



UNITED NATIONS

GENERAL ASSEMBLY



Distr. GENERAL

A/C.5/709
26 August 1957

ORIGINAL: ENGLISH

FIFTH COMMITTEE
Twelfth session

UN LIBRARY
28 AUG 1957
UN COLLECTION

SECRETARIAT OF THE MILITARY STAFF COMMITTEE

(Report by the Secretary-General)

I. INTRODUCTION

1. In resolution 1098 (XI) adopted by the General Assembly at its 662nd Plenary Meeting on 27 February 1957, the General Assembly requested the Secretary-General "to study the question of the integration of the secretariat of the Military Staff Committee with the United Nations Secretariat in all its practical, legal and other aspects, and to submit to the Fifth Committee at the twelfth session of the General Assembly a report on those aspects and on the steps which would be necessary to effect the integration".

II. RULES OF PROCEDURE OF THE MILITARY STAFF COMMITTEE RELATING TO ITS SECRETARIAT

2. The Secretariat of the Military Staff Committee was established in accordance with its draft rules of procedure which, together with its draft statute, was drawn up by the Military Staff Committee (hereinafter referred to as M.S.C.) and submitted to the Security Council for approval on 14 February 1946. At its 23rd meeting held in London on 16 February 1946, the Security Council instructed the Committee of Experts to examine the proposals of the M.S.C. and to submit a report to the Council.^{1/} The Council also decided that, pending its approval of the statute and rules of procedure of the M.S.C., the M.S.C. might be authorized to carry on provisionally along the lines of the proposals which it

^{1/} SC 1st year, 1st series, No. 1, 23rd meeting, p. 369.

had submitted.^{1/} The suggestions made by the Committee of Experts were never adopted by the Security Council. The draft statute and rules of procedure of the M.S.C. have since been applied on the basis of the provisional authority which was granted.

3. The structure and procedure of the M.S.C. Secretariat are contained mainly in rule 8 of the M.S.C. rules of procedure. The important provisions of this rule and any other rules bearing on the subject are set out below.^{2/}

4. According to rule 8 (a) the M.S.C. Secretariat "shall consist of five secretaries, one from each delegation. Each secretary shall be designated by his respective delegation". This part of the rule also provides that the five secretaries "will have all the necessary technical assistants, including interpreters, ...".

5. According to rule 8 (e), the subordinate staff of the M.S.C. Secretariat shall in principle be provided equally from the five nations. "Military personnel shall be paid by their respective governments". "All the civilian staff of the Secretariat shall be paid from the Budget of the United Nations at the same rates as comparable ranks of the United Nations staff ...".

6. According to rule 8 (d), "the Secretariat will be an agency of the M.S.C. and work in accordance with such rules as may be imposed by the M.S.C., to whom it will be responsible. The Secretariat will provide liaison in routine matters between the M.S.C. and the Secretariat of the United Nations." "The Secretariat shall be located, to insure the necessary degree of security, in such place as may be designated by the M.S.C. and shall operate under the direct supervision of the Committee" (rule 8 (e) (v)). All the civilian staff of the Secretariat shall have "the exclusive function of serving under the authority of the M.S.C." (rule 8 (e) (iii)).

7. All questions relating to the terms of employment of the subordinate staff "shall be coordinated with the Offices of the Secretary-General of the United Nations by the five secretaries" (rule 8 (e) (iv)). "The civilian staff shall

^{1/} The text of the M.S.C. proposals is contained in Document S/421 of 17 July 1947. This text, as revised by the Committee after correspondence with the Secretary-General (see S/124 and Corr.1 and S/124/Add.1), was the text considered by the Committee of Experts. The Document also contains the suggestions and the Report of the Committee of Experts.

^{2/} See in this connexion Repertory of Practice of United Nations Organs, Vol. V, p. 101.

be governed by the same general rules concerning terms of employment, such as pay, appointment, transportation, separation, promotion and leave of absence, as govern various other personnel under the administration of the United Nations Secretariat ..." (rule 8 (e) (iv)). Notwithstanding the generality of the latter provision, the rules specifically provide that "the Secretary-General shall effect, on the nomination of the M.S.C., appointment, separation, promotion and leave of absence of civilian personnel of the Secretariat of the M.S.C." (rule 8 (e) (vi)).

