



Wednesday, 23 January 1952, at 10.30 a.m.

Official Records

Palais de Chaillot, Paris

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Chairman: Mr. T. A. STONE (Canada).

Permanent staff regulations of the United Nations (A/1855, A/1912 and Corr.1, A/1912/Add.1, A/C.5/L.163, A/C.5/L.164, A/C.5/L.165, A/C.5/L.166, A/C.5/L.167) (continued)

[Item 45]*

ARTICLE I. DUTIES, OBLIGATIONS AND PRIVILEGES (concluded)

Regulation 1.7

1. The CHAIRMAN submitted for discussion regulation 1.7 to which India had proposed an amendment (A/C.5/L.167).

2. Mr. MANI (India) said that he had made a minor alteration in the text of his amendment to the text proposed by the Advisory Committee on Administrative and Budgetary Questions (A/C.5/L.163) which now read as follows: "After 'government' insert: 'nor, except in special circumstances and with the express concurrence of the Secretary-General'".

3. Mr. HSIA (China) asked for clarification of the term, "special circumstances".

4. The CHAIRMAN thought that it should rest with the Secretary-General to determine in each case whether special circumstances did in fact exist.

The Indian amendment, as modified by the sponsor, was rejected by 22 votes to 8, with 8 abstentions.

The text of regulation 1.7 recommended by the Advisory Committee was adopted by 37 votes to nil, with 4 abstentions.

5. Mr. FENAUX (Belgium) said he had voted against the Indian amendment because he had thought the explanation offered by the Chairman of the Advisory Committee and the Secretary-General sufficient to give

the regulation the flexibility desired by the Indian representative.

6. Mr. DONOSO (Chile) explained that he had voted for the Indian amendment on legal grounds, since the text recommended by the Advisory Committee did not appear to him sufficiently clear.

7. Mr. COSTELLO (New Zealand) said he had voted for the Advisory Committee's text because in his view the rule should be absolutely categorical.

8. Mr. ASHA (Syria), Rapporteur, asked whether the Committee's report should mention the observations on that subject made at the previous meeting by the Chairman of the Advisory Committee; they were reproduced in document A/1855.

9. Mr. MACHADO (Brazil) thought that where exceptions were made they should be embodied in the actual text of the staff regulations. The observations made by the Chairman of the Advisory Committee should not therefore be included in the report.

10. Mr. BOZOVIC (Yugoslavia) explained that he had voted for the Advisory Committee's text because he considered that the regulation should be clear and not subject to any exceptions, a point on which he agreed with the representative of Brazil.

11. Mr. BRENNAN (Australia) said that he had abstained from voting on the Indian amendment because, like the Belgian representative, he had expected the statement made at the previous meeting by the Chairman of the Advisory Committee to be mentioned in the Fifth Committee's report. Had he known that it was not to be included in the report he would have voted for the Indian amendment.

12. The CHAIRMAN put to the vote the question whether the Advisory Committee's observations on regulation 1.7, contained in document A/1855, should be included in the Rapporteur's report.

It was decided by 21 votes to 9, with 8 abstentions, that the Rapporteur's report should not contain a reference to those observations.

* Indicates the item number on the General Assembly agenda.

Regulation 1.8

13. Mr. TRESERRA (Mexico) pointed out that there was a discrepancy between the Spanish and English versions of the regulation. There was a difference between "becomes a candidate" and *presente su candidatura*.

14. The CHAIRMAN said that the Mexican representative's observation would be taken into account.

Regulation 1.8 was adopted.

Regulation 1.9

Regulation 1.9 was adopted.

Regulation 1.10

15. Mr. TRESERRA (Mexico) thought that the word *prometo* in the first line of the Spanish text should be replaced by the word *protesto*, which was a more accurate translation.

16. The CHAIRMAN said that account would be taken of the Mexican representative's observation.

Regulation 1.10 was adopted.

Regulation 1.11

Regulation 1.11 was adopted.

ARTICLE II. CLASSIFICATION OF POSTS AND STAFF

17. Mr. TRESERRA (Mexico) thought that the last three words in the Spanish version, *que se exijan*, should be replaced by the words *lo que es inherentes*.

18. Mr. MACHADO (Brazil) pointed out that there was some danger in making changes in translation which might in fact affect the substance of the question.

