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at 8 p.m.
New York

SUMMARY RECORD OF THE 59th MEETING

Chairman: Mr. GODFREY (New Zealand)

Chairman of the Advisory Committee on Administrative
and Budgetary Questions: Mr. MSELLE

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AGENDA ITEM 107: PERSONNEL QUESTIONS (continued)

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The meeting was called to order at 8.15 p.m.

AGENDA ITEM 107: PERSONNEL QUESTIONS (continued) (A/36/407 and Add.1, 432 and Add.1 and 2, 495; A/C.5/36/19, A/C.5/36/31; A/C.5/36/L.16, L.18-L.20, L.23)

1. Mr. SUY (Under-Secretary-General, The Legal Counsel), referring to the report of the Secretary-General on respect for the privileges and immunities of officials of the United Nations and the specialized agencies (A/C.5/36/31), said he would like to thank the members of the Committee for the expressions of concern regarding respect for the privileges and immunities of international officials and the affirmation that the international instruments dealing with the status, privileges and immunities of such officials must be strictly respected in order to ensure the independence and integrity of the international civil service. The increase in membership in international organizations and the corresponding increase in the number of States which were hosts to international organizations and their subsidiary bodies gave added importance to the question of immunities. Conditions in any one duty station had an impact on all the staff of the international organizations, wherever they might serve, and directly affected the morale and efficiency of the international civil service.
2. Before offering the clarifications requested by a number of delegations with regard to specific cases or the measures contemplated by the Secretary-General in the future, he would like to refer to the question of the character of the immunity of international officials. The law of international immunities, which was based principally on the United Nations Charter, the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies and other instruments referred to in paragraph 3 of the Secretary-General's report, distinguished between diplomatic and functional immunities. The very great majority of officials of the United Nations and specialized agencies were accorded functional rather than diplomatic immunities. That distinction was significant both from the point of view of the scope and content of the immunity and because of the fundamentally different character of the two types of immunity. While diplomatic immunity attached to the person, the functional immunity of international officials was organizational. Thus, section 20 of the Convention on the Privileges and Immunities of the United Nations provided that "Privileges and immunities are granted to officials of the United Nations in the interests of the United Nations and not for the personal benefit of the individuals themselves". An identical provision was contained in the Convention on the Privileges and Immunities of the Specialized Agencies.
3. That distinction was essential to an understanding of the nature of the violation of immunities reported by the Secretary-General in document A/C.5/36/31. The various cases referred to in the report involved a breach of the organizations' rights. For example, where violations involving immunity from legal process — the type of case most frequently cited — were concerned, the substance of the Secretary-General's protest in such cases was not that a particular staff member had been subjected to legal process but that he had been prevented from exercising his right under the international instruments in force to independently determine whether or not an official act had been involved. Where a determination was made that no official act was involved, the Secretary-General had, by the terms of the

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(Mr. Suy)

Convention on Privileges and Immunities, both the right and the duty to waive the immunity of any official.

4. As the Secretary-General stated in his report, Member States had on the whole respected the Organization's right of functional protection, which had been clearly enunciated by the International Court of Justice in its advisory opinion of 1949 in the Bernadotte case and which now formed part of generally accepted international law. It was not the intent of the provisions regarding immunity from legal process or the principle of functional protection to place officials above the law but to ensure, before any action was taken against them, that no official act was involved and that no interest of the Organization was prejudiced.

5. A second question concerned who was entitled to privileges and immunities. It had been suggested by some delegations that locally recruited staff members were not officials of the United Nations and specialized agencies for the purpose of privileges and immunities and that they were first and foremost nationals of the country concerned and, as such, were subject to its laws. On that point, he would like to clarify the meaning of the term "officials" as it was used in the Conventions. Section 17 of the Convention on the Privileges and Immunities of the United Nations stated that the Secretary-General would specify the categories of officials to which articles V and VII of the Convention should apply. The Convention on the Privileges and Immunities of the Specialized Agencies and the IAEA Agreement contained similar provisions. In 1946, the General Assembly had adopted resolution 76 (I), in which it had approved the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations to all members of the staff of the United Nations, with the exception of those who were recruited locally and were assigned to hourly rates. The specialized agencies and IAEA had taken similar actions. Consequently, all staff members regardless of rank, nationality or place of recruitment, whether Professional or General Service, were considered as officials of the organizations for the purposes of privileges and immunities except for those who were both locally recruited and employed at hourly rates. United Nations locally recruited staff such as clerks, secretaries and drivers were in nearly every case paid according to established salary or wage scales and not at hourly rates and they were, therefore, covered by the terms of General Assembly resolution 76 (I).

6. With regard to the discrepancy which existed between the régime applicable at United Nations Headquarters in New York and that which was applicable in virtually all other duty stations, including the headquarters seats in Geneva, Nairobi, Vienna and the seats of the regional economic commissions, it was perfectly true, as one delegation had pointed out, that in New York the range of staff members to whom diplomatic privileges and immunities were accorded was narrower than the range in other duty stations. The more restrictive régime, which was patterned exclusively on the provisions of the Conventions on Privileges and Immunities adopted in 1946 and 1947, had been made applicable at United Nations Headquarters in New York at a time when it had been anticipated that the staff of the United Nations would be largely concentrated in New York and a more liberal régime would have resulted in very large numbers of staff members being assimilated to diplomatic personnel. Although that discrepancy in treatment was undesirable and it would have been preferable to obtain equality of treatment for staff members regardless of their

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duty station, it should be noted that in absolute terms the number of staff members having diplomatic privileges and immunities in New York and the other major duty stations was roughly comparable.