8. According to Appendix A to the rules, "there shall be provided a Quartermaster ... This Quartermaster shall be a national of one of the five nations represented at the M.S.C. and shall be nominated by the five secretaries and appointed with the approval of the M.S.C."

9. According to rule 14 all members of the staff of the Secretariat (of the M.S.C.) "must at all times maintain the strictest security with regard to all matters dealt with by the M.S.C. All civilian employees of the Secretariat staff will be required to undertake, in writing, the necessary obligations".

10. According to rule 8 (e) (i), the permanent subordinate staff of the Secretariat "shall not initially exceed forty-one persons. This number may be varied later as circumstances demand. (See Appendices A and B)." Appendix A, as noted above, provides for the Quartermaster. Appendix B provides that the initial complement of the permanent subordinate staff would be "one chief clerk, ten interpreters and translators, ten typists, six court-reporters, five short-hand stenographers, five filing clerks and four mimeograph operators". Appendix B goes on to provide that the Chief Clerk would work under the orders of the Principal Secretary. The Principal Secretary, according to rule 8, is one of the five secretaries who act as such on a principle of rotation.

11. According to rule 8 (e) (vii) the Secretary-General shall meet the administrative and financial requirements of the M.S.C. in the same manner as those of other organs of the United Nations.

12. By rule 8 (e) (iv), "the M.S.C. will determine, by agreement with the Secretary-General, in time to permit him to prepare his annual budget for submission to the General Assembly, the number and categories and rates of pay of (these) civilians".

13. The functions of the Secretariat of the M.S.C. are set out mainly in rule 8 (b). It is responsible to the M.S.C. for the handling, reproducing, and

circulating of all documents, arranging where necessary for translations, making arrangements for meetings and issuing agendas, preparing and circulating records of meetings and preparing the documents which relate to decisions taken in meetings.

III. ADMINISTRATIVE AND FINANCIAL CONSIDERATIONS

14. Under the draft rules of procedure of the M.S.C. the civilian personnel of the M.S.C. Secretariat are appointed by the Secretary-General on the nomination of the M.S.C. The rule seems to be applied only to the appointment of staff in the professional category. While the names of candidates for professional posts in the M.S.C. Secretariat have, since 1946, normally been submitted to the Secretary-General under the authority of the Military Staff Committee, in fact, the nominations were almost invariably initiated by the various delegations concerned.

15. While some of the civilian staff members in the professional category seem to possess the combination of languages required for appointment in the Department of Conference Services and have passed tests, others seem to have been recruited on a less rigid basis. Thus, since 1952, the grant of permanent appointment was in one case made subject to passing certain tests and in another case was not made and a fixed-term appointment was granted in its place.

16. In the case of staff members in the General Service category a practice has, however, been developed whereby recruitment is through the Office of Personnel. In their cases, the standards of recruitment of the Organization have been applied. Furthermore, performance standards are applied with respect to the grant of permanent appointments.

17. The establishment of M.S.C. Secretariat civilian staff authorized by the General Assembly for 1957 consists of one first officer and seven second officers as well as seven clerical and secretarial posts. The same provision has been included in the 1958 budget estimates.

18. The workload of the M.S.C. Secretariat civilian staff has been annually reflected in the text of the Budget Estimates. For the years 1954-56 inclusive, the figures are as follows:

	<u>Meetings and internal working parties</u>	<u>Number of pages of documents and working papers of M.S.C.</u>	<u>Pages translated in 4 languages</u>
1956	92	3,914	4,970 (including 1,919 for other departments)
1955	88	3,704	4,919 (including 1,929 for other departments)
1954	84	3,752	3,519 (including 307 pages for other departments)

19. During 1956 three professional and one general service category staff were on loan to other departments. During the first half of 1957 there were four professional and one general service category staff on loan.

