The Regulations for the staff of the Registry shall be drawn up having regard to the plan of the organization prescribed by the Court and to the provisions of the Regulations for the staff of the Secretariat of the United Nations to which they shall, as far as possible, conform. Their adoption by the President on the proposal of the Registrar is subject to subsequent approval by the Court."

II. APPOINTMENT OF THE SECRETARY-GENERAL

A. Method of appointment

34. A brief account of the procedural steps relating to the method of appointment of the Secretary-General is set forth below. The steps relating to the recommendation of a candidate by the Security Council are dealt with first, and are followed by an account of the steps relating to the actual appointment by the General Assembly.

1. *Recommendation of the Security Council*

a. PRIVATE MEETINGS

35. Under resolution 11 (I), relating to the terms of appointment of the Secretary-General, the General Assembly stated that "both nomination and appointment should be discussed at private meetings". Rule 48 of the provisional rules of procedure of the Security Council ^{29/} similarly provides that "any recommendation to the General Assembly regarding the appointment of the Secretary-General shall be discussed and decided at a private meeting". All meetings of the Security Council to consider such recommendations have been held in private.

b. COMMUNIQUÉS

36. In accordance with rule 55 of the provisional rules of procedure of the Security Council, communiqués have been issued by the Secretary-General at the close of private meetings of the Council at which recommendations regarding the appointment of the Secretary-General were considered and have been "circulated in place of a verbatim record". ^{30/} These communiqués have contained information as to the stage reached in the consideration of a particular recommendation and the decisions taken in connexion therewith. In 1946 and 1950, the names of the candidates proposed for consideration by

^{29/} United Nations Publications, Sales No.: 1952.I.18.

^{30/} See, for example: S C, 5th yr. No. 58, 516th mtg., p. 1; S C, 8th yr., 617th mtg., p. 1.

the Council were not mentioned 31/ nor was the result of the voting given. In 1953, the communiqués mentioned 32/ the names of the candidates, the members of the Security Council which had nominated them, and the results of the voting taken.

c. NUMBER OF CANDIDATES

37. Under resolution 11 (I), the General Assembly stated that:

"It would be desirable for the Security Council to proffer one candidate only for the consideration of the General Assembly, and for debate on the nomination in the General Assembly to be avoided."

38. The practice of recommending only one candidate has so far been followed by the Security Council. 33/

d. PRIVATE CONSULTATIONS AMONG THE PERMANENT MEMBERS OF THE SECURITY COUNCIL

39. The official communiqué issued at the close of the 513th meeting of the Security Council held on 20 and 21 October 1950, stated that the Council had requested 34/ the five permanent members to hold private consultations and "to report the result of these conversations to the Security Council not later than 24 October 1950."

e. SECRET VOTE

40. Under resolution 11 (I), the General Assembly stated that "a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot".

f. COMMUNICATION OF RECOMMENDATIONS TO THE GENERAL ASSEMBLY

41. The decisions of the Security Council as to its recommendations under Article 97 have been officially communicated to the President of the General Assembly by letter from the President of the Council. 35/ When the question of the successor to the first Secretary-General was considered by the Security Council in 1950, the President of the Council informed the President of the General Assembly by letter 36/ that the Council had been unable to agree on a recommendation.

31/ S C, 1st yr., 1st Series, No. 1, 4th mtg., p. 44; S C 5th yr., No. 51, 509th mtg., p. 1.

32/ S C, 8th yr., 613th mtg., p. 1.

33/ During the discussion on the continuation in office of the Secretary-General at the fifth session of the General Assembly, one representative stated that according to his recollection, when Article 97 was drawn up at San Francisco, the general conviction had been that "the Security Council was not bound to recommend only one candidate but could nominate two or three, or even more, and thus leave the General Assembly free to choose among them by majority vote" (see G A (V), Plen., Vol. I, 298th mtg., para. 71).

34/ S C, 5th yr., No. 55, 513th mtg., p. 1.