19. The CHAIRMAN said that the Spanish and French texts of the draft regulations would be checked and carefully collated with the English text on which the Committee was at present working.

Article II was adopted.

ARTICLE III. SALARIES AND RELATED ALLOWANCES

Regulation 3.1 and annex I (Salary scales and related provisions)

20. Sir William MATTHEWS (United Kingdom) said that the staff regulations under consideration being intended to become permanent regulations, the proviso concerning the representation allowance of the Executive Assistant to the Secretary-General, text of which is contained in the last three lines of paragraph 2 of annex I—Staff Regulations (A/C.5/L. 163) might be construed as applying not only to the present holder of the post but to his successors as well. That would be contrary to the General Assembly's intention.

21. The CHAIRMAN suggested that it might be left to the officers of the Committee to modify the text of that passage to take into account the United Kingdom representative's observation.

With that reservation, regulation 3.1 and annex I were adopted.

Regulation 3.4 and annex II (Children's Allowance, Education Grant and Repatriation Grant)

Regulation 3.4 and annex II were adopted.

ARTICLE IV. APPOINTMENT AND PROMOTION

Regulation 4.1

22. The CHAIRMAN said that the Netherlands delegation had submitted an amendment to regulation 4.1 (A/C.5/L.166).

23. Mr. VAN ASCH VAN WIJCK (Netherlands) said that the object of his amendment was merely to regularize a *de facto* situation, since letters of appointment according to available information usually contained the particulars listed in the amendment. In view of what seemed to be a general desire not to overburden the regulations themselves, he proposed to embody the particulars in an annex, to which reference would be made in regulation 4.1.

24. Mr. FENAUX (Belgium) said that it had sometimes been argued that the fact that the letter of appointment was a unilateral document impaired the contractual character of the relations between staff members and the Secretary-General. The exchange of letters, however, introduced the elements of offer and acceptance of that offer which formed the basis of any contract. The Belgian delegation would vote for the Netherlands amendment which was not an innovation but a desirable clarification.

25. Mr. HSIA (China) asked how far the Netherlands amendment would involve alteration of the wording at present used in letters of appointment, and whether the difference, if any, between the old and the new terms of letters of appointment might not lead to complications.

26. Miss STRAUSS (United States of America) proposed to amend sub-paragraph (1) of the Netherlands amendment (A/C.5/L.166) by the addition of the words, "and to changes which may be duly made in such regulations and rules from time to time", after the words, "in question".

27. She also proposed the addition of the words, "if any", after the words, "the period of probation", in sub-paragraph (4).

28. With reference to sub-paragraph (5) she asked whether it was understood that annual increments were not automatic and were given only on condition of satisfactory services.

29. Mr. MACHADO (Brazil) supported the Netherlands amendment (A/C.5/L.166) because he considered that the question raised by the Chinese representative should be settled by the Committee itself. The existing staff regulations could be interpreted in various ways. The Secretary-General had interpreted them in one sense and the Administrative Tribunal in another. Existing contracts were not in conformity with the new staff regulations.

30. Mr. BRENNAN (Australia) asked whether the date at which the staff member was required to enter upon his duties invariably coincided with the date of commencement of his contract. He proposed the deletion of the word, "annual", in sub-paragraph (5) of the amendment since in some cases increments might be granted only every two years.

31. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) pointed out that the Advisory Committee had already examined the Staff Association's proposals which were more or less identical with the text of the Netherlands amendment and had decided against incorporating

them in the staff regulations. The Advisory Committee had ascertained that the letter of appointment covered all the points raised in the amendment, with the exception of the passage dealing with annual increments. It had also felt that the regulations should not be too detailed and should leave some latitude to the authorities responsible for applying them. Nevertheless, he did not feel that the members of his Committee would be opposed to the Netherlands amendment which did not seem to involve any difficulties.

32. He had no objection to the first United States amendment to sub-paragraph (1) of the Netherlands amendment or to the inclusion of the words, "if any", in sub-paragraph (4).

33. In sub-paragraph (5), he suggested that the words, "the category level", should be replaced by the words, "the level, category". It should however be clearly understood that those provisions would not impose a permanent obligation on the Secretary-General, since it sometimes happened that staff members were found to be unequal to the duties for which they had been appointed and had to be down-graded.