20. In paragraph 7 of the Report of the Secretary-General's Survey Group (see pages 54-55 of the Report) a target manning table was set out in the following manner:

"It is considered that, taking account of the foregoing observations and on the basis of present needs, a target manning table of approximately 12 posts, including language and document staff, should prove adequate. This would provide for a Language Unit comprising one First Officer and six Second Officer posts; a Chief Clerk at a G-5 level who would function also as an administrative assistant; and a Documents and Clerical Unit comprising one senior and four intermediate general service posts. This establishment could, of course, be readily supplemented should such a necessity arise as a result of increased Committee activity."

21. It would be reasonable to assume, however, that integration, i.e. the transfer to the Department of Conference Services of the interpretation, translation and document reproduction functions, would on the basis of the present workload of the Military Staff Committee reduce the over-all cost of the civilian secretariat services from the present budget level of \$117,000 to approximately \$65,000. This would in effect mean an increase in the present established posts budget of Conference Services by approximately \$40,000 for additional language staff posts while approximately \$25,000 would be required for secretarial and clerical

/...

staff, which would, as in the past, remain attached to the Military Staff Committee. On integration it would be possible to absorb all members of the civilian staff.

IV. LEGAL QUESTIONS RAISED BY THE PRESENT ARRANGEMENTS CONCERNING THE SECRETARIAT OF THE M.S.C. IN RELATION TO THE QUESTION OF INTEGRATION

22. The question of the integration of the Secretariat of the M.S.C. with the United Nations Secretariat raises a number of legal questions. These include:

- (i) Status of the M.S.C. Secretariat civilian staff;
- (ii) Relationship between the M.S.C. rules of procedure and the provisions of the United Nations Charter dealing with the Secretariat;
- (iii) Relationship between the M.S.C. rules of procedure and the Staff Regulations adopted by the General Assembly;
- (iv) Powers of organs under the Charter relevant to the administration of the Secretariat;
- (v) Authority of the Security Council.

The above-mentioned questions are dealt with separately below.

(i) Status of the M.S.C. Secretariat civilian staff

23. Although the civilian staff serve under the special regime indicated in the previous sections of this note, it seems clear that they form part of the United Nations Secretariat.^{1/} Members of the civilian staff receive their Letters of Appointment on behalf of the United Nations and signed on behalf of the Secretary-General. They receive permanent appointments, as do other staff members. The civilian staff are paid out of the budget of the United Nations. The necessary funds are appropriated by the General Assembly as part of the funds appropriated on behalf of the United Nations Secretariat. Furthermore the civilian staff are members of the United Nations Secretariat for many other purposes, including the pension fund, privileges and immunities, the laissez-passer and many such facilities applicable to members of the United Nations Secretariat.

^{1/} The Preliminary Budget Estimates of Expenditure submitted to the General Assembly pointed out that: "The civilian secretariat of the M.S.C. is part of the staff of the United Nations Secretariat; however due to the nature of the activities of the Committee, its civilian secretariat reports directly to the five secretaries of the military delegations" (A/79, p. 50). And see Repertory of Practice of United Nations Organs, Vol. V, page 103.

24. The Secretariat of the M.S.C., with the exception of the civilian staff, is composed of delegation personnel or military personnel paid by their respective governments. It is assumed therefore that the resolution of the General Assembly under reference is concerned only with the civilian staff and that no question arises concerning the integration of the five secretaries or the military personnel. The term "Secretariat" used in this resolution is therefore interpreted in this sense.

(ii) Relationship between the M.S.C. rules of procedure and the provisions of the United Nations Charter dealing with the Secretariat

25. According to Article 101 (1),^{1/} the staff of the Secretariat shall be appointed by the Secretary-General under regulations established by the General Assembly. Under the M.S.C. provisional rules of procedure, however, the civilian staff are required to be appointed by the Secretary-General on the nomination of the M.S.C. and the Staff Regulations enacted by the General Assembly are not followed in this connexion.

26. In practice, as indicated in section III of this note, nominations have been made by the delegation or delegations concerned. In connexion with this practice Article 100 of the Charter would appear to be relevant. It provides that "in the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization".^{2/}

27. Article 101 (3) of the Charter provides that the paramount consideration in the employment of staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Under the M.S.C. provisional rules, however, the choice of the civilian staff of the M.S.C. Secretariat is subject to nomination by the M.S.C. Article 101 (3) goes on to provide that due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. But, according to the draft rules the civilian staff will in principle be provided equally from the five nations represented on the Committee. In practice the civilian staff have consisted only of nationals of the five nations.

