

DOCUMENT A/2615

Report of the Fifth Committee

[Original text: English]
[7 December 1953]

1. The General Assembly, by resolution 708 (VII) of 1 April 1953, requested the Secretary-General to submit to the General Assembly at its eighth session a report on the progress made in the conduct and development of personnel policy, together with the comments of the Advisory Committee on Administrative and Budgetary Questions thereon; and invited the Secretary-General and the Advisory Committee to submit, after appropriate consultation with the administrative heads of the specialized agencies, their recommendations as to any further action that might be required of the General Assembly.

2. The Secretary-General placed the item "Personnel policy: reports of the Secretary-General and of the Advisory Committee on Administrative and Budgetary Questions" on the provisional agenda of the eighth session of the General Assembly. The inclusion of the item in the agenda was approved by the General Assembly at its 435th plenary meeting on 17 September 1953, and the matter was referred to the Fifth Committee for consideration.

3. The Secretary-General, pursuant to General Assembly resolution 708 (VII), submitted his report on personnel policy (A/2533) to the General Assembly on 2 November 1953. Part I of the report contained recommendations for certain amendments to the staff regulations of the United Nations and to Article 9 of the Statute of the Administrative Tribunal. The Secretary-General pointed out that he had consulted with the administrative heads of the specialized agencies or their representatives at meetings of the Administrative Committee on Co-ordination on 7 October 1953 on the subject matter of his report, though not on its text. He stated that he was pleased to note that the representatives of the specialized agencies were in general agreement with him on the basic objectives to be sought and fully understood the reasons for his conclusions that a change in the staff regulations and an increase in the powers of the Secretary-General, subject to appropriate safeguards, were necessary to meet the administrative needs of the United Nations.

4. The Secretary-General also pointed out that, in the course of his review of the administrative system and the rules applying to service in the United Nations, he had found that the staff regulations suffered from ambiguities and omissions which made certain revisions essential if he were to have the powers necessary to fulfil his obligations under the Charter. He further explained that his proposals were based on considerations of a general nature and were in no way adjusted to special circumstances prevailing at a particular time and in relation to a particular country. The objective of a reconsideration of the staff regulations, he added, should be to revise the regulations in the light of the Charter, so that they would provide a just and legal foundation for sound administration, taking into account the equal importance of the independence of the staff, and of the effective functioning of the Organization.

5. The Fifth Committee, at its 402nd meeting on 5 November 1953, requested the Advisory Committee on Administrative and Budgetary Questions to consider the Secretary-General's report and to submit a report thereon. The Advisory Committee submitted a report (A/2555) on part I of the Secretary-General's report on 14 November 1953, containing its observations on the amendments pro-

posed by the Secretary-General and recommending revised texts of certain of these amendments.

On 1 December 1953, the Advisory Committee submitted a further report (A/2581) containing its observations on part II of the report of the Secretary-General.

6. The Fifth Committee also had before it the views of staff representatives set forth in a letter dated 14 November 1953 from the Chairman of the Staff Committee of the United Nations at Headquarters enclosing a statement by the Staff Council dated 13 November 1953, and in a letter dated 10 November 1953 from the Chairman of the Staff Committee of the European Office of the United Nations enclosing a resolution adopted by the Staff Committee on 9 November 1953 (A/C.5/561).

PART I OF THE REPORT OF THE SECRETARY-GENERAL

7. The Fifth Committee held a general discussion on part I of the Secretary-General's report at its 406th to 414th meetings from 18 to 28 November 1953. The detailed views of each delegation will be found in official records of these meetings. In stating their views on the proposals as a whole, a number of representatives considered that the Secretary-General's powers should be made commensurate with his obligations under the Charter. The proposed amendments to the staff regulations, they believed, would have this effect. While it was true that the standards established would involve subjective judgments it was pointed out that such judgments were no more difficult than those involved in determining what was unsatisfactory service or serious misconduct, and adequate safeguards would exist to protect the interests of the staff. The view was also expressed that the Secretary-General already had the powers in question but that it was desirable to state these more expressly in order to avoid misinterpretation in the future. On the other hand, some delegations, while expressing full confidence in the present Secretary-General, believed that the issue should be considered on an institutional rather than a personal basis. They thought that the proposed amendments would give the broadest discretionary power and might be open to abuse in the future. They considered that no action should be taken which might threaten the security and the morale of the staff, or which would lead to the violation of existing contracts or acquired rights.

8. It was generally emphasized that decisions should be made solely to ensure the sound administration of the Organization while protecting the interests of the staff and avoiding any action which might impair their legitimate rights. Conditions of employment should be such as to create an efficient, competent and sound Secretariat, independent and international in character, but not wholly disconnected from the Member States it served. A number of representatives expressed favourable views with regard to the Secretary-General's suggestions in paragraphs 50 to 53 of his report concerning arrangements for the staff to put on record before an independent board of equals what they considered to be the facts with regard to charges made against them, and concerning assistance in obtaining qualified legal counsel before the Administrative Tribunal.

9. Certain representatives suggested that the question should be referred to a committee to meet between the eighth and ninth sessions of the General Assembly, since

many complex questions were involved and very little time remained in the present session to consider them. Such reference, it was suggested, would also permit of consultation with other agencies and bodies concerned as well as receipt of the report of the International Civil Service Advisory Board. Other representatives, however, pointed out that it would not serve the interest of either the staff or the Organization to postpone decisions and thus prolong the discussion and the uncertainty which existed. Since the latter group appeared to be in a substantial majority, those representatives favouring postponement did not insist on a vote.