7. The Secretary-General believed that the adoption of resolution 35/212 and the Fifth Committee debate on respect for the privileges and immunities of international officials had been very useful. While attention had, perhaps inevitably, been focused on a small number of cases involving the arrest and detention of staff members, the constructive element of the debate had been the affirmation by Member States of their respect for the international instruments in force and their desire to observe them strictly. The debate had also permitted a clarification of the nature and scope of the privileges and immunities of international officials and the concomitant duty of international officials to conduct themselves in accordance with the highest standards required by the international civil service. The Secretary-General intended to continue his efforts to protect those staff members who had been arrested and detained and hoped that, in the light of any recommendations or decisions which might be taken by the General Assembly, his task would be facilitated by all Member States concerned.

8. In conclusion, he reported that since the issue of the report the Secretary-General had received no formal communication concerning any of the cases mentioned in it. During the debate, however, some new information on certain cases had been provided and they would be followed up by the Secretary-General or the executive heads of the specialized agencies concerned. The Secretary-General was convinced that all of the cases cited were amenable to a solution in accordance with the principles enunciated in his report. Prompt observance of those principles by Member States would ensure that the rights of individual States and of the international organizations were mutually respected. It was in that spirit that the Secretary-General would continue his efforts to secure respect for the privileges and immunities of international officials.

9. Mr. JOHAH (Assistant Secretary-General for Personnel Services), introducing the comments of the Secretary-General (A/36/432/Add.2) on the report of the Joint Inspection Unit entitled "Personnel policy options" (A/36/432 and Add.1), said that the Secretary-General and his ACC colleagues had recommended, for the reasons stated in paragraphs 6, 7 and 8 of document A/36/432/Add.2, that the General Assembly should for the time being confine itself to taking note of the report of the Joint Inspection Unit and take no decisions that might pre-empt the development of a common policy responding to the programmes and needs of all the agencies.

10. Nevertheless the Secretary-General believed that it was incumbent on him to make some preliminary comments on the report of the Joint Inspection Unit inasmuch as it dealt with personnel problems within the United Nations. Those comments were contained in paragraphs 10 to 16 of document A/36/432/Add.2. They dealt specifically with the actual situation in which the options mentioned in the JIU report had been exercised in the United Nations Secretariat. It should be noted that those comments did not refer to the separate report submitted by ICSC on the same subject because the latter report contained no substantive recommendations that had not already been brought to the attention of the General Assembly.

(Mr. Johah)

11. Introducing the comments of the Secretary-General (A/36/407/Add.1) on the JIU report on the application of the principle of equitable geographical distribution to the staff of the United Nations Secretariat (A/36/497), he pointed out that the two reports of the JIU approached the same problems from different points of view. The report on personnel policy options was primarily concerned with the stability and efficiency of the Secretariat, based on a well-defined plan of career development, whereas the second report proposed measures to improve geographical distribution in the Secretariat through greater use of fixed-term contracts and by a system of rotation between service with the United Nations and in government service in the countries of origin. As the Secretary-General had pointed out in his comments, some of those recommendations of the JIU were not fully congruent with the principles stated in the other JIU report.

12. The position of the Secretary-General with regard to each of the JIU recommendations on equitable geographical distribution in the Secretariat was clearly explained in document A/36/407/Add.1. He himself would accordingly not discuss recommendations 1, 3 and 5, which had given rise to extensive comments within the Secretariat.

13. With regard to the first recommendation of the Joint Inspection Unit, the Secretary-General considered that it was his responsibility to monitor the distribution of staff in each of the 43 major departments and offices of the Secretariat in order to ensure that no group of countries predominated, except in the case of the regional commissions, which were authorized to recruit up to 75 per cent of their staff from countries of the region. However, to apply the principle of equitable geographical distribution to each Secretariat unit or entity would create serious difficulties in that it would deprive the Secretary-General of the flexibility he needed to manage personnel resources as efficiently as possible.

14. With regard to recommendation 3, the Secretary-General still believed that the ratio of permanent to fixed-term contracts should be determined primarily by reference to the operational requirements of the United Nations, with due regard to the need to ensure equitable geographical distribution. It was the Secretary-General, as the chief administrative officer of the Organization, that was responsible for determining that ratio.

15. The other important recommendation was recommendation 5 to the effect that vacancy announcements should be issued simultaneously for internal and external candidates. The Secretary-General believed that the application of that recommendation would alter the essential nature of the Secretariat as a career service. Nevertheless, as he had pointed out in his introductory statement, the Office of Personnel Services had taken the necessary steps — for example, earmarking 50 per cent of all vacant posts for nationals from countries which were unrepresented or under-represented and for women — with a view to ensuring a proper balance between vacancies available for candidates who were already serving in the United Nations and for outside recruitment.