34. Mr. PRICE (Assistant Secretary-General in charge of the Department of Administrative and Financial Services) said that the Secretary-General had no objection to the inclusion of the proposed clarifications as an annex to the staff regulations. For the reasons already mentioned by the Chairman of the Advisory Committee, the Secretary-General was anxious to avoid the accumulation of too many details.

35. Replying to the Chinese representative, he confirmed the statement of the Chairman of the Advisory Committee that the terms of the Netherlands proposal were completely consistent with the practice currently followed by the administration, except with regard to increments.

36. The Secretary-General supported the addition proposed by the United States representative to sub-paragraph (1).

37. In reply to the Australian representative's question concerning sub-paragraph (3) he said that a candidate receiving an appointment entered upon his duties at the date on which he left home.

38. The addition of the words, "if any", in sub-paragraph (4) proposed by the United States would clearly indicate that a distinction had to be made between the various types of contract.

39. If the United States amendment to sub-paragraph (1) was adopted, no problem would arise in connexion with sub-paragraph (5) since the necessary provisos would have been included in sub-paragraph (1) with regard to the question of increments.

40. The Secretary-General was also in favour of the Australian proposal to delete the word, "annual", in sub-paragraph (5).

41. Mr. MANI (India) proposed the addition of the words, "and agrees to abide by such administrative instructions as may be issued from time to time hereunder", at the end of paragraph B.

42. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) pointed out that the letters of appointment currently in use not only contained the provision which the

Indian representative proposed to add at the end of paragraph B, but explained that such instructions must be in conformity with the staff rules and regulations in force. The required safeguards were thus provided.

43. Mr. MANI (India) withdrew his amendment in view of the explanation given by the Chairman of the Advisory Committee.

44. Mr. VAN ASCH VAN WIJCK (Netherlands) welcomed the United States and Australian amendments as his delegation fully shared the views expressed by the representatives of those countries.

45. With regard to sub-paragraph (5), he agreed that increments were not automatic and must be granted according to the merits of the individual staff member.

46. Mr. MACHADO (Brazil) asked, in connexion with the United States amendment to sub-paragraph (1), how far changes made by the General Assembly in the provisions in force would be retroactive in the case of contracts issued previously.

47. He did not share Mr. Price's view that the Administration's existing practice was in complete conformity with the procedure proposed in the Netherlands amendment. With regard to sub-paragraph (4) in particular, he pointed out that the majority of staff members did not at present serve a probationary period. There was no express provision for probation in the case of temporary-indefinite contracts and fixed-term contracts. There had been differences of interpretation between the Administrative Tribunal and the Secretary-General and it was for that reason that the latter had submitted a new text confirming his own interpretation.

48. Under that interpretation, members of the Secretariat were required to serve a probationary period only when granted permanent contracts. So long as they held temporary contracts, they were not considered to have served a period of probation.

49. He thought it was desirable that a period of probation should be laid down even for staff members holding temporary-indefinite and fixed-term contracts. The United States amendment to sub-paragraph (4) ruled out that possibility. As the Netherlands delegation had accepted the United States amendment, he would be unable to vote for the Netherlands proposal as so modified.

50. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions), pointed out that the existing system in the United Nations, like that in most public administrations, provided for a probationary period only in the case of the holders of permanent contracts. There was no need for a probationary period in the case of temporary contracts, since the Secretary-General could terminate those holding such contracts at the end of each month, subject to one month's notice, if their services were not satisfactory.

51. Mr. ABBASI (Pakistan) thought that the effect of the proposed amendments would be to paralyse action by the Secretary-General.

52. In most Government services and in comparable international organizations the staff had the option of accepting amendments to their contracts when the staff regulations or rules were changed or resigning if they felt unable to accept them.

53. The higher interests of the United Nations demanded that the Secretary-General be given a sufficiently free hand and, in that respect, the text proposed by the Advisory Committee was entirely satisfactory. The Pakistani delegation, therefore, would be unable to vote for the amendments to regulation 4.1.