10. Amendments to the texts proposed by the Secretary-General or recommended by the Advisory Committee were submitted by India, by the United Kingdom, by Argentina and Chile, and by Brazil, Egypt, France, India, Indonesia, Lebanon, Netherlands, and Syria (A/C.5/L.255). Additional amendments to the staff regulations and to the Statute of the Administrative Tribunal were also proposed by Chile and Argentina (A/C.5/L.255) and draft resolutions were submitted by Argentina (A/C.5/L.257) and Canada (A/C.5/L.258). At its 414th to 418th meetings held from 28 November to 2 December 1953, the Committee considered and voted in first reading on the various texts and on the related proposals. At its 422nd meeting on 4 December, the Fifth Committee approved the texts which it recommends for adoption by the General Assembly.

11. In recommending the adoption of the amendments to the staff regulations, the Committee has had in mind the statements of the Secretary-General to the Committee on 18 and 25 November (406th and 412th meetings) and those parts of the Secretary-General's report on personnel policy (A/2533) in which he set forth his views on the interpretation and application of the new regulations. It was noted that the Secretary-General had stated that his decisions would remain subject to review by the Administrative Tribunal to the full extent of its present legal authority, and it was recognized by the Committee that the competence of the Administrative Tribunal was defined by its Statute and that the Fifth Committee could not change this competence short of modifying the Tribunal's Statute by recommending a legal text for adoption by the General Assembly.

12. The consideration of the individual proposals and the decisions of the Committee thereon are summarized in the following paragraphs.

Staff regulation 1.4

13. There was general agreement on the Secretary-General's proposed amendment to staff regulation 1.4 relating to conduct reflecting on integrity, independence and impartiality, which was set forth and explained in paragraphs 68 to 72 of the Secretary-General's report (A/2533). The text was concurred in by the Advisory Committee (A/2555, paragraph 17). The amendment was considered to be a clarification of the present regulation and an express recognition of the principles of the Charter. The amendment was unanimously approved by the Committee at its 414th meeting on 28 November.

Staff regulation 1.7

14. There was a greater difference in opinion with regard to the Secretary-General's proposed amendment to staff regulation 1.7 relative to political activities on the part of staff members. The Secretary-General's proposal was set out and explained in paragraphs 73 to 77 of his report (A/2533). The Advisory Committee, while concurring in the substitution of a new provision, recommended deleting from the Secretary-General's text the

words "unless otherwise authorized in accordance with staff rules issued by the Secretary-General" (A/2555, paragraph 18). A text was also submitted by the United Kingdom (A/C.5/L.255) which, with drafting amendments accepted by the representative of the United Kingdom, provided that staff members might exercise the right to vote but should not engage in any political activity which was inconsistent with or might reflect upon the independence and impartiality required by their status as international civil servants. The representative of the United Kingdom explained that his text linked staff regulation 1.7 with the amendment to staff regulation 1.4 which had already been approved. The representative of the Netherlands believed that there was no wide difference in substance between the text proposed by the Secretary-General and that of the United Kingdom (A/C.5/L.255).

15. A few representatives believed that a proposal to limit the political activities of staff members would interfere with their civic rights as well as the basic right of free association; others, while stating that members of their national service had the right to engage in political activities, recognized that special requirements for members of the international Secretariat were necessary to ensure their impartiality; it was noted that prohibition of political activities had been approved by the representatives of the staff. Still other representatives, while agreeing in principle with the amendment, felt that the term "political activities" should be more clearly defined, particularly as to whether it included passive membership in a political party. The Chairman of the Advisory Committee, at the 417th meeting of the Fifth Committee, explained that the term "political activity" in the Advisory Committee text referred only to active participation and not to passive membership in a political party. Representatives favouring the Advisory Committee text thought that it would avoid difficulty in determining what political activities were compatible with employment, and would not require the Secretary-General to act as arbiter.

16. The Committee noted the statement of the Secretary-General, made at the 412th meeting of the Fifth Committee on 25 November, that it was his intention to implement the regulation prohibiting political activities by a staff rule which, in the case of party membership, would be drafted along the following tentative lines: "Membership of a legal political party is permitted, provided that such membership, in the case of the staff member concerned, does not entail subjection to party discipline or action in favour of the party, other than the payment of normal financial contributions". The Committee suggests that the Secretary-General, when he is making the final draft of this rule, should also consider the text put forward by the United Kingdom which is as follows:

"Membership of a political party is permitted, provided that such membership does not entail any positive action, current or potential, other than voting or payment of normal financial contributions, contrary to the provisions of staff regulation 1.7. In any case of doubt, the staff member should consult the Secretary-General".

The Secretary-General explained that his reference to a legal political party did not imply that membership in a party which was illegal under the laws of the country of the staff member concerned would in all cases be a violation of staff regulation 1.7 but that each such case would have to be considered individually. The representative of the United Kingdom explained that the United Kingdom proposal deliberately omitted the word "legal", as membership of illegal parties would be debarred under staff regulation 1.4. The representative of Syria, who had suggested the addition of the phrase "political movement" said that he would not insist on this proposal in

view of the statement by the representative of the United Kingdom that the term "political activity" was broad enough to include the term.