16. Mr. FALL OULD MAALOU (Mauritania) expressed the view that the efficiency and dynamism of a true international secretariat depended on the dedication and loyalty

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of its staff members and on the political willingness of Member States to respect their status and give them the means to perform their functions.

17. His delegation had noted with satisfaction from the report of the Secretary-General on the composition of the Secretariat (A/36/495) the progress made in the application of resolution 33/143 and 35/210 and the measures taken to attain the objectives enunciated in those resolutions.

18. He was particularly gratified to find that the target of 25 per cent for the representation of women in the Secretariat was well on the way to being achieved. However, the Secretary-General should avoid recruiting, for the sake of attaining that target quickly, a majority of women from over-represented developed countries because that would have the effect of aggravating the considerable imbalance already prevailing within the international civil service.

19. His delegation was glad that the principles and methods of the competitive examination for P-1/P-2 recruitment and the internal examination for promotion from the General Services category to the Professional category had gained wide acceptance because that would help to improve the representation of unrepresented or under-represented Member States. Those competitive examinations should not, however, adversely affect the qualitative representation of developing countries generally and of unrepresented or under-represented countries, in particular.

20. His delegation had also been gratified to note the improvement in the roster of candidates and the active recruitment policy for candidates from unrepresented or under-represented countries. In that connexion it might be advisable to shorten and simplify the existing recruitment and appointment process so as to be able to attain the targets quickly, as the Joint Inspection Unit had recommended in its report on the application of the principle of equitable geographical distribution to the staff of the Secretariat.

21. With regard to the maximum extension of service beyond the age of retirement, his delegation supported recommendation 8 of the Joint Inspection Unit. It would be hard to justify a six months' extension when the retirement dates of staff members were known in advance.

22. He noted that the reports of the Joint Inspection Unit and of ICSC on the career service, career development and related questions contained no specific recommendations; he believed that Member States had perhaps been unable to identify clearly enough the principles of a consistent and rational personnel policy. While personnel expenditure, as matters stood, represented almost 80 per cent of the United Nations budget, ICSC and the Joint Inspection Unit should, in pursuance of the instructions given to them by the General Assembly in resolution 35/210, carry out a thorough study of career service, types of contract, the concept of occupational groups and grade linking and submit recommendations to the General Assembly at the thirty-seventh session. The Committee could then make decisions promptly on all those questions.

23. His delegation, like earlier speakers, was concerned about the question of the

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immunities and privileges of international officials, which involved the integrity and independence of the international civil service. His Government, by voting in favour of resolution 35/212, had committed itself to respecting those immunities and privileges and it intended to abide by that commitment.

24. Mr. PAL (India) said that it was traditional, when dealing with personnel questions, to refer to Article 101 of the Charter and in particular to its paragraph 3. It should not be forgotten, however, that under Article 7, the Secretariat was a principal organ of the United Nations and that Article 8 stipulated that the United Nations must place no restrictions on the eligibility to participate in any capacity and under conditions of equality in its principal and subsidiary organs. A system of allotting personnel entitlements, if too rigidly applied, would go not only against Article 101.3 but also against Article 8.

25. It was not surprising that the Secretariat, as a principal organ of the United Nations, as were the intergovernmental bodies, was subjected to the same political process that governed the work of the General Assembly. Desirable ranges of posts had become rights and Member States obviously considered those posts not only as a privilege but also as a means of extending their influence. The Committee had, of course, implicitly recognized that situation in the very detailed resolutions on personnel adopted in recent years. If the Secretariat was to be part of the intergovernmental negotiation process, the Committee should define the role of the politicized international civil service.

26. In the United Nations, Member States were trying to exert influence in three ways: through the proposal and adoption of resolutions in the General Assembly and its subsidiary organs; by bringing influence to bear on the upper echelons of the Secretariat; and through the presence of their officials in the Secretariat. If personnel entitlements were seen in that light, the respective weights of individual countries or of regional groups appeared very different from the results of an analysis which considered only the number and rank of nationals of each country in the Secretariat.

27. Of the three main groups of Member States, the Group of 77, by weight of numbers, could theoretically carry any resolution through the General Assembly. However, on any controversial or significant issue, every resolution had to be negotiated with the other parties in order to take their concerns into account. Where those negotiations did not lead to a consensus and a resolution was passed by the majority of Member States, the Secretariat was often paralysed by the threat or fear of withdrawal of support from the major Powers. It happened that the major contributing countries brought their pressure to bear and made their views counterbalance, and sometimes undermine, the wishes of the majority as expressed in the democratic process of the General Assembly. Evidence of that was the adoption of a resolution on personnel questions at the thirty-fourth session over the opposition of the other groups of States, whereby the Secretariat had had to mark time until a consensus was reached at the thirty-fifth session.

28. In the Secretariat, the imbalance of influence was tilted even more heavily in favour of the few. The major contributing countries were entitled to the most

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personnel, even though the sacrifices made by all countries were the same. Moreover, a mockery was made of the principle of equitable geographical representation when a handful of countries laid claim to the majority of posts. The situation became completely inequitable, because it was those very countries which already enjoyed most influence in the process of intergovernmental negotiation and in the upper echelons of the Secretariat.

