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CONTENTS

Chairman: **Mr. Awni KHALIDY (Iraq).**

Personnel policy: reports of the Secretary-General and of the Advisory Committee on Administrative and Budgetary Questions (A/2533 and A/2555, A/C.5/561) (*continued*)

[Item 51]*

General discussion (continued)

1. Mr. FENAUX (Belgium) said that pursuant to General Assembly resolution 708 (VII) the Secretary-General had submitted a report to the Fifth Committee (A/2533) on personnel policy which reviewed his achievements in that respect since taking office and made certain recommendations "as to any further action that may be required of the General Assembly".

2. Turning first to part II of the report on developments of personnel policy which did not require amendments to the staff regulations, he said that the position of temporary staff had been reviewed vigorously and conscientiously, with a view to "consolidating the staff of the Secretariat and establishing it, with the relatively few but necessary exceptions, on a career basis" (A/2533, paragraph 93). The review, although well advanced, had not yet been concluded, a fact which testified to the meticulous care being exercised by the selection committees in their work.

3. His delegation thought that the appointment policy was generally speaking wise. The principle of flexibility of staff, which should make it unnecessary to resort to extensive use of outside assistance, the provisions in respect of probationary status, the distribution of permanent and temporary appointments, the new groups of staff which would be established as from 1 January 1954 and the safeguards which should henceforth attach to the review of staff at the expiry of their probationary appointment or of their five-year contract, appeared satisfactory to his delegation at first glance. It was prepared to rely on the Secretary-General in those matters which lay essentially within his jurisdiction, reserving the right to appraise the new appointment policy in the light of the results achieved. His delegation would emphasize, however, that the probationary period, if properly interpreted, should make it possible in two or, if necessary, three years to determine with a minimum of error whether or not the person in question should be given a permanent appointment. The probationary period should protect the Administration in the same way as the contract protected the staff member.

4. He had noted two omissions in part II of the report of the Secretary-General. No reference was made to recruitment by competitive examination although the General Assembly had favoured the use of that method wherever practicable. Nor was reference made to the language qualifications required of staff members, although the situation in the United Nations in that respect was far from satisfactory. Perhaps the Secretary-General had felt that those matters were to be taken for granted but his delegation would welcome some assurances that so far as possible personnel would be recruited through competitive examinations and that special care would be taken to ensure that staff members should have a thorough knowledge of one official language other than their mother tongue. That was an essential prerequisite if the United Nations was to acquire a truly international character and spirit.

5. In reviewing part I of the Secretary-General's report, his delegation would for the moment confine itself to certain purely legal considerations. Of the proposed amendments contained in the report, only those were acceptable which were compatible with the respect due to the contractual obligations assumed by the United Nations vis-à-vis its staff members. He was convinced that no member of the Committee would endorse solutions which would lead to a violation of existing contracts and acquired rights. His delegation could make no concessions which would derogate from that principle. The United Nations and its staff members were bound together by a contractual relationship. The power of United Nations organs could not be exercised in violation of existing employment contracts. The General Assembly's power to amend the staff regulations unilaterally extended only to those provisions which were not contractual in nature. Regulations of a contractual nature could be amended only by agreement between the contracting parties, the holder of the contract and the United Nations. In the absence of such agreement, the contracts would continue in force in their original form. The General Assembly was not sovereign, for it had to respect undertakings of the United Nations.

6. The Secretary-General proposed for inclusion in regulation 9.1 (*a*) of the staff regulations three provisions authorizing the termination of appointments for reasons not stated in the existing regulations. Subparagraph (i) of the proposed amendments related to termination if the staff member did not meet the high standards of integrity required by Article 101, paragraph 3, of the Charter; but that point was already covered by the existing regulation 9, which provided for termination "if the services of the individual concerned prove unsatisfactory" and by regulation 10,

* Indicates the item number on the agenda of the General Assembly.

under which a staff member could be terminated for "serious misconduct". That was the most appropriate interpretation of regulations 9 and 10, particularly as Article 101 of the Charter included integrity together with efficiency and competence as the qualifications to be required of staff members.

7. It was impossible to arrive at a definition of integrity applicable to all cases or to say whether or not it included the concept of loyalty. As in the application of the criteria of efficiency and competence, the Administration should decide, judging each case on its merits, whether the staff member was so seriously lacking in integrity that his appointment should be terminated. It was unquestionable, however, that the Administration could interpret the concept of integrity only in its contractual meaning. In adjudicating the case of a staff member, the Administrative Tribunal was and should continue to be competent to decide, in the light of the circumstances of each particular case, whether or not the Administration's act constituted a violation of the employment contract of the staff member concerned. His delegation agreed with the proposed amendment contained in paragraph 58 (i) of the Secretary-General's report subject to those considerations.

8. In paragraph 58 (ii) of his report the Secretary-General also proposed a second reason for termination. In applying for employment with an organization, an applicant was bound to disclose any present or past circumstances which might lead the prospective employer to refuse to hire him. If that was all the proposed paragraph purported to say, it would not represent an innovation and would in principle be compatible with the existing contracts, provided of course that the Administrative Tribunal's powers of judgment remained intact. But if the provision purported to confer on the Administration a power of judgment binding on the Tribunal, it would be incompatible with existing contracts. The power of discretionary judgment would operate retroactively permitting of unilateral decisions concerning contracts concluded in the past. Those comments also applied to the alternative amendment recommended by the Advisory Committee on Administrative and Budgetary Questions in its report (A/2555).