17. The text proposed by the United Kingdom was approved at the 417th meeting on 1 December by 41 votes to none, with 8 abstentions.

Staff regulation 9.1 (a)

18. The text of the Secretary-General's proposed amendment to staff regulation 9.1 (a) regarding termination of permanent appointments is set out and explained in paragraphs 58 to 67 of his report (A/2533).

Preamble

19. In his statement to the Fifth Committee at its 412th meeting on 25 November, the Secretary-General, while not putting it forward as a formal proposal, suggested that the words "by a properly motivated decision" might be added to the preamble of the proposed amendment to staff regulation 9.1 (a). It was explained by the representative of the Secretary-General, at the 417th meeting, that this phrase had been inserted to make it clear that the Secretary-General intended to give a full explanation of the reasons for termination to the staff member concerned and, if necessary, to the Joint Appeals Board and the Administrative Tribunal. A suggestion was accepted that the phrase should be changed to "giving his reasons therefor". The preamble of the Secretary-General's proposal, with the addition of these words, was approved at the 417th meeting by 27 votes to 9, with 2 abstentions.

Sub-paragraph (i)

20. The Advisory Committee on Administrative and Budgetary Questions concurred in the text for sub-paragraph (i) proposed by the Secretary-General. Its observations on the sub-paragraph are set out in paragraphs 5 and 6 of its report (A/2555). It was pointed out by many representatives that sub-paragraph (i) merely incorporated in the regulations the standard of integrity which was already to be found in the Charter. It was also considered a natural corollary to the amendment to staff regulation 1.4. On the other hand, some representatives considered it unnecessary, since they believed that the standard of integrity was already covered by the provisions relating to unsatisfactory service and to misconduct. They believed that integrity was too indefinite a term, required subjective evaluation, and might be subject to political interpretations. Other representatives, however, called attention to the Secretary-General's statement that "integrity" applied only to actions and activities which were morally objectionable, and had no political connotations. The Secretary-General, in his report, had also pointed out that the term "integrity" and the term "loyalty", as often applied in the political sphere, did not cover the same set of considerations, although of course in a case of contested "loyalty", acts might come to light which indicated a lack of integrity as an independent fact (paragraph 59). Many representatives supporting this amendment also referred to the Secretary-General's statement that the proposed regulation related only to present integrity and that events in the past were to be considered only as evidentiary.

21. The representative of India proposed a text for sub-paragraph (i) which, with accepted amendments, provided that the Secretary-General might also, by properly motivated decisions, terminate the appointment of a staff member who holds a permanent appointment if he learned of facts relative to the staff member's conduct during his period of employment in the United Nations, if such facts indicated that the staff member did not meet the high

standards of integrity required by Article 101, paragraph 3, of the Charter.

22. Before the voting took place, the representative of the Secretary-General accepted the suggestion of the representative of Israel to change the phrase "the high standards" to "the highest standards" in accordance with the wording of Article 101 of the Charter. The Secretary-General's text was approved at the 417th meeting on 1 December by 27 votes to 9, with 2 abstentions.

Sub-paragraph (ii)

23. The Advisory Committee, while first raising the question whether a special provision in the staff regulations was required, concluded that, in view of the wide geographical area of United Nations recruitment, a formal and explicit provision was necessary. It recommended the omission of the restrictive word "administrative" from the Secretary-General's text as well as certain amendments in form (A/2555, paragraphs 7 and 8). These recommendations were accepted by the Secretary-General. A revised text of sub-paragraph (ii) was also proposed by India. This text provided that the Secretary-General might also, by properly motivated decisions, terminate the appointment of a staff member holding a permanent appointment if he learned of facts relative to the staff member's conduct anterior to his appointment and relevant to his administrative suitability which, had they been known when he was appointed or had they not been wilfully suppressed or misrepresented by him in his answers to the questions asked of him at the time of his appointment, should, under the standards established in the Charter, have precluded his appointment. The representative of India considered sub-paragraph (ii) to be allied with sub-paragraph (i) in that it concerned "past integrity" and therefore opposed the proposal of the Advisory Committee to delete the restrictive term "administrative".

24. Representatives supporting sub-paragraph (ii) considered it a natural concomitant of sub-paragraph (i). It was considered that an employee was obligated to disclose any present or past circumstances which might lead prospective employers to refuse to employ him. The proposed sub-paragraph was not an innovation incompatible with existing contracts. A few representatives thought that this proposal was unnecessary in that it was covered by the criteria of integrity in the first sub-paragraph, and that in applying to past conduct it overlooked the fact that a person could rise above his past. Others considered it imprecise or open to misunderstanding.

25. Several representatives commented favourably on the suggestion of the Advisory Committee that the procedure for the engagement of staff should include an appropriate clause, both in the application form and in the letter of appointment, prescribing the sanctions to be applied in the event of misrepresentation or omission of material facts.

26. At its 417th meeting on 1 December, the Committee approved, by 27 votes to 9, with 2 abstentions, the text recommended by the Advisory Committee and accepted in the alternative text presented by the Secretary-General.