29. The present list of under-represented countries included 10 major contributors. Although those States were under-represented in raw figures, in terms of the influence they wielded they were already so heavily over-represented that their presence in the Secretariat was marginal to their national or group interests.

30. The intention of the Charter had been to glean the finest talents from all parts of the world and to synthesize the experience of different cultures and different political, economic and social systems. Thus an international civil service should have been born. Actually nothing of the kind had transpired. Firstly, there was a growing body of Secretariat staff seconded from national Governments on short-term contracts and therefore subjected to the influence of those Governments. Furthermore, most of them came from countries that wielded the most influence.

31. In addition, the supplementary benefits paid by certain countries to their nationals in the Secretariat enabled them to wield still more influence over the staff members in question.

32. The fact that there were vast bodies of staff from countries sharing common ideologies, and indeed from one or two countries only, created an imbalance in the Secretariat, made worse because those nationalities often monopolized key offices which had become traditional satrapies of those countries or regional groups. Those customs prevailed in the Office of Personnel Services itself where the Classification Unit did not even have a single member from a developing country.

33. His delegation could not therefore accept a proposal that recruitment should henceforth be made only of staff members from under-represented or unrepresented countries. If no distinction were made between the two different categories of under-represented countries, chances were that there would simply be a greater imbalance in favour of the "under-represented" major contributors rather than better geographical distribution. It was also more economical and much easier to recruit large numbers of staff from one country where they were easily found than one or two from several small countries. Everything therefore seemed to militate against a change in the direction of better geographical distribution.

34. It was disturbing to note that the percentage of senior appointments from developed countries from July 1980 to June 1981 was higher than the percentage of all appointments from that group of States.

35. While welcoming the adoption by the Office of Personnel Services of an annual work plan of recruitment, his delegation wished to reintroduce the proposal that that Office, in co-operation with the Office for Programme Planning and Co-ordination,

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should examine the feasibility of drawing up a medium-term personnel plan that would be integrated into the medium-term plan of the United Nations and therefore into the whole process of programme planning and budgeting.

36. Turning to staff management relations, he noted that the staff unions and associations placed particular importance on ILO Convention 151 on the right to organize and determine conditions of employment in public service. On that subject he pointed out that, while constituting guidelines whose application was desirable, the ILO conventions were not designed for the international civil service. In any event, it would be for the General Assembly to determine to what extent the Convention could apply to the Professional level and above. No decision on collective bargaining could be taken without consultation with, and the agreement of, the General Assembly.

37. He wished to place the problem of the privileges and immunities of the staff of the United Nations and the specialized agencies in its correct perspective. Without under-estimating the gravity of the matters reported by the Secretary-General (A/C.5/36/31), he thought that the small number of cases reported, out of the tens of thousands of personnel in duty stations all over the world, should be compared with the practice of countries which persisted in making supplementary payments to hundreds of their nationals in the United Nations staff, a practice which was a much more damaging violation of the international character of the Secretariat and the integrity of its staff. He pointed out that the Conventions on the privileges and immunities of the United Nations, the specialized agencies and IAEA clearly did not apply to all staff members of the United Nations system. Moreover, there was a countervailing duty imposed on the bodies of the United Nations system to co-operate with the appropriate authorities of Member States to prevent the occurrence of any abuse. Lastly, the Conventions laid down provisions for the amicable settlement of disputes. He hoped that those procedures would be followed by all concerned in order to settle outstanding problems as quickly as possible.

38. In conclusion, he welcomed the fact that the Committee had had the opportunity to hear the views of the staff.

39. Mr. ASP (Sweden), speaking on behalf of the delegations of Denmark, Finland, Norway and Sweden, said that in section V of General Assembly resolution 35/210, the Secretary-General and the executive heads of the other organizations of the United Nations system had been requested to take certain specific steps designed to improve the recruitment of women and eliminate all forms of sexual discrimination. The delegations of the Nordic countries expected the Secretary-General and the executive heads to demonstrate goodwill and make genuine efforts to tackle those difficult programmes. The Secretary-General had commented on that question in document A/37/495, but the Nordic countries were disappointed that a more comprehensive report, as requested by the General Assembly, had not appeared and wished to know if such a report would be forthcoming.

40. With regard to respect for the privileges and immunities of officials of the United Nations and the specialized agencies, he said that in its resolution 35/212 the General Assembly had clearly reaffirmed the absolute necessity of ensuring protection for international civil servants. His delegation had taken note with

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grave concern of the report of the Secretary-General in document A/C.5/36/31. It believed that it was exclusively for the Secretary-General or the specialized agencies concerned to determine the extent of the functions of an individual official. Consequently, it was of paramount importance that the Secretary-General should gain access to arrested or detained staff members in order to decide whether an act had been performed in an official capacity and, if so, whether immunity should be waived. The Nordic delegations regretted that in a number of cases, the United Nations and the specialized agencies had been denied such access. The immunity of United Nations employees was an integral part of the characteristics of an independent international civil service, free from external pressures. He therefore appealed to all Member States to recognize and fully respect the independent status of the international civil service and the privileges and immunities accorded to its members.