9. Paragraph 58 (iii) provided a third reason for termination. His delegation entertained serious misgivings concerning the compatibility of that text with existing contracts. Under the proposed regulation the Secretary-General was apparently to be the sole judge of the "interest of the good administration of the Organization". His judgment on that point would be binding on the Administrative Tribunal. In the final analysis, therefore, the effect would be that contracts were liable to termination by the unilateral decision of one of the contracting parties. To approve the test of "the interest of the good administration of the Organization" would patently add to the grounds for termination admitted under the contracts in force. He pointed out that the proposed amendment did not relate to the problem of the suppression of posts, a ground already covered in regulation 9 and consequently in the contracts. The same comments applied to the alternative text proposed by the Advisory Committee.

10. With regard to regulation 1.4 of the staff regulations governing the conduct of members of the Secretariat, the Secretary-General proposed an addition to the effect that the staff should avoid any action which might adversely reflect on their status "or on the integrity, independence and impartiality which are required by that status". The proposed amendment was within the scope of regulation 1 and hence compatible in principle with existing contracts. It would of course be the responsibility of the Administrative Tribunal to state in any particular case whether the regulation had been applied in accordance with the staff member's contract. The observations in support of the proposed amendment would be merely evidence, and would not affect the Tribunal's power to determine the meaning and scope of the amended text.

11. The Secretary-General had also proposed that the existing staff regulation 1.7 should be replaced by a new, more explicit text, for which the Advisory Committee had also proposed a draft. Although his delegation had no objections to the Secretary-General's draft, it preferred the Advisory Committee's text, for the reasons given in that Committee's report. The texts were compatible with existing contracts and would not limit the powers of the Administrative Tribunal.

12. The Secretary-General proposed that regulation 9.3 should be supplemented by a new provision which would enable him to pay to a staff member, on the termination of his appointment, a higher indemnity payment than was payable under the existing regulations. His delegation had no legal objection to that proposal but he reserved the right to express his opinion on the amount of such indemnities later in the debate.

13. The Secretary-General proposed that the existing article 9 of the Statute of the Administrative Tribunal should be revised. The Statute of the Administrative Tribunal, like the staff regulations, contained contractual provisions in addition to purely functional and administrative provisions. The provisions concerning the particular position of each staff member and the substantive provisions of his agreement with the Administration were contractual. The Statute could not be amended in such a way as to violate contracts or impair acquired rights. Clearly, article 9 directly concerned the contractual position of staff members. It attempted, by judicial machinery, to ensure that the advantages accruing to staff members under their contract were safeguarded.

14. The Secretary-General's proposal would radically alter the existing situation. It would in any case deprive the Administrative Tribunal of its power to recommend the restoration of the applicant's rights by ordering either the revocation of the decision taken in violation of his contract or the specific performance of the obligation denied by the Administration. It would leave the Tribunal merely with the power to award damages, and would limit even that power, for the Tribunal would no longer be able to assess the indemnity in proportion to the actual damage in each case. The Statute would establish a maximum indemnity which the members of the Tribunal could not exceed even if that amount was deemed inadequate. The General Assembly could not undermine the contractual rights of staff members in such a fashion through an amendment to the Tribunal's Statute.

15. The text proposed by the Advisory Committee also provided for a maximum indemnity to which the Tribunal should adhere, whereas compensation should in principle equal the damage sustained. The General Assembly could not by a unilateral gesture deprive staff members of the benefits of their employment contract.

16. The proposed article 9, paragraph 2, was open to the same objections as paragraph 1. It would limit the indemnity payable in the event of a procedural irregularity whereas under the existing regulations the Tribunal could fix the indemnity in accordance with the extent of damage resulting in such cases through the Administration's fault.

17. Considered apart from the rest of the text, the proposed paragraph 3 appeared satisfactory; but it appeared less suitable if interpreted in the light of paragraphs 1 and 2 which would prevent the Administrative Tribunal from recognizing the liability incurred by the Administration owing to its non-fulfilment of a contract and from assessing the full extent of the damage sustained in every case.

18. He was certain that the Fifth Committee was aware of the significance of the considerations he had raised. Far from making any reform impossible those ideas merely sketched the limits which due respect for acquired rights and commitments undertaken imposed on the Committee. They applied only to existing contracts. There would, however, be no violation of the obligations of the United Nations if the rights of the individual were impaired with the staff member's consent. For example, in the matter of the termination of contracts, the possibility that the staff member might agree to premature termination because of the resulting financial compensation should not be ruled out.

19. As the legal limitations he had outlined would not necessarily apply to future contracts, the way was open for reform. He reserved the right to speak later on possible reforms.

20. In conclusion he said that his delegation had deliberately confined its preliminary remarks to the legal aspects of the question and reserved the right to express its views on other aspects of the matters raised in the Secretary-General's report as well as on the funds which had to be appropriated as a result of recent decisions of the Administrative Tribunal.