35/ S C, 1st yr., 1st Series, Suppl. No. 1, annex 6, p. 80.

36/ G A (V), Annexes, a.i. 17, p. 1, A/1439 and A/1460.

g. COMMUNICATION TO THE CANDIDATE

42. When the Security Council, in 1946, decided to recommend the appointment of Mr. Trygve Lie, he was informed 37/ of the recommendation "in order to ascertain whether he would be prepared to accept this nomination". In 1953, in a communication 38/ to Mr. Dag Hammarskjold, the hope was expressed by the President of the Council that the candidate would agree to accept the appointment if, as members of the Council "hope and believe, it is shortly made by the General Assembly".

2. *Appointment of the Secretary-General by the General Assembly*

a. PRIVATE MEETINGS

43. Rule 142 of the rules of procedure of the General Assembly 39/ provides that "the General Assembly shall consider the recommendation [of the Security Council on the appointment of the Secretary-General] and vote upon it by secret ballot in private meeting."

44. At the time of the appointment of the first Secretary-General, however, the President of the General Assembly drew the attention 40/ of the Assembly to the rules of procedure and suggested that it should decide unanimously to vote by secret ballot in public meeting. As there was no opposition, the vote was taken in public meeting.

45. The same procedure was followed upon the occasion of the appointment of the second Secretary-General. 41/

b. NOMINATION IN THE GENERAL ASSEMBLY

46. Upon the occasion of the appointment of the first Secretary-General, the recommendation of the Security Council was supported 42/ in the General Assembly by the representative of Australia who, speaking as President of the Council, indicated that the recommendation was being made unanimously by the members of the Security Council. No statements were made before the General Assembly voted on the recommendation to appoint Mr. Hammarskjold. 43/

c. SECRET BALLOT

47. Under resolution 11 (I), the General Assembly stated that "a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot". Rule 142 of the rules of procedure of the General Assembly confirms this principle.

48. Upon the occasion of the appointment of the first Secretary-General, the President of the General Assembly stated 44/ that representatives should indicate their support of or opposition to the recommendation of the Security Council, as the case

37/ S C, 1st yr., 1st Series, No. 1, 4th mtg., p. 44.
38/ S C, 8th yr., 617th mtg., p. 1.
39/ United Nations Publication, Sales No.: 1954.I.17.
40/ G A (I/1), Plen., 20th mtg., p. 304.
41/ G A (VII), Plen., 423rd mtg., paras. 1-122.
42/ G A (I/1), Plen., 20th mtg., pp. 303 and 304.
43/ G A (VII), Plen., 423rd mtg., paras. 1-8.
44/ G A (I/1), Plen., 20th mtg., p. 304.

might be, by writing the word "Yes" or "No" on their ballot paper; he made it clear that no names should be mentioned. 45/

d. MAJORITY REQUIRED

49. Under resolution 11 (I), the General Assembly, basing itself upon the provisions of Articles 18 and 27, stated that, for the appointment of the Secretary-General by the General Assembly,

"a simple majority of the members of that body present and voting is sufficient, unless the General Assembly itself decides that a two-thirds majority is called for. The same rules apply to a renewal of appointment as to an original appointment; this should be made clear when the original appointment is made."

e. INSTALLATION IN OFFICE

50. The ceremony which took place when the first Secretary-General was installed is described below. 46/ The President of the General Assembly called upon the Vice-Presidents, the President of the Security Council and the President of the Economic and Social Council to take their places on the platform. Mr. Lie was escorted to the platform by the Executive Secretary, Mr. (later Sir Gladwyn) Jebb. He was asked by the President whether he solemnly undertook to exercise with loyalty, discretion and conscience the functions entrusted to him, to regulate his conduct with the interests of the United Nations only in view and not to seek or accept instructions from any Government or other authority external to the Organization. Mr. Lie then took the oath of office as follows:

"I, Trygve Lie, solemnly swear to exercise in all loyalty, discretion and conscience the functions entrusted to me as Secretary-General of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Organization." 47/

51. The President then delivered a congratulatory speech and declared Mr. Lie installed in his functions as Secretary-General. Mr. Lie made a speech of thanks.