54. Mr. BRENNAN (Australia) said that he thought the United States amendments to sub-paragraph (1), could not have retroactive effect to vary contracts already in force. When signing their contracts those concerned must be taken to have accepted beforehand any amendments that might be made in the regulations and rules in force at the time of their entry into service. They could resign if they did not accept such changes. The United States amendment to sub-paragraph (1) was in line with the practice followed in most public administrations.

55. With regard to increments, he suggested that the words "the scale of increments" in sub-paragraph (5) should be replaced by the words "and the conditions under which such increments, if any, can be earned", in order to stress the conditional nature of increments.

56. Mr. PRICE (Assistant Secretary-General in charge of the Department of Administrative and Financial Services) confirmed the Australian representative's interpretation regarding the retroactive effect of amendments to the regulations and rules. He recalled that the provisional regulations had had to be amended by rules in order to give effect to decisions taken by the General Assembly at its fifth session concerning the reduction from 100 to 60 of the maximum number of annual leave days that could be accumulated and the withdrawal of the housing allowance.

57. Similarly, although the regulations prescribed a 40-hour working week, instructions provided that those hours could be exceeded in special circumstances, such as General Assembly sessions.

58. The United States amendment to sub-paragraph (1) would therefore help to remove any misunderstanding on that point.

59. Mr. CHECHETKIN (Union of Soviet Socialist Republics) proposed to amend the United States amendment to sub-paragraph (1) to read as follows: "subject to amendments which may be made to the regulations from time to time with the approval of the General Assembly". The text would thus conform to Article 101 of the Charter.

60. Further, as following the explanations of the Chairman of the Advisory Committee, the Indian representative had withdrawn his amendment to paragraph B, the Fifth Committee's report to the General Assembly should stress the point that, irrespective of the staff regulations and rules, existing instructions would remain in force.

61. Mr. MANI (India) supported the USSR amendment to sub-paragraph (1) because it placed the emphasis on the General Assembly's authority.

62. He was also in favour of the Australian amendment to delete the word "annual" in sub-paragraph (5), but could not accept the Australian suggestion concerning the conditions governing the grant of increments; the word "conditions" might give rise to various interpretations. It was preferable, therefore, to leave the Secretary-General complete discretion in that matter.

63. Mr. FOURIE (Union of South Africa) thought that in presenting his amendment the Netherlands delegation had not intended to question the principle that subsequent amendments to the regulations must inevitably affect contracts granted previously. But, after the discussion that had taken place on that point, the United States amendment to sub-paragraph (1) was all the more necessary because it would prevent any misunderstanding. The Netherlands amendment, therefore, would no longer be acceptable if the United States amendment to sub-paragraph (1) was rejected.

64. Mr. VAN ASCH VAN WIJCK (Netherlands) confirmed the South African representative's interpretation and agreed that if the United States amendment to sub-paragraph (1) were rejected it would be preferable to abandon the whole of the Netherlands amendment.

65. The General Assembly adopted regulations which it had power to change; similarly the Secretary-General was entitled to amend the rules which he issued, but the latter had to be submitted annually to the General Assembly, which could call for the modification of any provisions which in its opinion conflicted with its wishes.

66. Concerning sub-paragraph (5), he shared the Indian representative's view that the Australian amendment concerning increments was undesirable. The text was as it stood sufficiently clear because it spoke of "allowable" increments.

67. Further, the addition of the words, "if any", to sub-paragraph (4) did not preclude the promulgation of rules stipulating that all members of the Secretariat should serve a probationary period.

68. Lastly, he thought that the USSR amendment to the United States amendment to sub-paragraph (1) was unnecessary, as regulation 12.1, which the Committee would be considering later, provided that the regulations could be supplemented or amended by the General Assembly.

69. Mr. MACHADO (Brazil) agreed with the Assistant Secretary-General's interpretation, but pointed out that the effect of adopting the United States amendment would be to make staff employment conditions subject to any changes which might be made to the staff regulations or rules in the future. He doubted whether it was necessary, in view of the first sentence of paragraph B of the Netherlands amendment, to insert the phrase proposed by the United States. He considered the latter redundant, in view of regulation 12.1.

70. Mr. CHECHETKIN (Union of Soviet Socialist Republics) withdrew his amendment.

71. The CHAIRMAN put to the vote the first part of the Netherlands amendment, namely that providing for the insertion of a reference to annex IV in the text of regulation 4.1.