21. Mr. CAFIERO (Argentina) said that the question before the Committee was one of the most important items on its agenda not only because of its immediate implications but also because of the consequences which might flow from the Committee's decisions. He thanked the Secretary-General for his comprehensive report on the question and the Advisory Committee for its constructive comments (A/2555). His delegation had also studied with great interest the Staff Council's comments on the proposed amendments to the staff regulations (A/C.5/561). The staff could rest assured that the General Assembly's decisions would be taken solely to ensure the sound administration of the Organization and that each Member State was concerned with protecting the staff and avoiding anything which might impair their legitimate rights. In respect of staff, the Charter aimed both in spirit and letter at the formation of a select group of officials who by their industry and devotion would help to achieve the great objectives for which the United Nations had been established. In the Charter and in many other documents staff members were classed as international officials. Each Member State had undertaken to respect the international character of the staff and not to seek to influence them in the discharge of their responsibilities. Being in a special category, the staff could not be compared with other employees such as government civil servants nor could they be subject to the same rights and obligations as applied to other employees in a different position. But there was another greater and more important consideration. A staff member upon joining the service of the United Nations did not lose his nationality. Nor was he totally or partially divorced from his ties with his country of origin towards which he should continue to fulfil his duties as a citizen. Any other interpretation would have implied that his Government had renounced part of its sovereign powers.

22. The problem of staff policy should be viewed from the dual aspect of the international and national status of the staff. That was why the regulations in respect of government officials or employees of other public or private organizations did not and could not include provisions such as those contained in the United Nations staff regulations where regard must be had to the international nature of the staff member's functions without prejudice to his capacity as a national of a particular country.

23. That was the position confronting the Secretary-General who had to choose his staff subject to the conditions laid down in the Charter. The existing staff regulations contained provisions which enabled the Secretary-General to discharge his functions. But the Secretary-General and the directors of the specialized agencies had agreed that certain amendments to the staff regulations were required.

24. Accordingly, certain amendments, forming part of a minimum programme, had been submitted which would confer greater powers on the Secretary-General and thus broaden the range of matters within his jurisdiction.

25. The proposed texts appeared to give the Secretary-General wide powers but after a second reading of the observations contained in the documents before the Committee, and as a result of the statements by the Secretary-General and the Chairman of the Advisory Committee, most of his delegation's misgivings had been dissipated.

26. He was aware that any human being could make mistakes in interpreting and applying specific resolutions but subsidiary bodies had been established by the General Assembly to correct such errors. Moreover, the General Assembly itself was sovereign over all such subsidiary organs and could approve or reject any action taken to carry out its decisions.

27. He drew attention to paragraphs 16 and 37 of the Secretary-General's report despite the assurance however that the proposed amendments would in no way involve a revision of the sphere of legal competence of the Tribunal and thus the legal protection given a staff member would remain unchanged; the staff's misgivings about the future consequences and the practical application of the proposed regulations had not apparently been allayed. Yet any lingering doubts should be dispelled by the last sentence of paragraph 58 which stated that: "No termination under this paragraph shall take place until the matter has been considered and reported on by a special advisory board appointed for that purpose by the Secretary-General." Moreover, in paragraph 67 the Secretary-General stated that the staff should be properly represented on the board. The Advisory Committee in paragraph 15 of its twenty-first report (A/2555) had concurred in the suggested addition, proposing, however, that the membership of the board sould be reported annually to the General Assembly. The staff itself had also accepted the idea

by proposing in paragraph 23 of its statement (A/C.5/561) that staff representatives should constitute half the membership of the board. In view of the importance of the proposed board his delegation proposed that regulation 9.1 (*a*) should be amended to provide that the board's membership should be subdivided into three; it might consist of six members, two appointed by the Secretary-General, two by the staff and two by the General Assembly. As the Secretary-General had stated, the board would be an advisory and by no means an executive body, he could accept or reject its findings. With the three viewpoints represented on the board, however, his delegation was certain that the interests of all parties would be safeguarded. With that amendment his delegation would be prepared to accept the proposals recommended by the Advisory Committee.

28. He supported the Secretary-General's proposed amendment to staff regulation 1.4.

29. On the question of political activities of the staff he thought that regardless of how those activities might be limited under the regulations in practice they could always give rise to doubt for in many instances it was difficult to distinguish between what was political and what was not. The Organization would then have to decide whether or not certain activities were compatible with employment in the United Nations. The Committee should be as clear as possible on the point. In order to avoid any possible difficulty in future his delegation would support the Advisory Committee's text.

30. The proposed amendment to staff regulation 9.3 involved a matter of vital importance not only because of its substantive aspects but also because of its financial implications. Under the existing regulations and even with the proposed amendments it was obvious that a situation might arise in which indemnities would have to be paid. They might one day constitute a serious burden for Member States. The question then arose whether Member States would be prepared in future to accept those obligations. As the answer was by no means simple, his delegation had considered the possibility of setting up a reserve fund out of which to defray future indemnities. He requested the Secretary-General to submit a detailed report to the ninth session of the General Assembly on the possibility of establishing such a fund. Merely by way of information his delegation suggested that if the Committee thought it advisable the fund could be organized along the same lines as the Staff Pension Fund, based on actuarial calculations and financed out of contributions from the staff and from the Organization. The rights of personnel terminated by appropriate methods as well as personnel entitled to an indemnity should, of course, be clearly defined.