45/ At its fifth session, when the General Assembly had before it a draft resolution proposing that the first Secretary-General be continued in office, the President drew attention to the fact that the rules of procedure did not provide for a vote by secret ballot except in the case of an election of persons or States. He stated that if the rules of procedure were strictly applied, a vote on the draft resolution should be taken by show of hands. He suggested, however, that, while no election was involved, the decision to be taken nevertheless concerned a person; hence it would be advisable to take a vote by secret ballot. As there was objection to the suggestion of the President, the draft resolution was voted upon by show of hands (G A (V), Plen., vol. I, 298th mtg., paras 118-123).

46/ G A (I/1), Plen., 22nd mtg., pp. 323-326.

47/ This oath is the same as that prescribed for members of the staff in the Staff Regulations, except that in the latter, the words "as an international civil servant" are used instead of the words "as Secretary-General of the United Nations".

52. The ceremony of installation of the second Secretary-General was conducted in the same manner. ^{48/} However, only the seven Vice-Presidents of the General Assembly and the Chairmen of the Main Committees of the General Assembly took their places on the platform. Mr. Lie introduced Mr. Hammarskjold to the General Assembly and the President asked the new Secretary-General to take the same oath of office as that taken by the first Secretary-General. After taking the oath, Mr. Hammarskjold made a speech of acceptance and was welcomed in speeches by the representatives of several Member States.

B. Terms of appointment of the Secretary-General

53. The terms of appointment of the first Secretary-General were laid down by the General Assembly, under resolution 11 (I), in the light of "the heavy responsibilities which rest upon the Secretary-General in fulfilling his obligations under the Charter".

54. When the second Secretary-General was appointed, the General Assembly adopted resolution 709 (VII), by which it decided that "the terms of appointment of the second Secretary-General shall be the same as those of the first Secretary-General."

55. Under resolution 11 (I), the General Assembly provided that "the terms of appointment of the Secretary-General shall be such as to enable a man of eminence and high attainment to accept and maintain the position."

1. Length of term of office

a. NORMAL TERM - ELIGIBILITY FOR REAPPOINTMENT

56. Under resolution 11 (I), the General Assembly stated that "the first Secretary-General shall be appointed for five years, the appointment being open at the end of that period for a further five-year term."

57. It further stated that, "there being no stipulation on the subject in the Charter, the General Assembly and the Security Council are free to modify the term of office of future Secretaries-General in the light of experience."

58. In its recommendations to the General Assembly with regard to the appointment of the Secretary-General, the Security Council has not expressed itself on the question of the term of office.

b. ASSUMPTION OF OFFICE

59. The Official Records indicate ^{49/} that the Secretary-General has assumed his title and functions immediately upon taking his oath of office.

c. CONTINUATION IN OFFICE

60. The question of the appointment of the Secretary-General was included ^{50/} in the agenda of the General Assembly at its fifth session. Subsequently, the General

^{48/} G A (VII), Plen., 426th mtg., paras. 1-118.

^{49/} Ibid., paras 1-8. Mr. Trygve Lie was referred to as Secretary-General until he introduced the new Secretary-General to the General Assembly.

^{50/} G A (V), Plen., vol. I, 284th mtg., para. 62.

Assembly adopted 51/ the recommendation of the General Committee that this question should be discussed in plenary meeting without reference to the General Committee.

61. Shortly after the General Assembly took this decision, the Security Council held several meetings. After the Council had reported 52/ on its inability to formulate a recommendation, discussion of the question of the appointment of the Secretary-General was taken up 53/ later in the session in plenary meeting, over the objection of one delegation.