Sub-paragraph (iii)

27. The Advisory Committee, after setting forth its observations on sub-paragraph (iii) in paragraphs 9 to 13 of its report (A/2555), stated that, on the basis of the safeguards which existed, it was prepared to recommend the text proposed by the Secretary-General subject to an amendment intended to protect the interests both of the Secretariat and of the United Nations as a whole, and

subject to the further safeguard that the provisions would be reviewed by the General Assembly within a period of not more than two years. It suggested that the text should include the words "in the interest of the good administration of the Secretariat or in the general interest of the United Nations".

28. Representatives favouring this sub-paragraph, while considering that it gave very broad powers to the Secretary-General, believed that the observations and statements by the Secretary-General and the Advisory Committee should dissipate any misgivings which existed. They believed that adequate safeguards were provided. The Secretary-General's statement was noted to the effect that this provision was intended to be used in the interest of the staff when it was desired not to stigmatize a staff member by termination or dismissal under other provisions of the staff regulations.

29. Those representatives expressing doubts concerning sub-paragraph (iii) believed that the power granted was so broad as to render other provisions with regard to termination superfluous. The Secretary-General would be the sole judge of the requirements of good administration and contracts would be liable to termination by unilateral decision of one of the contracting parties. They believed that discretionary powers should not take the place of legal rights, and that the adoption of this provision would create a feeling of insecurity among the staff. Some of these representatives, however, expressed their agreement to giving the Secretary-General the power requested for a period of one or two years.

30. The Secretary-General, at the 412th meeting of the Fifth Committee on 25 November, explained again his intention with regard to the use of this sub-paragraph. While he did not put it before the Committee as a formal proposal, he read a text which he thought might prove helpful if a delegation desired to endorse it as a proposal. Sub-paragraph (iii) would be moved to the end of the proposed amendment and there would be added thereto the clause "provided that the action is not contested by the staff member concerned". Thus, this sub-paragraph would only be used in case of a termination agreed to by the staff member, in place of a resignation on request.

31. The Advisory Committee considered this alternative text of the Secretary-General, and its views were reported to the Fifth Committee on 27 November at the 413th meeting. It considered that it would be preferable to delete sub-paragraph (iii) altogether rather than to adopt the new text suggested by the Secretary-General.

32. The Secretary-General clarified his position by stating that he was not formally proposing the alternative text. However, he was prepared to accept the latter if proposed by a delegation, as it was in substance entirely in accordance with the ideas set forth in his report.

33. The United Kingdom submitted a text providing that if, in the considered judgment of the Secretary-General, after he had personally examined the case, interviewed the staff member concerned, and consulted the advisory board, such action would be in the interest of the Organization and in accordance with the standards of the Charter. The representative of the United Kingdom considered that final responsibility must be fixed for the interpretation of the words "in the interest of the good administration of the Organization". Otherwise much litigation might arise. His delegation's text would lay the final responsibility upon the Secretary-General.

34. The representative of the Secretary-General, in reply to a question from the representative of Israel, explained that the words "in accordance with the standards of the Charter" were intended to refer to the

standards of efficiency, competence and integrity mentioned in Article 101 of the Charter. The Fifth Committee, at its 417th meeting on 1 December, after rejecting the Secretary-General's alternative text by 27 votes to 18, with 5 abstentions, the United Kingdom text by 36 votes to 9, with 3 abstentions, and the Advisory Committee's text by 25 votes to 15, with 5 abstentions, approved in first reading the original text of the Secretary-General by 24 votes to 15, with 11 abstentions.

35. Following the first reading, the Secretary-General received a letter from the Chairman of the Staff Committee of the United Nations Secretariat at Headquarters which he transmitted to the members of the Fifth Committee (A/C.5/573). In this letter the preference of the Staff Committee was expressed for the alternative text suggested by the Secretary-General over the text approved by the Committee. The alternative text, it was stated, would largely remove staff anxiety regarding this sub-paragraph. However, the Staff Committee would prefer the procedure of resignation at request over the procedure of agreed termination in the alternative text. The Secretary-General in a statement made before the Fifth Committee at its 420th meeting pointed out that for legal reasons he gave preference to his original proposal which had been approved by the Fifth Committee. However, the alternative text which he had presented represented a solution fully in line with his intentions as well as the recognized needs of the administration, and was therefore agreeable to him.

36. At the 422nd meeting on 4 December, the representative of Belgium, after calling attention to what he considered a misunderstanding on the part of some members of the Committee at the time of the vote on this sub-paragraph in first reading, proposed that the words "provided that the action was not contested by the staff member concerned" which had appeared in the Secretary-General's alternative text, should be added to the text previously approved. This sub-paragraph would then be moved to the end of the amendment, as was also suggested in the alternative text of the Secretary-General, since reference to a special advisory board would no longer apply to this provision. The proposal was approved by the Committee by 36 votes to 14, with 4 abstentions.

Special advisory board

37. The Secretary-General's proposal for a special advisory board to consider cases involving termination under the new provisions of staff regulation 9.1 (a) was presented by him as one of the safeguards for the exercise of his new powers. While approving the idea of a special advisory board, a number of representatives suggested that the Secretary-General should examine the question of simplifying the system of boards and committees dealing with staff matters. Several representatives referred to the desirability of ensuring adequate representation of the staff on the board and also considered that the appointment of the chairman by the President of the International Court of Justice would enhance the standing of the board. Since, however, the board was to be an administrative and not a judicial body, the view was expressed by several representatives that the chairman, if he were to be appointed by the President of the International Court of Justice, need not of necessity be a lawyer, but might be a suitably qualified person from another profession.