31. His delegation had studied with great interest the staff's objections to the proposed amendment to article 9 of the Statute of the Administrative Tribunal. His delegation's amendment to the last sentence of the text of the proposed staff regulation 9.1, since it concerned the primary causes leading to the Administrative Tribunal's intervention, would soften the effect of the amendment to the Statute. His delegation would however vote in favour of the text proposed by the Advisory Committee.

32. In principle his delegation agreed with the Staff Council's comments on part II of the Secretary-General's report concerning special categories of staff. In principle each and every member of the staff regardless of his post contributed to the development of the Organization. The Secretary-General had referred to the problem in his opening statement to the Committee (406th meeting). His delegation hoped that the Secretary-General would be able to interpret the sentiments expressed by the staff and achieve a harmonious solution to the problem, thus giving renewed evidence of the cordial relationship being developed between the staff and the Administration.

33. Chapter IV of Part II of the Secretary-General's report related to the question of the status of United Nations staff members under United States immigration law. Paragraph 118 described the policy the Secretary-General proposed to follow in such matters. Leaving aside the question of reimbursement of income taxes which would be considered later, he said that the Secretary-General had reviewed certain amendments to the staff rules which would affect staff members who were not citizens of the United States but who by signing the waiver confirmed their permanent residence status in the United States. In the proposed amendments it should be made clear that staff considered as permanent residents of the United States should be excluded from the quotas assigned to each country under the rule of geographical distribution for by accepting permanent residence status in one country it was to be inferred that that staff member no longer wished to maintain relations with his country of origin. Such staff members might in fact be considered as a separate category. His delegation requested that in the list of United Nations personnel distributed annually showing the nationality of each staff member, the type of visa should be indicated in each case.

34. Lastly, he referred to the comments in annex II of the Secretary-General's report concerning recent judgments of the Administrative Tribunal. Without discussing the substance of the question he said the Statute of the Administrative Tribunal nowhere provided that the General Assembly had relinquished its power to confirm or reject decisions of the Tribunal. No other interpretation was possible, particularly in view of Article 22 of the Charter, on the basis of which the Tribunal had been established as a subsidiary organ of the General Assembly. The specific task of the Tribunal was to interpret decisions taken in respect of staff, leaving the General Assembly completely free to reach the final decision. If resolutions of the principal organs of the United Nations could be reviewed by the General Assembly, save in certain specific cases, the opposite view was not tenable in respect of a subsidiary body of the General Assembly.

35. Moreover, in accordance with Article 17, paragraph 2, of the Charter, the expenses of the Organization were to be borne by the Member as apportioned by the General Assembly. A subsidiary body, therefore, could not levy compulsory contributions on the Member States until the General Assembly had discussed the form and the substance of the amounts to be included in the budget for that purpose. The financial regulations and rules 152 and 153 of the General Assembly's rules of procedure also supported his view concerning the General Assembly's competence in respect of judgments of the Administrative Tribunal.

36. In recent years the Argentine Republic had developed and carried out a broad programme of social legislation. The rights of the worker were set forth in the Constitution. Stability in employment and the right to indemnity in case of dismissal were guaranteed.

Those indemnities, however, were granted in cases of dismissal for reasons of efficiency or competence. In the question before the Committee however other issues had entered into play which in certain respects exceeded mere considerations of efficiency or competence. Pending the submission of the report on the proposed special fund for indemnities he would merely state his delegation's reservations concerning the amounts now requested and those which might be requested in future for the payment of indemnities. His delegation would give careful attention to any resolution which might be submitted on the subject.

37. Mr. VON BALLUSECK (Netherlands) said that Article 7 of the Charter rightly included the Secretariat among the principal organs of the United Nations; an international civil service of the highest standard was essential to its proper functioning as a world organization. Article 101 of the Charter conferred upon the Secretary-General the exclusive right to appoint staff under regulations established by the General Assembly; the General Assembly was responsible for ensuring that the Secretariat remained independent and maintained high standards. The Organization had been assembled hastily and under conditions which had perhaps not been of the best. The time had come for a careful review of the lessons which might be learned from its brief history for the guidance of its future development. Any action should however be firmly based on the principles laid down in the Charter while yet revealing a keen appreciation of the practical necessities of the situation.

38. The first part of the Secretary-General's report on personnel policy (A/2533) and the Advisory Committee's report thereon (A/2555) were mainly concerned with the conditions of termination of permanent appointments. In the matter of temporary and indefinite appointments, the Secretary-General had wide powers of termination and he had not suggested any modification of the relevant regulation. The Netherlands delegation agreed that the regulations were adequate in that respect. In passing he noted the concern of the Staff Council in its statement (A/C.5/561) lest the segregation of manual and skilled trades personnel from the remainder of the international civil service by the type of contract open to them should militate against the unity of spirit of the Secretariat in what the Secretary-General himself had called "a common adventure". His delegation would deprecate any such administrative differentiation, and would like a further statement from the Secretary-General on that point.