41. Mr. HAND (United Kingdom), speaking on behalf of the 10 States Members of the European Economic Community, said that respect for the privileges and immunities of United Nations officials was essential, both to guarantee the efficiency of the system and to protect the basic civil rights of international officials. The Secretary-General and executive heads should ensure that those privileges and immunities were honoured, and it was the duty of the General Assembly to respond appropriately where the various relevant instruments had not been respected. The Ten welcomed the report of the Secretary-General (A/C.5/36/31) and hoped that short annual reports, providing information not only on new cases but also on progress made in solving existing ones, would be made. In that connexion, they believed that it would be helpful if the paper recently presented by the Director-General of UNESCO to that body's Executive Board could be distributed to the members of the Committee as a conference room paper. The Ten did not under-estimate the complexity of the cases mentioned in the Secretary-General's report, nor were they able to judge whether immunity should be recognized or waived, but they believed that only the executive head of the organization concerned could determine the extent of the duties and functions of his officials and, consequently, whether particular acts had been performed in an official capacity. The issues raised by the Secretary-General's report, however, went beyond that legal aspect and referred to the basic civil rights of accused officials. All Member States had the duty to respect the basic right of international organizations to have access to detained staff members so that they could verify the facts of each case and assist staff members in arranging for legal representation. The Ten whole-heartedly supported draft resolution A/C.5/36/L.16.

42. Mr. RALLIS (Greece) said that his delegation regretted that the criteria laid down by the General Assembly in its resolution 35/210 on the recruitment of personnel were not always taken into consideration. Countries which were under-represented continued to be so. On the other hand, officers of low rank were often recruited in order to bring the quota of a given country up to the desired level, without consideration of the need for equitable representation of Member States at all levels. To remedy the situation, his delegation believed there should be closer co-operation in recruitment procedures between the Office of Personnel Services and the other United Nations services. The establishment of a recruitment plan would be a useful means of achieving that goal, and to that end, the Secretariat should announce vacancies at all levels regularly and as early as possible.

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(Mr. Rallis, Greece)

43. His delegation opposed the raising of the retirement age, which would lead to the perpetuation of existing imbalances at the expense of under-represented States. The extensions beyond the retirement age which had been granted in 1981 could have been avoided if the post vacancies had been announced well in advance. His delegation hoped that the Office of Personnel Services would recognize the importance of that problem and take steps towards resolving it, in accordance with resolution 35/210.

44. Mr. LÖSCHNER (Federal Republic of Germany) said that his delegation welcomed the efforts made by the Office of Personnel Services, in accordance with resolution 35/210, to relieve, to a certain degree, the serious under-representation of his country's nationals in Secretariat posts subject to geographical distribution. His delegation supported the earmarking of 50 per cent of post vacancies for nationals of unrepresented or under-represented Member States and the assignment of P-1 and P-2 posts through competitive examinations. Those procedures should be reinforced and made more comprehensive in order to take due account of the fact that the Federal Republic of Germany and other Member States were virtually unrepresented in the political areas of the Secretariat, particularly at the highest levels.

45. His delegation attached special importance to keeping extensions beyond the established retirement age to the absolute minimum. He requested information from representatives of the Secretariat on the number of cases in which extensions had been granted repeatedly.

46. With regard to respect for the privileges and immunities of officials of the United Nations and the specialized agencies, he pointed out that in its resolution 35/212 the General Assembly had requested the Secretary-General to submit a report on behalf of the Administrative Committee on Co-ordination (ACC). He wondered if the Secretary-General had submitted his report (A/C.5/36/31) on behalf of ACC, and if not, why not.

47. Mr. BELYAEV (Byelorussian Soviet Socialist Republic) said that his delegation's position was based on strict observance of the provisions of Article 101, paragraph 3 of the United Nations Charter. The two principles mentioned in that paragraph, namely the necessity of securing the highest standards of efficiency, competence and integrity in the Organization's staff and of taking into consideration the importance of recruiting on as wide a geographical basis as possible, were closely connected. With regard to the competence of United Nations staff, his delegation had always participated actively in reviews of the steps taken by the Secretary-General to increase the Secretariat's efficiency. As to the recruitment of staff on as wide a geographical basis as possible, it was essential for all Member States to be represented at all levels, without discrimination or privileges.

48. The reports before the Committee at the current session contained extremely useful information which indicated that the Secretariat's recruitment policy had improved. Nevertheless, much remained to be done. Despite the provisions of Article 101, paragraph 3, of the Charter and the relevant General Assembly resolutions, particularly resolution 35/210, more than a quarter of Member States were unrepresented or under-represented, and many of them were represented at the

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lowest level of the desirable range. Some groups of States were scandalously over-represented, to the detriment of other groups. Table 9 in the report of the Secretary-General on the composition of the Secretariat (A/36/495) indicated that the number of staff from Eastern Europe had decreased from 1980 to 1981, although that group was already under-represented.