62. This delegation expressed its objection both in writing, in a letter 54/ sent to the President of the General Assembly, and orally, 55/ holding that it had been illegal, under the terms of Article 97 and under rule 140 of the rules of procedure of the General Assembly, to include this item in the agenda in the absence of any recommendation of the Security Council. In the absence of such a recommendation, it was argued, there was no question to be considered, since the recommendation of the Security Council constituted the very question to be dealt with.

63. After discussion, 56/ the General Assembly, by 46 votes to 5, with 8 abstentions, adopted a draft resolution which became resolution 492 (V), by which it referred to "the necessity to ensure the uninterrupted exercise of the functions vested by the Charter in the office of the Secretary-General," and by which it decided that "the present Secretary-General shall be continued in office for a period of three years."

64. In the course of the discussion of the resolution at the draft stage, some representatives indicated 57/ that, if the draft resolution were adopted, their Governments would consider the decision invalid and would not recognize the Secretary-General. The arguments set forth below were among those advanced. (1) Article 97 provided that the Secretary-General must be appointed by the General Assembly on the recommendation of the Security Council. (2) The unanimity of the permanent members of that Council was required by the Charter before a recommendation could be made, in order that the Secretary-General should be acceptable not only to a majority but to all the States Members of the United Nations. (3) Under Article 97 and under its own rules of procedure, the General Assembly could not consider a candidate who had not been recommended by the Security Council. (4) A proposal to continue the Secretary-General in office should be considered on the basis of the same rules as were applicable in the case of a new appointment. (5) The Charter made no reference to an extension of the term of office of the Secretary-General, and that concept was, therefore, contrary to the provisions of the Charter. (6) There was no difference between a renewal of appointment and an extension of the term of office; both were a form of re-appointment subject, under General Assembly resolution 11 (I), to the same conditions as the original appointment. That decision had not been rescinded and was therefore binding.

51/ Ibid., 285th mtg., para. 75.

52/ G A (V), Annexes, a.i. 17, p.1, A/1439 and A/1460.

53/ G A (V), Plen., vol.I, 296th mtg., para. 28.

54/ G A (V), Annexes, a.i. 17, p.2, A/1468.

55/ G A (V), Plen., vol.I, 296th mtg., paras. 15-27.

56/ Ibid., paras. 13-168; 297th mtg., paras. 1-186; 298th mtg., paras. 1-105.

57/ For texts of relevant statements, see G A (V), Plen., vol.I,

296th mtg.: USSR, paras. 112-116;

297th mtg.: Byelorussian SSR, paras. 149-159; Czechoslovakia, paras. 125-143;
Poland, paras. 76-117; Ukrainian SSR, paras. 42-58;

298th mtg.: USSR, paras. 1-49.

65. Other representatives expressed 58/ doubts concerning the legality of the draft resolution and were among those who subsequently abstained from voting. One representative was of the opinion that, although the Assembly could adopt a resolution amending the provisions concerning the term of office of the Secretary-General, it could not apply it retroactively to a previous appointment. Another representative believed that the words of the Charter were clear and had been confirmed by General Assembly resolution 11 (I).

66. The views set forth below were among those expressed 59/ in support of the draft resolution. (1) Although the Charter did not provide for an extension of the term of office of the Secretary-General, it did not forbid such action. In fact, the records of the United Nations Conference on International Organization held at San Francisco showed that reference to the term of office of the Secretary-General in the proposals submitted at Dumbarton Oaks had been omitted in order to guard against a situation in which the exercise of the power of the veto might prevent the re-election of the Secretary-General. (2) In the absence of any specific provision in the Charter, it was for the General Assembly to regulate the term of office, as well as to specify the other conditions of appointment of the Secretary-General. (3) This power of the General Assembly had been recognized by the fact that the term of office of the Secretary-General was fixed under resolution 11 (I), and the matter had not been dealt with or discussed in the Security Council. (4) The Security Council had made its recommendation without reference to the term of office, and this recommendation remained valid. (5) The term of office which had been fixed under one General Assembly resolution could be modified or extended by a new resolution. (6) The Security Council had the power of recommendation and the General Assembly the power of appointment, which included the right to modify the tenure and conditions of appointment of the Secretary-General. (7) The case under discussion did not concern a re-appointment, but an extension of office. (8) There were no provisions against the extension of the term of office in the Charter or in resolution 11 (I). Furthermore, the Security Council had been unable to agree on a recommendation, and the United Nations could not be left without its chief administrative officer. (9) It was necessary to ensure the uninterrupted exercise of the functions vested by the Charter in the office of the Secretary-General. (10) The Charter must be interpreted in a way that would make it effective, and not in a manner that would destroy the Organization.