39. With respect to permanent appointments, the Secretary-General had drawn attention to the hiatus existing between the requirements of the Charter and the terms of the staff regulations concerning the integrity of staff members. He had stated that the second condition mentioned in regulation 9.1 (*a*) as grounds for termination should be broadened. The notion of unsatisfactory service was of course open to different interpretations and did not necessarily cover unsatisfactory conduct. The Secretary-General had therefore proposed the amplification of regulation 9.1 (*a*) by the addition of a paragraph setting forth three further reasons justifying termination. The first two concerned unsatisfactory behaviour of a type which experience had proved was not covered by the criterion of unsatisfactory service but which did not warrant the employment of the disciplinary measures for serious misconduct provided for in Article X. The Secretary-General had therefore suggested a provision based on the standard of integrity required by the Charter. It was, of course, difficult to define integrity but it was clear that in the case of members of the Secretariat the term had to be interpreted in the light of the very special position of an international civil service. There seemed therefore to be some justification for making the criterion of integrity more specific in the staff regulations than was at present the case. In view, however, of the vagueness which would necessarily remain and the consequent possibility of abuse of the criterion, he welcomed the proposal that the increased powers of the Secretary-General should be balanced by additional checks upon his actions. Although hesitating to agree that the General Assembly, which was a very large political body, was the instrument best fitted to undertake the periodical review proposed, his delegation admitted that it would be difficult to find an alternative. While hoping therefore that the General Assembly in its review would not concern itself with individual cases, for that remained the task of the Tribunal under the terms of its Statute, he recognized that such a review might have a preventive effect. The Secretary-General had moreover recognized his special obligation to apply the proposed new standards with restraint.

40. Similar considerations applied to the second of the new grounds for termination put forward by the Secretary-General, the criterion for which was the administrative suitability of the staff member. His delegation was inclined to agree with the Advisory Committee that the limiting epithet, "administrative", was undesirable since it was the general suitability of the staff member which should be judged. But it was not convinced that the idea of suitability was not already contained in the criterion of integrity.

41. The third new ground for termination was "the interest of the good administration of the Organization". In his statement to the Committee the Secretary-General had explained that his intention in that connexion was to make it possible to dismiss a staff member without stigmatizing him. He had recognized that such a clause was open to abuse, and had provided the necessary checks and balances; but as he had intimated that he might be able to take such action without amending the regulations, the Netherlands delegation preferred to await further clarification before taking a position on the proposal. In any case it could not agree to the Advisory Committee's proposal to empower the Secretary-General to dismiss a staff member "in the general interest of the United Nations": that would give the Secretary-General almost unlimited discretionary powers which, it was to be noted, he himself did not desire.

42. Seen as a whole, the proposed amendments to regulation 9.1 (*a*) offered new measures by which to judge the conduct, the suitability or the usefulness of members of the Secretariat, although the criteria on which they were based remained those of the Charter: efficiency, competence and integrity. Indeed, it might be said that the Committee was asked to sanction, not a widening of the powers of the Secretary-General but a more exact definition of those powers with respect to the termination of staff members. Nevertheless, in practice, the number of grounds on which the Secretary-General could terminate a member of the staff would be increased, and it was to his credit that he had proposed to counterbalance that increase by providing for periodical review by the General Assem-

bly and by the setting up of a special advisory board. The value of the latter would to a large extent depend on its composition, and as the Secretary-General himself had suggested, the staff should naturally be properly represented on it. The final safeguard would of course still be the Administrative Tribunal, which would remain fully competent to review, within the terms of its statute, all termination decisions against which staff members might appeal. However, the fact that certain of the Secretary-General's judgments—for instance, with regard to lack of integrity in its administrative context—would be outside the scope of a review of a strictly legal nature was of particular importance to the special advisory board and to the General Assembly's periodical review. That being so, it might be well for the advisory board to include individuals independent both of the Secretary-General and of the staff; the Netherlands delegation would welcome further comment from the Secretary-General in that connexion.

43. Members had every confidence in Mr. Hammarskjold; but they had to legislate not for a person but for an institution. The Netherlands delegation was not certain that the new amendments were wholly necessary if, as the Secretary-General had said, the number of staff members affected would be very small. However, it agreed with the Secretary-General that the notion of integrity should not be confined to the Charter but should be given more prominence in the staff regulations. It was therefore inclined to give the Secretary-General the wider powers he had asked for, in the hope that they would be equitably counterbalanced by the proposed increased safeguards.

44. The Netherlands delegation had no objection to the proposed amendment to regulation 1.4. The revision represented an elaboration rather than a substantial modification of the regulation. The question of the behaviour befitting an international civil servant was a very delicate matter. While it was clear that subversive activities directed against any Member Government were not in keeping with that status, it was equally clear that the United Nations must apply its own international standards and could not uncritically adopt the conclusions reached by national authorities about any staff member. Likewise, evidence of present lack of integrity and not past activity, even of a subversive nature, must determine the Secretary-General's judgment on that score.