^{1/} See Repertory of Practice of United Nations Organs, Vol. V, pages 219, 233, 234.

^{2/} See Repertory of Practice of United Nations Organs, Vol. V, pages 206-208.

28. The provisional rules provide that the Secretariat of the M.S.C. shall be regarded as an agency of the M.S.C. and shall work in accordance with such rules as may be imposed by the M.S.C., to whom it will be responsible. Article 101 (2) of the Charter provides that appropriate staffs, forming part of the Secretariat, may be permanently assigned to organs of the United Nations. This provision was, however, interpreted by the Preparatory Commission of the United Nations in the following manner:

"30. Paragraph 2 of Article 101 of the Charter is interpreted to mean that the Secretary-General has full authority to move staff at his discretion within the Secretariat but must always provide the Economic and Social Council, the Trusteeship Council, and other organs with adequate permanent specialized staffs forming part of the Secretariat." 1/

(iii) Relationship between the M.S.C. rules of procedure and the Staff Regulations adopted by the General Assembly

29. The M.S.C. provisional rules of procedure differ from the Staff Regulations adopted by the General Assembly in a number of cases. These Regulations do not contain any specific exception in favour of the civilian staff of the M.S.C.

The following list indicates the more important cases of divergence:

(a) Rule 8 does not follow Staff Regulation 1.2 which specifies that staff members are subject to the authority of the Secretary-General, to assignment by him to any of the activities or offices of the United Nations, are responsible to him in the exercise of their functions and that their whole time is at his disposal. The paragraphs set out in section V from the Report of the Preparatory Commission of the United Nations are also relevant in this connexion.

(b) Rule 8 does not follow Staff Regulation 4, which specifies, following Article 101 of the Charter, that the power of appointment of staff members rests with the Secretary-General. It is true that under rule 8 appointment, etc. is effected by the Secretary-General but, on the strict wording of the rule, the Secretary-General has no discretion in this regard and is bound to follow whatever nominations the M.S.C. might make. Furthermore, Regulation 4 provides that each staff member shall receive a letter of

1/ See Repertory of Practice of United Nations Organs, Vol. V, page 271.

appointment, which letter usually subjects the terms of the appointment to the provisions of the Staff Regulations. But, as indicated in this sub-section, the Staff Regulations and the M.S.C. rules relating to the M.S.C. Secretariat differ in a number of respects. In addition, Regulation 4 lays down certain matters of policy relating to the appointment, transfer, and promotion of staff, whereas under rule 8 these and analogous matters are subject to the nomination of the M.S.C.

(c) Similarly, the provisions on leave of absence in rule 8, which subjects the grant of leave of absence to the discretion of the M.S.C., do not seem to be consonant with those of Staff Regulations 5.1 and 5.2 and Staff Regulations 105.1 and 105.2, whereby the Secretary-General alone is vested with the power to grant leave.

(d) Staff Regulation 9 lays down certain matters regarding separation from service, including specific reasons and procedural requirements for termination. Regulations 8, 10 and 11 contain matter regarding disciplinary measures, appeals and staff relations. Under rule 8, however, the separation of members of the civilian staff of the M.S.C. Secretariat shall be effected on the nomination of the M.S.C. It is uncertain what effect such a nomination would have on the provisions of the Staff Regulations dealing with the rights of staff members in this connexion or on the various procedures established thereunder.

(e) The Secretary-General may provide and enforce Staff Rules consistent with the broad principles of personnel policy embodied in the Staff Regulations. The M.S.C. rules, in reserving the specific powers referred to above concerning the appointment, etc. and control of civilian staff, do not take this fully into account.