The first part of the Netherlands amendment was adopted by 35 votes to 1, with 5 abstentions.

72. The CHAIRMAN put to the vote one by one the sub-paragraphs of paragraph A and paragraph B of annex IV proposed by the Netherlands.

Paragraph A (1) of annex IV, as amended by the United States delegation, was adopted by 26 votes to 1, with 13 abstentions.

73. Mr. HSIA (China) said he had abstained because it was not clear whether the text the Committee had

just adopted was compatible with that of regulation 12.1 or not.

Paragraphs A (2) and A (3) were adopted.

Paragraph A (4), as amended by the United States delegation, was adopted by 26 votes to 2, with 9 abstentions.

Paragraph A (5), with the amendment proposed by the Australian delegation to delete the word "annual", was adopted by 38 votes to none, with 2 abstentions.

Paragraph A (6) was adopted.

Paragraph B was adopted by 36 votes to none, with 4 abstentions.

Annex IV, as amended, was adopted by 38 votes to 1, with 2 abstentions.

Regulation 4.1, as amended, was adopted.

74. Mr. MACHADO (Brazil) explained that he had abstained on Annex IV because he saw no need for the amended text.

75. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) observed that a question had been put to him at the 330th meeting regarding the nature of the legal relationship between the Director-General and the staff of the International Labour Office. That subject was defined by the first three paragraphs of Article 16 of the ILO staff regulations, which Mr. Aghnides read out.

76. The contract thus established was governed by the staff regulations as a whole and was moreover subject to a limitation that it was not contrary to the public interest, which safeguarded the authority of the Conference or the Governing Body. According to Article 16 bis of the staff regulations relating to the modification of contracts, the terms of contracts might be modified by the Director-General so as to give effect to decisions of the ILO representative organs concerning conditions of employment.

77. There was therefore a contractual relationship, subject to two limitations: the provisions of the staff regulations on the one hand and any modifications that might be introduced by the Conference or the Governing Body on the other hand. With those reservations, the contract of employment, although not subject to the laws on contracts of any particular State, was governed by the general principles of law, as the letter of appointment expressly stated.

Regulation 4.2

Regulation 4.2 was adopted.

Regulation 4.3

78. Mr. BOZOVIC (Yugoslavia) had no objection to the purport of the regulation but would prefer the

wording of Article 8 of the Charter. It would appear from the comments in the right-hand column of document A/C.5/L.163 that Article 8 of the Charter was limited in scope. He challenged that interpretation: in his opinion, it would be better to reproduce the exact wording of Article 8 of the Charter, perhaps with the addition of a clause dealing with matters of sex and race.

79. Mr. FENAUX (Belgium), referring to the second sentence in regulation 4.3, said that he understood the difficulties that might arise in giving general application to the rule as to the use of the competitive system. Nevertheless, he trusted that that rule would not remain a dead letter; it was a highly important factor for raising the standard of staff members. He would like his remarks to appear in the Committee's report as expressing the Committee's view.

80. Mr. COSTELLO (New Zealand) pointed out that the French phrase used in regulation 4.3, "par voie de concours", was much more specific than the words "on a competitive basis" in the English text. He would willingly agree that the notion of competitive examinations should be regarded as one of the methods contemplated by the English text.

81. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) confirmed the New Zealand representative's view.

82. Regarding the point raised by the Yugoslav representative, he pointed out that the words "In accordance with the principles of the Charter..." at the beginning of regulation 4.3 were much wider in scope than a mere citation of Article 8. Moreover it had not been possible to quote all the Charter articles containing non-discrimination clauses.

83. Mr. BOZOVIC (Yugoslavia) proposed that the first sentence of regulation 4.3 should be reworded as follows: "... staff members shall be selected without any discrimination, especially as to race, sex or religion".

84. The CHAIRMAN observed that the effect of the Yugoslav amendment would be to tie the Secretary-General's hands; it was in fact necessary in some cases to make certain distinctions. The present text of regulation 4.3 would, in particular, ensure equal rights for men and women.

85. Mr. BOZOVIC (Yugoslavia) withdrew his amendment.

Regulation 4.3, as recommended by the Advisory Committee, was unanimously adopted.

The meeting rose at 1.15 p.m.