45. The difficulties were greater in connexion with regulation 1.7. It was almost impossible, and in any case at the present stage too early, to attempt to determine the point at which the participation of a staff member in national politics began to conflict with his duties as an international civil servant. Wide discretionary power must therefore be left to the Secretary-General. Both the Secretary-General and the Advisory Committee had proposed an amendment to the regulation which would limit the political activity of a staff member to the exercise of his right to vote. It was not clear whether that right was taken to include his right to belong to a national political party. The Netherlands Government believed that to require the surrender of the basic political right of free association would constitute an infringement of one of the fundamental human and democratic rights; such a right should not be sacrificed to the administrative needs of the Organization. The United Nations was not a super-state, and the relationship between the Secretariat and a staff member was purely contractual; he should be free to exercise his own fundamental political rights so long as such activity was not obviously harmful to the Organization. Nevertheless the degree of tact and reserve required of a member of the Secretariat by reason of his international status should in no way be under-estimated. Just as Member States were required to place their obligations under the United Nations Charter before those deriving from any other international agreement, so should individual staff members be expected to place their obligations to the Secretariat above their interests in their national political life. It would, however, be most unrealistic and even dangerous to expect staff members to live in a political vacuum. His delegation therefore hoped that the term "political activity" was not intended to exclude membership of an admitted political party.

46. The proposed amendment to staff regulation 9.3 presupposed the adoption of the third part of the amendment proposed to staff regulation 9.1 (*a*). The reservations which his delegation had made with regard to the earlier amendment therefore applied to the matter of the payment of indemnities. In general, it felt that double indemnity would be justified where termination did not result from a fault of the staff member concerned; in that respect it preferred the Secretary-General's suggestion to that of the Advisory Committee.

47. With regard to the proposed revision of article 9 of the statute of the Administrative Tribunal, his delegation found it difficult to accept the idea that, where an appeal was deemed to be well-founded, compensation should be the rule and reinstatement the exception. Reinstatement might well cause embarrassment to the staff member in his relations with the Secretary-General or other members of the Secretariat. Nevertheless, his delegation believed that in such a case rehabilitation should be the first step; the possibility of compensation might subsequently be considered if the Secretary-General should decide that reinstatement would not be in the interest of the Organization. For that reason, his delegation preferred the text recommended by the Advisory Committee (A/2555) to that proposed by the Secretary-General. Compensation should of course be adequate; it was not certain that a maximum of two years' net base salary would be sufficient in every case. His delegation thought that the provisions should be more elastic in that respect, but realized that ultimately the adequacy of the compensation awarded depended on the sense of fairness of the Tribunal. It doubted the appropriateness of the suggestion made by the Advisory Committee to limit compensation to a maximum of one year's net base salary or $10,000 (whichever might be the smaller), if it was desired that the Organization should continue to attract to its service persons of the highest qualifications. In any re-examination of the staff regulations, it should not be forgotten that the conditions of employment should be such as to create an efficient, competent and sound Secretariat, independent and international in character but yet not wholly disconnected from the Member States it served. That was no easy task, and the Charter had deliberately conferred great power upon the Secretary-General because the efficient functioning of the Secretariat depended largely upon him.

48. The Netherlands delegation believed that in his proposals the Secretary-General had earnestly endeavoured to build a sound and balanced system. Adequate checks were, however, necessary, and a period of

trial followed by a review by the General Assembly was clearly desirable. On the whole, with the reservations it had made, and while reserving the right to intervene later in the debate on points of detail, his delegation considered the Secretary-General's proposals highly commendable.

49. Mr. VIGNALE (Uruguay) wished to make it quite clear, from the outset, that the Uruguayan delegation, and indeed the Uruguayan Government, had the utmost confidence in the Secretary-General, in whose hands the proper functioning of the United Nations was amply ensured. While the Uruguayan delegation did not share the Secretary-General's views on all matters, such differences of opinion as there were did nothing to detract from the high regard in which it held him as a man of ability, energy and integrity whose every effort was directed towards the good of the United Nations. That, too, was the aim of the Uruguayan delegation, and it was only on the means of achieving ultimate perfection that it differed from the Secretary-General.

50. It had been said, and with reason, that the authors of the Charter had done much to lay the foundations of lasting peace and a free world. It was because he held that view that he was reluctant to approve of any measures which, while undoubtedly based on the best of intentions, seemed to him liable to introduce into the United Nations arbitrary powers that would not be in keeping with the lofty ideals proclaimed at San Francisco. In saying that, he ventured to think that he was speaking not only for the members of the Fifth Committee but for all those throughout the world who had confidence in the work of the United Nations.

51. For those reasons, he was anxious that the question of personnel policy should be given an adequate and satisfactory solution, which, in his view, was not to be found in the spirit or letter of the proposals put forward by the Secretary-General.

52. While he did not wish to give the impression that he was glorifying his own country, he could not fail to point out that in Uruguay the major parties, traditional opponents though they were, had united in a spirit of patriotism to put an end to any possibility of the wielding of arbitrary power by one person alone, and with that end in view had replaced the Presidency by a National Council of State. He was not proposing any such measure for the United Nations, but he felt it his duty to point out that the measures proposed for the personnel policy of the United Nations, which should be a model in every respect, were such as would increase the discretionary powers of the Secretary-General and thereby impair the prestige of the United Nations among freedom-loving peoples of the world.