49. The injustice was perpetuated by the system of permanent appointments, supported by a group of States on the fallacious pretext of maintaining a high standard of staff competence. His delegation believed that the practice of permanent appointments worked against the effectiveness of the Secretariat, because the staff members so appointed were often transferred after a certain period from one department to another or undertook professional training to equip themselves for new assignments. It was very clear that, if they had been recruited for a fixed term, those useless expenses could have been avoided. Table 10 in the report of the Secretary-General showed, unfortunately, that the number of permanent staff recruited had increased by 52 between 1980 and 1981. If to that was added the fact that the number of staff held on beyond the statutory retirement age had risen during the same period from 22 to 26, it would be easily seen that the under-representation of certain groups of States was not about to be eliminated. Such injustices were further aggravated by the attitude of certain heads of department in the Secretariat, who systematically refused to apply the principle of equitable geographical distribution.

50. His delegation attached particular importance to the classification of Professional posts, because it held to the theory that the classification system must allow the level of a post to be determined properly and must avoid any waste of resources. It therefore found it surprising that the Secretariat had not transmitted any specific information on the application of the Master Standard promulgated by the International Civil Service. It would also like to know if the Secretariat had followed up on the recommendation of the Advisory Committee in paragraph 41 of document A/35/7/Add.8, authorizing the Secretary-General to exchange posts at level P-5 and below between budget sections, providing the total numbers of posts at each level, as approved by the General Assembly, remained unchanged. The Secretariat should therefore specify what steps it had taken to apply the classification system promulgated by the ICSC and give exact indications of the number of posts for which upward or downward reclassification had been proposed.

51. His delegation was fully aware of the fact that General Assembly resolution 35/210 had been adopted only at the previous session and that the Secretariat had not yet had the time to put it into full effect. It was therefore limiting itself to stating a position of principle and expressing the hope that the Secretariat would redouble its efforts.

52. His delegation fully supported the conclusions and recommendations of the Joint Inspection Unit in chapter IV of its report on the application of the principle of equitable geographical distribution of the staff of the United Nations Secretariat (A/36/407).

53. Finally, with regard to the privileges and immunities of officials of the

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United Nations, his delegation believed that the legal aspects of the status of officials should be reviewed by the Sixth Committee. Its own guiding principle was the fact that the status of United Nations officials, as defined in the 1946 and 1947 Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, must be respected by Member States, especially those States in whose territory United Nations bodies were situated. In any case, it found that the information provided in the report of the Secretary-General on respect for the privileges and immunities of officials of the United Nations and the specialized agencies (A/C.5/36/31) was unclearly and tendentiously presented. It further deplored the fact that the report had slandered certain Member States.

54. Mr. SHAHEED (Syrian Arab Republic) said that he had carefully read the report of the Joint Inspection Unit on the application of the principle of equitable geographical distribution of the staff of the United Nations Secretariat (A/36/407) and the report of the Secretary-General on respect for the privileges and immunities of officials of the United Nations and the specialized agencies (A/C.5/36/31). His delegation felt that the Secretariat should not grant permanent contracts too often, but should rather make more frequent use of the services of experts or officials recruited for a fixed term. Heads of departments should be given a certain latitude when it came to determining the period of appointments. Those various steps would greatly facilitate the application of the principle of equitable geographical distribution of Secretariat staff.

55. His delegation took note of the comment by the Inspectors of the Joint Inspection Unit in paragraph 43 of document A/36/407 to the effect that, regrettably, the heads of some entities paid primary attention to internal candidates and did not take sufficient account of external talent. His delegation believed with the Joint Inspection Unit that vacancy announcements should be issued simultaneously for internal and external candidates, which would increase the chances of recruiting a genuinely competent staff.

56. In the interests of economy the number and size of missions by Secretariat staff should be reduced. The statutory age of retirement should be strictly respected except where it was absolutely necessary to do otherwise.

57. The Syrian Arab Republic was a party to the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies and had always offered international officials the assistance to which they were entitled. In return, it expected those officials for their part scrupulously to respect the provisions of the Conventions and comply with national laws. If officials wanted their privileges and immunities to be respected, they should refrain from any activities unconnected with their duties and any interference in the internal affairs of the host country.

58. Mr. ALI (Bangladesh) recalled that his delegation had joined the consensus in the adoption of General Assembly resolution 35/210 which, it believed, would permit the restructuring and modernizing of the Secretariat. It was therefore happy to note that the Office of Personnel Services had taken steps to meet the target set by the General Assembly.

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(Mr. Ali, Bangladesh)

59. The report of the Secretary-General on the composition of the Secretariat indicated that the number of unrepresented and under-represented States had increased from 1980 to 1981 and that developing countries were poorly represented in senior posts. It hoped that at the next session the Secretary-General would be in a position to submit a more favourable report.

60. In that connexion, his delegation would like to know what mechanism had been adopted with regard to the population factor, to which 240 posts were to have been allocated under resolution 35/210, section II. It would be interesting to know if the population factor was applied to all regions and how those posts were distributed among different States within a region.

61. His delegation had noted with concern that nearly half of the posts in the Secretariat, whether financed from the regular budget and from extrabudgetary sources, were not subject to geographical distribution. It was time for the Secretariat to make a review of posts which might be included among those subject to geographical distribution.

62. It emerged from the Secretary-General's report that vacancy announcements were not published externally if there were suitable candidates available on the Secretariat's roster. His delegation could see no justification for that procedure and fully concurred with the recommendation of the Joint Inspection Unit that vacancy announcements should be issued simultaneously for internal and external candidates.