38. Argentina and Chile proposed a text covering the composition of the board which, with accepted amendments, provided that no termination under the new paragraphs should take place until the matter had been con-

sidered and reported on by a special advisory board consisting of five members, of whom two should be appointed by the Secretary-General and two elected by the staff. The chairman of the board should be designated by the President of the International Court of Justice. The United Kingdom also submitted an alternative proposal as to the board's composition providing that the board should consist of a chairman to be nominated by the President of the International Court of Justice, two members to be nominated by the Secretary-General from individuals of well-established reputation not connected with the United Nations, one member of the staff representing the Secretary-General and one member representing the staff, to be selected after consultation between the Secretary-General and the Staff Committee. The United Kingdom also recommended that its text should not be adopted as a staff regulation but should be incorporated in the Rapporteur's report, as a suggestion for a staff rule, for consideration by the Secretary-General.

39. The Fifth Committee in its first reading decided, by 21 votes to 15, with 5 abstentions, on the principle that the provisions governing the membership of the proposed advisory board should be embodied in a staff regulation. Following this vote, the United Kingdom representative proposed his text as an amendment to the joint Argentine-Chilean proposal. The Committee rejected by 18 votes to 18, with 11 abstentions, the text of the United Kingdom. The joint amendment was then approved in first reading, by 28 votes to 11, with 6 abstentions, at the 417th meeting on 1 December.

40. The Secretary-General, before the second reading, suggested reconsideration of this decision and proposed that the board should consist of a chairman appointed by the Secretary-General on the nomination of the President of the International Court of Justice and of four members appointed by the Secretary-General in agreement with the Staff Council. He considered that direct election of staff representatives on the board would be awkward and impracticable and that it was desirable that the advisers should be persons in whom the Secretary-General and the staff had expressed confidence by mutual agreement. He further suggested that the composition of the board was a subject which could more appropriately be dealt with in a staff rule than in a staff regulation. He consequently proposed the adoption, as the staff regulation, of his original proposal that the board should be appointed by the Secretary-General and stated that, if the regulation were accepted by the Committee, he would implement it by the following staff rule:

"The special advisory board shall be composed of a chairman appointed by the Secretary-General on the nomination of the President of the International Court of Justice, and of four members appointed by the Secretary-General in agreement with the Staff Council."

41. In a letter from the Chairman of the Staff Committee, the view was expressed that the exact manner in which the staff should choose its representatives on the board should be left open in the text of the staff regulation (A/C.5/L.262).

42. The proposal of the Secretary-General was approved by the Fifth Committee at its 422nd meeting on 4 December by 53 votes to none, with 1 abstention.

Staff regulation 9.3

43. The Secretary-General's proposed amendment to staff regulation 9.3 relative to the payment of increased indemnities is set out and explained in paragraphs 78 to 80 of his report (A/2533). The Advisory Committee, after recording its observations thereon in paragraphs 19 to 22 of its report (A/2555), recommended that the pay-

ment of increased indemnities should be limited to those cases of staff members terminated under staff regulation 9.1 (a) (iii), and that the increase should be limited to a figure 50 per cent higher than that which would otherwise be payable.

44. Those representatives favouring the Secretary-General's text believed that the increased indemnity would not only be a reasonable corollary to the increase in the Secretary-General's power under staff regulation 9.1 (a) (iii), but the increased indemnities should also be paid in cases where termination did not result from fault on the part of a staff member. The Secretary-General explained that this would mean that the increased indemnities could be paid in cases of termination on the grounds of health, abolition of post and reduction of staff. The representative of the Secretary-General, at the 417th meeting of the Fifth Committee, accepted an express reference to these grounds as an amendment to the Secretary-General's text. He also accepted a modification which would clearly show the intention to give the Secretary-General discretion to pay an increased indemnity up to the amount stipulated.

45. Some representatives who opposed sub-paragraph (iii) of staff regulation 9.1 (a) were also opposed to the present amendment. Some others opposed any increase in the present indemnities, which they considered to be sufficient in all cases of dismissal.

46. Those representatives supporting the Advisory Committee text believed that, since staff regulation 9.1 (a) (iii) gave wider discretionary powers to the Secretary-General to terminate appointments, he should also have wider discretionary power with regard to payment of indemnities for persons terminated under this provision. They could not agree, however, that there were any grounds for altering the indemnity rates approved at an earlier session of the General Assembly with regard to terminations under existing staff regulations. It was pointed out by the Chairman of the Advisory Committee that, while terminations under 9.1 (a) (iii) would be exceptional, the new provision would entail considerable expenditure if it were extended to other cases.

47. The Fifth Committee first voted on a proposal by the United Kingdom that no addition should be made to staff regulation 9.3. This proposal was rejected by 19 votes to 12, with 16 abstentions. The text recommended by the Advisory Committee was then approved, at the 417th meeting of the Committee on 1 December 1953, by 22 votes to 14, with 11 abstentions.