(iv) Powers of organs under the Charter relevant to the administration of the Secretariat

30. Under the Charter of the United Nations powers relating to the administration of the Secretariat are specifically vested only in the Secretary-General and the General Assembly. Under Article 101 (1) of the Charter, staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The Staff Regulations adopted by the General Assembly do not contain any exception relating to the civilian staff of the M.S.C. Furthermore, the provisional rules of procedure of the M.S.C., which are applied on the basis of

/...

the provisional authority granted by the Security Council in 1946, have not been considered specifically by the General Assembly from the point of view of its powers under the Charter.^{1/}

31. The General Assembly was notified in the Report of the Security Council that the M.S.C. had been authorized to carry on provisionally along the lines of its proposals.^{2/} The following reference appeared in the Budget Estimates for the Financial Year 1948 submitted to the General Assembly at its Second Session:

"The Secretariat of the M.S.C. serves the Committee in its various functions as defined by the Security Council. It is organized as a separate unit of the Secretariat because of the particular status of the Committee."^{3/}

The General Assembly has adopted each year the necessary appropriation, as part of the appropriation in respect of the United Nations Secretariat, by which the cost of the civilian staff of the M.S.C. Secretariat is borne. It may perhaps be maintained, therefore, that the General Assembly, although it has not expressly exercised its powers under Article 101 of the Charter in this case, has implicitly approved the existing situation.

32. Such acquiescence by the General Assembly in the existing situation would not prevent it from exercising now the powers conferred on it by Article 101 and the General Assembly could, if it wished, decide at any time to apply to the civilian staff of the M.S.C. Secretariat the provisions of any Staff Regulations adopted by it.

(v) Authority of the Security Council

33. The General Assembly, in exercising its power to establish Staff Regulations, would, of course, do so in the interests of the Organization as a whole and in such a way that the proper and efficient working of other organs was not impaired.

^{1/} See in this connexion the statement of the Advisory Committee on Administrative and Budgetary Questions in A/2043, par. 100.

^{2/} Official Records of the Second Part of the First Session, Supplement No. 1.

^{3/} GA (II), Suppl. No. 5 (A/318), p. 44. See also GA (V), Suppl. No. 5 (A/1267), p. 77 and GA (VIII), Suppl. No. 7 (A/2403), p. 19.

There may well be therefore certain areas relating to the Secretariat where the advice of particular organs may be necessary or where the instructions of those organs would be followed. Such areas would tend to relate more to methods of working than to issues of basic staff policy such as are contained in Chapter XV of the Charter and the Staff Regulations enacted thereunder. Such an area might properly exist in relation to any security requirements or special experience required of staff serving the M.S.C. by the Security Council owing to the nature and functions of that Committee.

V. STATEMENTS BY THE PREPARATORY COMMISSION OF THE UNITED NATIONS AND THE SECRETARY-GENERAL'S SURVEY GROUP

34. The Report of the Preparatory Commission of the United Nations contains a number of paragraphs dealing with the administration of the Secretariat from the point of view of the Secretariat as a whole. The report of the Secretary-General's Survey Group which was made in September 1954, contains a number of paragraphs relating specifically to the Secretariat of the M.S.C. Extracts from the paragraphs in these two Reports are set out below.

Report of the Preparatory Commission of the United Nations

"27. There is one exception to the rule that all Departments may at any time be called upon to do certain work for any organ. Owing to the fact that the Security Council has exclusive powers to deal with military and enforcement measures, it will be necessary that the special units of the Department of Security Council Affairs concerned with these measures should serve the Security Council exclusively. 1/

"28. The principal reason for setting up the Secretariat as a single working body - though it will, of course, be internally organized so as to deal most effectively with the various aspects of the operations of the United Nations - is that all the organs it serves have their responsibilities in the primary common task of maintaining peace and security. This task is the unifying principle of the whole Organization, its organs, and the Secretariat. This principle is reinforced by the provision that special units of the Department of Security Council Affairs serve the Security Council in its unique functions relative to military and enforcement measures.

1/ See in this connexion Rule 24 of the provisional Rules of Procedure of the Security Council.