53. The question of personnel policy had been discussed in detail at the seventh session of the General Assembly, at which time the French representative (418th plenary meeting) had pointed out that the Secretariat of the United Nations was not a body that was called upon to make important decisions, deal with political or military secrets or take any direct action, either harmful of beneficial, towards any Member State of the United Nations, and if that were borne in mind, much unfair criticism and useless indignation could be saved. He had added that staff morale had been seriously affected by the crisis that had developed in personnel matters, and that unless care were taken, the stability and efficiency of the United Nations might be endangered. He had also expressed the French delegation's conviction that the Secretary-General would be able to overcome the difficulties only if he was determined to maintain strictly intact the general principles governing the status of an international civil service. Another point he had stressed had been that an official entering the service of the United Nations did not lose his nationality, but pledged his loyalty, in all matters relating to his work, towards the United Nations alone and could not seek or receive instructions from any government, his own or another, or any authority external to the United Nations. That, he had added, was a difficult ideal which could be achieved only if the Secretary-General was himself able to defend each individual member of the Secretariat, and the independence of the Secretariat as a whole, against any outside influence and pressure.

54. Those conclusions might not find universal acceptance, but it was impossible to dispose of them by fallacious reasoning or arguments of a purely political content. Even if a Member State had reason to suspect the loyalty of a member of the Secretariat, there were other means of settling the matter fairly and justly. As the French representative had pointed out on the same occasion, every Member State had the right to establish the conditions under which it authorized its nationals to become members of the United Nations Secretariat; the United Nations was not called upon to sanction those measures, nor could they limit the right of the Secretary-General to employ any person he considered qualified for service in the Secretariat, even if that person was not authorized by his government to accept or continue employment. Secondly, every State was entitled to expect the Secretary-General not to retain in the service of the United Nations a staff member convicted of engaging in subversive intrigues against its security. Thirdly, every host State was entitled to notify the Secretary-General that it did not consider it desirable for one of its nationals to be assigned to international duties on its territory, upon receipt of which notice it was for the Secretary-General to decide what action he should take; the French delegation had felt that the Secretary-General should, in principle, comply with such a request but that it was his duty to retain the staff member in the service of the United Nations in another country, provided he fulfilled the requirements of the Charter.

55. The Uruguayan delegation, too, had stated its views firmly and unequivocally at the seventh session (420th meeting) when its representative had pointed out that administrative law was neither a mere figment of the imagination nor something ever changing, designed to create an atmosphere of insecurity among the staff, and that he would rather see permanent contracts occasionally granted to persons whose merits were not outstanding than withheld, on the pretext of certain undefined "high standards" from staff members who deserved them on the ground of years of service with the United Nations. He had added that Uruguay had devoted special attention to the principles of administrative law to be followed in the civil service and that Uruguayan civil servants could retain their own political views, whether for or against the policy of the Government.

56. The Uruguayan delegation still held the same views. Uruguay was a young country but it had never been deflected from the path of liberality and justice

upon which its laws were based. If it had been able to attain and maintain high standards of democracy, how much more should it be possible for the United Nations to do so, relying as it could upon the support and co-operation of the world's most famous jurists. Defects which were perhaps inevitable in the legislation of a country, owing to internal political influences, were inadmissible in such an organization as the United Nations, which not only possessed a Charter in whose preparation the most outstanding figures and renowned jurists of the modern world had taken part, but was itself the highest authority in matters of rights.

57. The Uruguayan delegation could not accept the amendments proposed by the Secretary-General to the staff regulations. It did not question the principle of the independence, authority and responsibility of the Secretary-General in the administration of the staff, for that was in accordance with the Charter and the regulations adopted by the General Assembly, as the Secretary-General pointed out in pragraph 15 of his report (A/2533). It held, too, that the sole purpose of the staff regulations had been to promote the independence of the Secretariat and the quality of its members. At the same time, however, as paragraph 16 of the report pointed out, it had been considered essential that the staff should enjoy the maximum practicable security of a career service based on permanent appointment. That being so, the proposed amendments were inadmissible, for they were of a nature to destroy the principles outlined by the Secretary-General in those two paragraphs.

58. He did not consider that the specific grounds defined in the staff regulations for the termination of a permanent appointment limited the power of the Secretary-General to terminate such an appointment; at most they prevented the possibility of any involuntary, arbitrary or unjust action. In his comments, the Secretary-General had carefully explained the scope of his various proposals; what mattered, however, was the spirit and letter of the provisions, and it was clear that neither one nor the other were in conformity with accepted standards of justice. It was common knowledge that arbitrary power and injustice could always undo what had, in a liberal spirit, been established as a legal principle. The Uruguayan delegation could not support, outside its own country, standards that were contrary to those which obtained in Uruguay.

59. In Uruguay the authority that had the power to appoint was not the same authority that had the power to dismiss. According to the proposals before the Committee, those two powers would be vested in one and the same organ, or in one and the same person. Although Article 101 of the Charter admittedly gave the Secretary-General powers in personnel matters, there was nothing in the Charter to prevent the United Nations setting up an Administrative Tribunal to consider appeals against the Secretary-General's decisions or to prevent the General Assembly intervening in any way, in order that appointments and dismissals, demotions or promotions should not lie exclusively in the hands of one person.

60. In paragraph 67 of his report, the Secretary-General referred to the special advisory board that he would appoint to consider terminations under the additional paragraph he was proposing to staff regulations 9.1 (*a*), and pointed out that the staff would be represented on the board. The Uruguayan delegation, while reiterating its confidence in the personal integrity of the Secretary-General, felt bound to dispute the principle of such a board and to point out the fact that the board was to be appointed by the Secretary-General was prejudicial to the rights of the Secretariat and that in certain circumstances the representation of the staff on the board might be no more than an illusion.