Article 9 of the Statute of the Administrative Tribunal

48. The Secretary-General's proposal for revision of article 9 of the Statute of the Administrative Tribunal was set out and explained in paragraphs 81 to 87 of his report (A/2533). The Advisory Committee concurred in the second and third paragraphs of the Secretary-General's proposal and recommended a new text for the first paragraph. This new paragraph retained the first sentence of the existing article 9 of the Statute, while at the same time meeting the points raised by the Secretary-General. It further suggested that it was desirable from the point of view of financial administration to limit the compensation that might be awarded to one year's net base salary, or \$10,000, whichever was smaller, and recommended an amendment to the Secretary-General's text to that effect. The Chairman of the Advisory Committee explained that this amount was intended to be in addition to any indemnities paid by the Secretary-General under the staff regulations at the time of termination.

49. The Secretary-General accepted the first part of the Advisory Committee's text, but desired to maintain his original limit on the amount of compensation which the Administrative Tribunal might award, which was two years' net base salary. It was explained by the representative of the Secretary-General that, in accordance with the practice of the Administrative Tribunal, it was intended that the amount would be less any indemnities paid at the time of termination. The Secretary-General had, however, suggested that in exceptional cases the Administrative Tribunal should be free to recommend the payment of higher compensation.

50. A joint amendment (A/C.5/L.255) was proposed by Brazil, Egypt, France, India, Indonesia, Lebanon, Netherlands and Syria which, with consequential drafting changes, would add to the revised text of the Secretary-General the provision that the Administrative Tribunal might, in exceptional cases when it considered it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision should accompany each such order. The representative of France, as a co-sponsor of the joint amendment, stated that he did not consider that the proposed amendment would in any way affect the normal practice of the Administrative Tribunal with regard to the deducting of termination indemnities from the amount of compensation.

51. Some representatives opposed any action on this subject because they believed it undesirable to tamper with the Statute of the Administrative Tribunal in a way which might alter the existing balance between the power of the Secretary-General and of the Tribunal. Furthermore, it was pointed out that, in many national administrations, reinstatement was the normal remedy, and that compensation was not a satisfactory substitute for the loss of employment. Other representatives agreed that compensation should be the rule but did not favour a rigid ceiling thereon. To accept the proposed amendment, they believed, might reduce the Administrative Tribunal to a body whose sole function would be to approve or disapprove the grant of previously determined indemnities. On the other hand, opposition was also expressed on the ground that it would be contrary to Article 17 of the Charter to approve in advance a limit below which awards made by the Tribunal would not be subject to budgetary review by the General Assembly.

52. There was general acceptance of paragraphs 2 and 3 of the Secretary-General's proposed revision of article 9 of the Statute of the Administrative Tribunal, and these paragraphs were not discussed in substance by the Committee. The view was expressed by one representative, however, that there should be no limit on the compensation for loss caused by a procedural delay.

53. The Fifth Committee, at its 418th meeting on 2 December, decided to vote on the first paragraph in three parts. The first part was approved by 55 votes to none, with no abstentions. The second part, beginning with the words "provided that" was approved by 32 votes to 17, with 5 abstentions. The third part, beginning "The Tribunal may, however" was approved by 33 votes to 17, with 4 abstentions. The Committee then approved the paragraph as a whole by 34 votes to 13, with 6 abstentions. The Committee approved the second paragraph by 54 votes to none, with one abstention, and unanimously approved the third paragraph.

Staff regulation 1.2

54. The Committee also had before it an amendment proposed by Argentina and Chile to delete the words "activities or" from staff regulation 1.2. The purpose of

the amendment, it was explained, was to ensure that staff members would not be assigned to activities of a completely different nature from that for which they were recruited and for which they might not have the proper qualifications. The representative of the Secretary-General explained that it was desirable to retain these words in order, among other reasons, that the Secretariat might have the necessary flexibility referred to in the Secretary-General's report on the organization of the United Nations (A/2554). He said that the Committee should have confidence that no action would be taken by the Secretary-General contrary to the terms of the letter of appointment and that the Secretary-General would not apply this regulation unreasonably. The representative of the Netherlands called attention to the provisions of annex II to the staff regulations requiring letters of appointment to state the nature of the appointment as well as the category, level and commencing rate of salary. He added that, in his opinion, any change in category which would not be anticipated in the provisions of the letter of appointment could be the subject of appeal by the staff member concerned to the Administrative Tribunal. On the understanding that a reference would be made to these statements in the Committee's report, the representatives of Argentina and Chile withdrew their amendment.

Article 7, paragraph 3, of the Statute of the Administrative Tribunal

55. Argentina and Chile also proposed an amendment to the present text of article 7, paragraph 3, of the Statute to delete the words "unless the joint body considers that it is frivolous". The representative of Chile, in explaining the amendment, emphasized that, under the present wording of the article, a staff member who considered himself to be the victim of an arbitrary action might be deprived of any possibility of appealing to the Administrative Tribunal. This constituted a denial of justice, particularly since the joint body was not a judicial but a strictly advisory body, composed of members of the Secretariat. It was pointed out, on the other hand, that the requirement of unanimity on the part of the Joint Appeals Board, including the elected representatives of the staff, represented a very substantial safeguard. The proposed amendment was rejected, by 20 votes to 7, with 22 abstentions, by the Committee at its 418th meeting on 2 December 1953.