"29. Another reason is that by organizing the Secretariat according to the work performed by each part and not in Departments tied exclusively to one or the other organ, duplication of work, overlapping and waste of time, and confusion will be avoided. Again, the creation of Departments attached exclusively to a single organ would give rise to divided loyalties and undesirable rivalry between Departments." 1/

Report of the Secretary-General's Survey Group on
the Organization of the Secretariat 2/

"1. A review of the servicing and staffing needs of the M.S.C. Secretariat raises at the outset considerations of a legal and constitutional character resulting from the special status accorded the Committee under the Charter and more specifically from the provisions set forth in its draft Statute and Rules of Procedure concerning the relation between the Committee, the Security Council and the Secretary-General ...

"2. (Refers to relevant provisions of the M.S.C. Draft Rules of Procedure).

"3. The Survey Group ventures to suggest that in view of the very different circumstances prevailing today as compared with 1946 when the M.S.C. was organized, there is need for a careful review of existing arrangements in so far as they concern administrative relationships between the Committee and the Secretary-General.

"4. Other considerations apart, and viewed solely from the standpoint of effective utilization of staff and facilities, it is impossible to avoid the conclusion that present servicing arrangements are needlessly wasteful and inefficient ... 3/

"5. (Discusses the then present manning table).

"6. A question of no less importance than that of the size of establishment necessary is whether it is in fact essential for a separate language and other conference staff to be placed at the Committee's exclusive disposal. In this connexion, attention is called to previous recommendations of the Advisory Committee to the effect that such staff be transferred to the Department of Conference Services, where responsibility for servicing United Nations bodies in respect of interpretation, translation and document reproduction properly rests. From the standpoint of efficiency and

1/ See Repertory of Practices of United Nations Organs, Vol. V, page 270.

2/ This report was circulated during the tenth session of the General Assembly only to delegations and members of the Advisory Committee on Administrative and Budgetary Questions.

3/ Written in 1954.

economy alone, the ideal arrangement would be for such staff to be fully integrated into the appropriate Headquarters services, which would then assume the same obligations towards the M.S.C. as towards other bodies, subject to such special measures as may be deemed advisable in the interests of security. Alternatively, the categories of staff in question might be separately provided for on the manning table of the M.S.C. Secretariat but assigned for normal working purposes to Conference Services, on the understanding that the Committee would always have first call on their services. There can be little doubt that even under the latter arrangement, fuller and more effective use, particularly of language staff, would be assured."

VI. POSSIBLE COURSES OF ACTION BY THE GENERAL ASSEMBLY

35. In accordance with the provisions of Article 101 of the Charter, whereby the appointment and conditions of service of staff rest with the Secretary-General under regulations established by the General Assembly, the General Assembly has the legal authority to decide that the Staff Regulations should be applied in full or in part to the civilian staff of the Military Staff Committee.

36. If it is the General Assembly's wish to move in the direction of the integration of the Secretariat of the Military Staff Committee with the United Nations Secretariat in the interests of a sound and economical administration, there would appear to be two courses open to it. (These include the proposals made by the Survey Group and set out in paragraph 34 above.) In the first place the Assembly could decide that the staff would be fully integrated in the Secretariat, on the understanding that it would be the responsibility of the Secretary-General to provide the Military Staff Committee with all the services necessary for its due functioning. Alternatively, if the first course were considered to be too far-reaching in the direction of integration, the Assembly could decide to retain the civilian staff as a separate unit for servicing the Military Staff Committee on the understanding that the Secretary-General would have full authority under the normal application of the Staff Regulations in administering that unit; this authority would include the appointment and the conditions of service of the staff, and also its assignment and utilization consistent with the requirements of the service.

37. Neither of these alternatives would preclude the Security Council or the Military Staff Committee from adopting rules imposing special conditions provided that they were compatible with the Charter and the Staff Regulations and pertinent to the exercise of its functions.

38. If the General Assembly should decide to change the existing situation, it could from the procedural standpoint instruct the Secretary-General to transmit its decision to the Security Council with a request for the observations of that Council. Such observations and the Secretary-General's own recommendations could then be referred to a subsequent session of the General Assembly for final decision. Alternatively, the General Assembly may wish to instruct the Secretary-General to proceed subject to any objection which may be received from the Security Council. In the event of such objection, it could be referred to the General Assembly.