58/ For texts of relevant statements, see G A (V), Plen., vol.I, 298th mtg., Australia, paras. 131-135; Iraq, paras. 126-128; Egypt, paras. 50-63; Syria, paras. 131-135.

59/ For texts of relevant statements, see G A (V), Plen., vol.I,
 296th mtg.: Brazil, paras. 84-86; New Zealand, paras. 61-72;
 Ecuador, paras. 87-99; United States, paras. 38-54;
 France, paras. 73-83; Uruguay, paras. 100-111;
 Greece, paras. 55-60;
 297th mtg.: Bolivia, paras. 59-75; Pakistan, paras. 118-124;
 Canada, paras. 15-30; Peru, paras. 144-148;
 China, paras. 168-177; Philippines, paras. 1-14;
 Cuba, paras. 31-41; United Kingdom, paras. 160-167;
 Israel, paras. 181-186;
 298th mtg.: India, paras. 100-105;
 Nicaragua, paras. 90-99.

d. RESIGNATION OF THE SECRETARY-GENERAL AND ACCEPTANCE
OF THE RESIGNATION

67. The first Secretary-General submitted his resignation by letter 60/ to the President of the General Assembly at its seventh session, proposing, at the same time, that the General Assembly include in its agenda the item entitled "Appointment of the Secretary-General of the United Nations". Mr. Lie then made a statement 61/ in the General Assembly. He also informed 62/ the President of the Security Council of his decision. Subsequently, before putting to the vote the recommendation that Mr. Hammarskjold be appointed Secretary-General, the President of the General Assembly stated 63/ that "in taking up this item today, the General Assembly therefore accepts the resignation of Mr. Lie."

2. *Conditions of service*

a. EMOLUMENTS

68. The emoluments of the Secretary-General were fixed by the General Assembly under resolution 11 (I) as follows:

"The Secretary-General shall receive a salary of an amount sufficient to bring him in a net sum of 20,000 dollars (U.S.), together with a representation allowance of 20,000 dollars (U.S.), per annum. In addition, he shall be provided with a furnished residence, the repairs and maintenance of which, excluding provision of household staff, shall be borne by the Organization."

b. ANNUAL RETIREMENT ALLOWANCE

69. The General Assembly provided by resolution 13 (I) that:

"The Secretary-General appointed at the first session of the General Assembly shall be provided with an annual retirement allowance of one-half of his net salary (excluding allowances) on his retirement, provided that he has completed his term of service with the United Nations, as set out in Chapter VIII, section 2, paragraph 18 of the Report of the Preparatory Commission."

c. ABSTENTION FROM GOVERNMENTAL SERVICE AFTER
EXPIRATION OF THE TERM OF OFFICE

70. The General Assembly, by resolution 11 (I), noted and approved the following observations of the Preparatory Commission:

"Because a Secretary-General is a confidant of many governments, it is desirable that no Member should offer him, at any rate immediately on retirement, any governmental position in which his confidential information might be a source of embarrassment to other Members, and on his part a Secretary-General should refrain from accepting any such position."

60/ G A (VII) Annexes, a.i. 74, p. 1.

61/ G A (VII) Plen., 392nd mtg., paras. 2-10.

62/ S C, 7th yr., Suppl. for Oct., Nov. and Dec., p. 55, S/2846.

63/ G A (VII), Plen., 423rd mtg., para. 2.