61. He went on to outline the strict rules governing the termination of civil service appointments in Uruguay, which were based on the idea that termination was the most serious harm that an official could suffer. The payment of financial compensation could not make up for the moral effect of an unjust dismissal. Moreover, termination should be based upon legal provisions; and while the Secretary-General's proposals, in paragraphs 49, 50, 51 and 53, of procedures which would give staff members an opportunity of self-defence were most praiseworthy and a further proof of his personal integrity, the staff member should not have to depend upon the goodwill of the Administration but should have legal protection. That was the more important in view of the proposals for the amendment of article 9 of the statute of the Administrative Tribunal, which would substantially abridge the legal safeguards enjoyed by staff members under the present system.

62. It could certainly not be claimed that the Secretary-General had shown any injustice or was likely to do so; the important point, however, was that the proposed amendments opened the door to the possibility of injustice. It was essential that the power to terminate appointments should be exercised in accordance with specific rules laid down by the General Assembly on the basis of Article 101 of the Charter, and it was the responsibility of the General Assembly to make rules to cover the relationship between the staff and the Administration in accordance with legal standards, without allowing for any discretionary powers. The Committee should consider carefully the moral effects of any measure that would allow of the dismissal of a member of the United Nations Secretariat; for the termination of a permanent contract by the Secretary-General, after consideration by a board appointed by him, was tantamount to dismissal and would undoubtedly harm the prestige of its victim.

63. Turning to the proposed amendments, Mr. Vignale said that sub-paragraph (i) of the additional paragraph proposed to staff regulation 9.1 (*a*) would be a retrograde step and would annul one of the safeguards established in the staff regulations, making it possible for the Secretary-General to terminate permanent contracts for reasons which were not valid under the existing staff regulations; the Secretary-General would be the judge of the degree of integrity of the staff member in question, subject to the report of an advisory board he himself had appointed.

64. Under the present provisions, the Secretary-General was empowered to terminate temporary appointments without giving any reason. The Uruguayan delegation was willing to agree that that was quite logical, although it was somewhat irregular that such temporary contracts were often allowed to continue for many years. In order to decide upon the degree of integrity of a staff member, a period of ten months should surely be enough; once the staff member had served that probationary period he should be given a permanent contract, and his future relations with the Secretary-General should then be governed by regula-

tions approved by the General Assembly. The very term "integrity" was too indefinite to be the basis for termination once a permanent contract had been granted.

65. According to sub-paragraph (ii) of the proposed additional paragraph to staff regulation 9.1 (*a*), facts anterior to the appointment of a staff member and relevant to his administrative suitability would be sufficient to allow the Secretary-General to terminate his permanent contract. Such facts would obviously be connected with the life or work of the staff member before he joined the Secretariat; if they were connected with his work for the United Nations they would have precluded his being granted a permanent contract. Suitability, however, was surely a matter of development, and an official who would have been unsuitable for his position in the United Nations Secretariat some years earlier might very well be eminently suitable at present. If the facts related to his former life rather than his work, there was no reason why a man should not rise above his past, and it would be unfair to penalize him for them at a later stage.

66. With regard to sub-paragraph (iii), he must repeat that discretionary powers could not take the place of legal rights. While the interest of the good administration of the Organization was admittedly a factor of great importance, it must be ensured within regulations safeguarding the rights of staff members.

67. Finally, he pointed out that while it had frequently been held that the sole purpose of good staff regulations was to ensure the well-being and protection of the staff, it was equally true that good staff regulations were an essential factor for the well-being of the Administration. As an ex-legislator of Uruguay had pointed out, the best way of ensuring the smooth functioning of public services was to give the public official a legal position which would make him independent of favouritism or political influences, would ensure him steady progress in his career and would protect him against wrongful dismissal and arbitrary transfer or demotion.

68. Having put forward those general observations on the proposed amendments to the staff regulations, the Uruguayan delegation reserved the right to intervene again when each of the amendments was discussed separately.

69. If the matter were to be decided at the present session, the Uruguayan delegation would vote on the lines it had indicated. It felt, however, that if the subject were given more detailed study it might well be that acceptable recommendations would be forthcoming. It would therefore be prepared to support the suggestion that the Brazilian representative had made in his statement (407th meeting).

70. Although the present discussion related to personnel policy, the subject was closely connected with the question of the sums the Administrative Tribunal had awarded by way of compensation, a matter to which some delegations had referred. The Uruguayan delegation therefore wished to declare, firstly, that the Administrative Tribunal was a judicial organ established by the General Assembly; secondly, that the General Assembly was empowered to amend the statute of the Administrative Tribunal and even to abolish it; thirdly, that since the Administrative Tribunal was a judicial organ, its judgments and decisions, based on its statute, were not subject to revision by the political and legislative body that had established it; and, lastly, that the Administrative Tribunal's decisions could not, therefore, be revised by the General Assembly. The Uruguayan delegation would vote in favour of the sums allotted by the Administrative Tribunal and would go into greater detail on the subject at a later stage if necessary.

The meeting rose at 1.10 p.m.

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