63. In paragraph 32 of the Secretary-General's report (A/36/495) it was stated that the Secretariat had established lists of research institutions and universities which could serve as possible sources of candidates and that vacancy announcements were sent to them. He requested that copies of that list should be distributed to Member States.

64. It was stated in paragraph 64 of the Secretary-General's report that posts at the P-1 and P-2 levels whose characteristics did not justify their inclusion in the programme of examinations had been reopened for recruitment under normal procedures. His delegation would like to know what the characteristics of those posts were.

65. His delegation agreed with the view of the Joint Inspection Unit that the extensive use of permanent contracts hindered the application of the principle of equitable geographical distribution. It therefore agreed with the recommendation of JIU that the number of permanent contracts should be reduced and the number of fixed-term contracts increased.

66. The United Nations Secretariat should be a truly representative body, in which there was equal representation of developed and developing countries at all levels. The principle of equitable geographical distribution had so far been applied exclusively to Professional posts. The overwhelming majority of posts in the General Service category were consequently occupied by nationals of a small number of countries. His delegation would welcome a breakdown by country of the General Service staff. It was unfair that the nationals of most of the countries of the

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third world could not be employed in the General Service category, in the United Nations even if they had the necessary qualifications. His delegation did not wish to be unduly critical of the existing recruitment policy which was based primarily on pragmatic considerations. It hoped, however, that, if the United Nations was to employ an increasing number of foreign nationals in the General Service category, it would give those countries which were in a position to provide personnel the opportunity to fill those posts. He realized that 30 per cent of all posts at the P-1 and P-2 levels were to be filled by competitive examinations for serving General Service staff, but an effort should be made to restore a measure of geographical balance in a category that was obviously disadvantaged.

67. Mr. GALLEGOS (Chile) stressed the importance to Member States of personnel questions, which greatly influenced the efficiency of the Organization. Personnel questions had been discussed in many forums, but fell primarily within the competence of the Fifth Committee, as was pointed out in paragraph 1 of the Secretary-General's report (A/36/495). It was inevitable that the staff should react to the decisions of the competent authorities. Nevertheless, their reaction should be constructive and should not dwell only on the negative aspects of the question as did the report submitted by the Staff Unions and Associations of the United Nations Secretariat. His delegation would have preferred document A/C.5/36/19 to contain specific suggestions for improving the efficiency of the United Nations staff rather than further claims.

68. His delegation had reservations regarding the request made by the staff in document A/C.5/36/19 that diplomatic immunity should be extended to all categories of United Nations staff. The Vienna Convention was very clear on that point, and such a step would give rise to abuses which might well have political repercussions far more serious than the problems it was designed to solve. Any change in the existing legal system should therefore be approached with great caution.

69. Mr. PAPENDORP (United States of America) supported the request of the 10 member States of the European Community that the report submitted by the Director-General of the United Nations Education, Scientific and Cultural Organization (UNESCO) to its Executive Board should be distributed to the members of the Committee.

70. Mr. von HELLENBERG HUBAR (Netherlands) introduced draft resolution A/C.5/36/L.16 entitled "Respect of the privileges and immunities of officials of the United Nations and the specialized agencies" on behalf of the following countries: Australia, Barbados, Belgium, Canada, Denmark, Federal Republic of Germany, Ghana, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden and Thailand. The sponsors believed that it was necessary to reaffirm the responsibility of international organizations for the protection of their staff members. It was in the interests of Member States to respond favourably to the appeal in paragraph 1 of the draft resolution, which was intended basically to enable the Secretary-General to determine whether a particular act for which a staff member was being held responsible had been performed in his official capacity and, when necessary, to enable the Organization to exercise its right of protection. The content of that

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paragraph was consistent with the position which had always been maintained by the United Nations and with the advisory opinion of the International Court of Justice of 11 April 1949. It should be emphasized that the draft resolution did not cover acts performed in a personal capacity. The sponsors of the draft resolution hoped that it would be adopted by consensus, as had been the case with resolution 35/212 at the previous session.

71. Mr. RICHTER (German Democratic Republic), introducing amendments (A/C.5/36/L.18) to draft resolution A/C.5/36/L.16, said that the purpose of the amendments was to take account of the differences of opinion among Member States. The amendments were also based on the belief that the Fifth Committee should refrain from dealing with legal questions, which should be considered in detail by a competent organ before being made the subject of draft resolutions. For the sake of balance, the draft resolution should mention not only the rights of staff members but also their obligations and duties under the Charter of the United Nations, international conventions and the staff regulations.

72. The first amendment would have the effect of deleting the reference to consensus from the first preambular paragraph, because resolution 35/212 had been adopted, not by consensus but simply without a vote. The second amendment would eliminate the reference in the third preambular paragraph to paragraph 6 of the Secretary-General's report (A/C.5/36/31), as that paragraph had been interpreted in different ways by Member States and because no mandatory legal instrument could be invoked in support of the recommendations contained therein. The purpose of the third amendment was to replace the fifth preambular paragraph by the second to sixth preambular paragraphs of resolution 35/212, chiefly because it was inappropriate to refer to the advisory opinion of the International Court of Justice which the General Assembly had never endorsed.