Review by the General Assembly

56. The Secretary-General in his report suggested that, as a counterpart to the granting of discretionary powers, it would be desirable to have a review by the General Assembly analogous to parliamentary control in national administrations. A number of representatives welcomed the suggestion, but stressed that such review should be strictly confined to principles and should not lead the General Assembly to examine individual cases which were not appropriate for consideration by it. Canada proposed a draft resolution providing that the General Assembly would decide to undertake, at its tenth session in 1955, on the basis of a report to be submitted by the Secretary-General and the comments thereon of the Advisory Committee, including their recommendations as to such further action as might be required of the General Assembly, a review both of the principles and standards progressively developed and applied by the Secretary-General in his implementation of the staff regulations and of the staff regulations themselves. It would also request the Secretary-General to circulate to governments of Member States not later than four weeks before the opening date of the tenth session the report and comments referred to. The representative of Canada explained that

his resolution was based on paragraphs 39 and 40 of the Secretary-General's report which dealt with the control by the General Assembly of the principles of interpretation of the new grounds for termination and on paragraph 13 of the Advisory Committee's report which suggested that sub-paragraph (iii) of the amendment to staff regulation 9.1 (a) should come under General Assembly review within a period of not more than two years. The representative of Canada also suggested that the Secretary-General should transmit a detailed report to the specialized agencies on the new regulations and their application.

57. The draft resolution proposed by Canada was unanimously approved by the Committee at its 416th meeting on 1 December 1953.

Special fund for payment of indemnities

58. In the course of the discussion of the amendment to staff regulation 9.3, the representative of Argentina raised the question of the desirability of establishing a special fund to cover the payment of indemnities. With this in view, Argentina submitted a draft resolution as follows:

"The General Assembly,

"Considering the existing provisions relating to indemnities,

"Considering that it is necessary to make provision in advance for the financial and budgetary consequences which the payment of indemnities would involve,

"Requests the Secretary-General to present at the ninth session of the General Assembly a detailed report on the possibility of establishing a special fund to be used for the payment of indemnities."

59. In the course of the discussion the representative of France suggested that, instead of a resolution on the subject, the Rapporteur's report might contain a request to the Secretary-General and to the Advisory Committee to prepare for the ninth session a report on the financing of indemnities, taking into account the views expressed in the Committee's discussion. The representative of Turkey believed that the report should also discuss the question whether the establishment of a fund of this kind would be compatible with the provisions of Article 17 of the Charter. In this connexion, the Chairman of the Advisory Committee stated that, without wishing to anticipate the attitude of the Committee, he believed the establishment of such a fund would raise important constitutional issues.

60. The Secretary-General informed the Committee that, if it expressed a wish to that effect, he would undertake a study of the possibility and desirability of the proposal before making budgetary arrangements for the payment of indemnities. He used the term "budgetary arrangements" as he felt that various possible solutions should be studied and not merely the proposal for a special fund. The Committee agreed that the Rapporteur's report should indicate the desire of the Committee that the Secretary-General should submit the study envisaged to the ninth session of the General Assembly.

PART II OF THE REPORT OF THE SECRETARY-GENERAL

61. At its 419th meeting, the Committee turned its attention to the problems and policy suggestions dealt with in part II of the report of the Secretary-General on personnel policy (A/2533). Discussion was directed for the most part to the problems resulting from the application to United Nations staff members of the relevant provisions of the United States Immigration and Nationality Act of 24 December 1952, on the basis of the

observations and proposals outlined in chapter IV of the Secretary-General's report and the recommendations set forth in the twenty-fifth report of the Advisory Committee (A/2581).

62. The Committee was informed that the number of staff members who were in permanent residence status and therefore affected by the above Act had been reduced, by 17 November 1953, to 453. Of this total, 121 had been authorized by the Secretary-General to sign a waiver of privileges and immunities, including forty-nine who are presently entitled to benefits associated with international recruitment.

63. In the ensuing discussion, a number of delegations specifically endorsed the view expressed by the Advisory Committee in its report that a decision to remain on permanent residence status in no way represented an interest of the United Nations and that, on the contrary, to the extent (if any) that it might weaken existing ties with the countries of nationality it was an undesirable decision. Attention was also called to the fact that the Act provided full opportunity for the adjustment of immigrant status to G-4 visa status, and that no technical difficulty of any kind arose in that respect. At the same time, however, it was pointed out that nothing in the administrative rules of the Organization had hitherto precluded the recruitment of persons in immigrant status or the transference (if approved by the Secretary-General) of staff members from G-4 visa status to that of permanent residence. Consequently, it was argued, it would be inequitable if, by reason of legislative action on the part of the host country, such staff members were to find themselves in a position of inferiority to staff of United States nationality recruited locally.

64. It was therefore proposed by the Secretary-General and concurred in by the Advisory Committee that a staff member opting for permanent residence status in the country of his duty station, and thereby rendering himself liable to national income taxation on salary and other emoluments received from the United Nations, should receive reimbursement of such taxation, subject to the decision of the General Assembly to appropriate funds annually for this purpose. On the other hand, it was recommended that such staff member should:

(i) Lose any eligibility for home leave;

(ii) Lose any entitlement to payment of non-resident's allowance from the date on which the staff rules were changed or from the end of the month in which he signed the waiver, whichever was later;

(iii) Lose any entitlement to education grant after the completion of the 1953-1954 academic year. He would, however, retain eligibility for one-way travel for the dependent child between the home country and duty station on the completion of the 1953-1954 academic year;

(iv) Lose any entitlement to repatriation grant;

(v) Lose any eligibility for return transportation for himself or his dependants, and for removal of household effects, which was based on "place of home leave".