73. Mr. KUDRYAVTSEV (Union of Soviet Socialist Republics), introducing the amendments in document A/C.5/36/L.19, said that a number of countries — the Soviet Union, the German Democratic Republic, Ethiopia and Bulgaria — had thought it necessary to submit amendments to the draft resolution under consideration, thus confirming what his delegation had stated during the general debate on item 107, namely that the problems involved had been dealt with in a one-sided fashion.

74. The privileges and immunities enjoyed by staff members of the United Nations and the specialized agencies in the Member States where the headquarters of those organizations were situated varied widely from one country to another. In essence, the privileges and immunities of international civil servants were governed by Article 104 of the Charter and by the provisions of the international Conventions of 1946 and 1947. However, those privileges and immunities were regulated in greater detail by the Headquarters Agreements. An agreement of that type existed with the United States of America. It provided, in article 4, paragraph 11, that the United States could not oppose the access of staff members of the United Nations to or their departure from Headquarters.

75. In the case of Switzerland, which was not a Member of the Organization and had not signed a headquarters agreement, an arrangement had been made whereby United Nations officials in grades P-5 and above enjoyed the same privileges and

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immunities as diplomats in Swiss territory. In Switzerland, therefore, the privileges and immunities granted to international civil servants were much more extensive than those granted to them in the United States.

76. In Austria international civil servants could import personal effects duty-free and, as in Switzerland, officials in grades P-5 and above enjoyed on Austrian territory all the privileges and immunities laid down in the Vienna Convention of 1961. An agreement had also been concluded with Kenya.

76a. His delegation therefore considered that the draft resolution under consideration should be amplified by adding, after paragraph 1, a paragraph in which the General Assembly "Appeals to the Governments of the Member States in which the headquarters of the United Nations and the specialized agencies are located to ensure that the levels of privileges and immunities granted to the staff members of these organizations are raised to the most favourable of existing ones". The Secretary-General would be asked to make a comparative analysis of those privileges and immunities and to submit a report on the question to the General Assembly at its thirty-seventh session.

77. Not only were the provisions of the conventions and agreements he had mentioned inadequate but they were not always scrupulously complied with. In 1979, for example, the United States authorities had refused for nine months, with no explanation, to grant an entry visa to Mr. Orlov, Director of the Dag Hammarskjöld Library, although his appointment had been confirmed by the Secretary-General. In the same year, the United States authorities had forbidden Mr. Bogdanov, a Soviet citizen, to enter New York. Mr. Bogdanov, who was to have been a member of a working group set up to study certain questions relating to disarmament, had thus been unable to carry out the duties entrusted to him by the Secretary-General. Bad example was contagious, and, in 1981 Thailand, which was one of the sponsors of the draft resolution under consideration, had refused to allow two staff members of the Economic and Social Commission for Asia and the Pacific (ESCAP), Mr. Gorchkov and Mr. Sokolov, to enter its territory.

78. Lastly, Australia, which was also a sponsor of draft resolution A/C.5/36/L.16, had recently refused entry visas to Mr. Pissarev, a member of the Human Rights Division of the Secretariat, and Mr. Bykov, a United Nations consultant, both of whom were to have participated in a seminar on human rights and criminal law at Canberra. Australia, which was always ready to urge other countries to respect the provisions of international conventions, had little hesitation in violating those provisions.

79. His delegation hoped that the amendments which it was proposing would, together with those of the German Democratic Republic and certain other States, be supported by the Committee. It was opposed to the proposal of the representatives of the United States and the United Kingdom that the report of the Director-General of UNESCO should be distributed to members of the Committee, since the biased information it contained was already included in the tendentious report of the Secretary-General (A/C.5/36/31).

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80. Mr. GEBRE-MEDHIN (Ethiopia), introducing the amendments in document A/C.5/36/L.20, said that the draft resolution under consideration did not reflect the concerns of all Member States. The amendments proposed by his delegation were intended to make the draft resolution more balanced, by pointing out that international civil servants had not only rights but duties, and that they should refrain from abusing their privileges and immunities, and respect the laws of the host country. The purpose of the amendment on substituting a new paragraph for paragraph 1 was to eliminate any reference to a legal problem that did not come within the Fifth Committee's terms of reference. As it stood, paragraph 1 of the draft resolution would deprive Member States of the possibility of determining in full sovereignty what privileges and immunities they wished to grant to international civil servants. It would be better to refer to the Conventions of 1946 and 1947, which were universally accepted. Paragraph 3 of draft resolution A/C.5/36/L.16, which gave the impression that violations of privileges and immunities were a permanent feature, would be replaced by a paragraph which would enable the Secretary-General to submit a report to the General Assembly on cases in which he had not been able to exercise fully his inherent right and duty in respect of the protection of staff members of the United Nations or of the specialized or related agencies. Ethiopia, which had a long tradition of being host to international organizations, had always scrupulously respected the privileges and immunities of international officials and believed that, as the Legal Counsel had said, respect for those privileges and immunities had to be based on satisfactory relations between those officials and Governments.

81. Mr. BOUSHEV (Bulgaria), introducing the amendment in document A/C.5/36/L.23, explained that it was intended to emphasize the primacy of the United Nations Charter.

The meeting rose at 11.15 p.m.