65. In addition, the Advisory Committee, while concurring in the transitional measure recommended by the Secretary-General as regards a staff member's entitlement to the education grant, considered as unwarranted the Secretary-General's proposal that staff members who would otherwise have been eligible for home leave during 1953 or 1954 should be permitted to take one final home leave during the year in which it would have fallen due.

66. The Advisory Committee further recommended (a) that persons in permanent residence status should in future be ineligible for appointment as internationally recruited staff members unless they were prepared to change to a G-4 (or equivalent) visa status; and (b) that,

except in the cases of the above-mentioned 453 staff members, any internationally recruited member of the Secretariat who asked and received authority to change from a G-4 (or equivalent) visa status to a permanent residence status should not thereby acquire any entitlement to reimbursement of national income taxes. However, in exceptional cases to be defined by the Secretary-General in the staff rules, a member of the Secretariat may be permitted to change his status without thereby forfeiting the possibility of acquiring entitlement to such reimbursement.

67. The specific recommendations of the Advisory Committee received a wide measure of support. A number of delegations, however, recorded their strong opposition to any extension of the policy of national income tax reimbursement to a further group of staff members; they would not therefore be able to support the appropriation of additional funds for this purpose. The recommendation that present staff members who opted for permanent residence status in the country of their duty station should, subject to annual appropriation of funds, receive reimbursement of national income taxes, on being put to the vote, was approved by 27 votes to 11, with 12 abstentions. The recommendations relating to loss of entitlement to various benefits associated with international recruitment, as indicated in sub-paragraphs (i) through (v) of paragraph 64 above, were approved by 47 votes to none, with 2 abstentions.

68. In the light of an explanation given by the representative of the Secretary-General, the Committee accepted, by 25 votes to 12, with 12 abstentions, a proposal by the representative of Denmark that the transitional arrangements, as recommended by the Secretary-General, should apply in the case of home leave, as well as in the case of the education grant.

69. The Committee, having been informed that the Secretary-General would in future refuse to recruit persons in permanent residence status for posts subject to international recruitment, concurred, by 48 votes to 1, with 1 abstention, in the recommendation of the Advisory Committee as set forth in paragraph 66 (a) above. The Advisory Committee's final recommendation, as stated in paragraph 66 (b) above, was similarly accepted by 45 votes to 1, with 3 abstentions. In connexion with this last recommendation, certain delegations questioned the equity of treating staff members who were already in permanent residence status differently from those who subsequently opted for that status. Doubts were also expressed as to the equity of making a distinction between United States citizens who would continue to be entitled to the benefits associated with international recruitment and other staff members who were not yet citizens of the United States but who had applied for or had acquired permanent residence status.

70. Several delegations expressed the hope that the Secretary-General would submit definite proposals in due course for dealing with the problem that had arisen with regard to the application of the principle of geographical distribution. The view was widely shared that international officials should be true representatives of the culture and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations. It was stated by the representative of the Secretary-General that definite proposals had not yet been submitted since the Secretary-General had as yet no clear knowledge of how large the problem would be. Should any considerable number of internationally recruited staff members decide to retain their permanent residence status, the Secretary-General would report the matter

to the General Assembly at its next session, together with specific proposals for dealing with the situation.

71. A formal proposal, however, was moved orally by the representative of Czechoslovakia to the effect that staff members at Headquarters having permanent residence status should be excluded, for the purposes of geographical distribution of the staff, from the quotas appropriate to their country of nationality and should be included for such purposes within the quota appropriate to the United States. He further requested that this proposal should be voted on in two parts. The first part of the proposal being rejected by 18 votes to 18 with 10 abstentions, it was ruled that the proposal as a whole had failed.

72. The Committee, however, accepted, by 20 votes to 16, with 13 abstentions, an alternative proposal by the representative of Lebanon to the effect that, for purposes of applying the criterion of equitable geographical distribution as required by Article 101 of the Charter, staff members of a nationality other than that of the host country who acquired permanent residence status in the host country should be classified in a special category.

73. It was the understanding of the Committee that these decisions should be recorded in its report to the General Assembly for the guidance of the Secretary-General in giving effect to the policies thus approved through appropriate amendments to the Staff Rules.

Recommendations of the Fifth Committee

74. In accordance with the foregoing decisions, the Fifth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I

AMENDMENTS TO THE STAFF REGULATIONS OF THE UNITED NATIONS

The General Assembly

Adopts, as amendments to the staff regulations of the United Nations, the text annexed to the present resolution. These amendments shall become effective from the date of their adoption.

ANNEX

STAFF REGULATION 1.4 (amended text)

Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status.

STAFF REGULATION 1.7 (amended text)

Staff members may exercise the right to vote but shall not engage in any political activity which is inconsistent with or might reflect upon the independence and impartiality required by their status as international civil servants.

STAFF REGULATION 9.1 (a) (additional provisions)

The Secretary-General may also, giving his reasons therefor, terminate the appointment of a staff member who holds a permanent appointment:

(i) If the conduct of the staff member indicates that the staff member does not meet the highest standards of integrity required by Article 101, paragraph 3, of the Charter;

(ii) If facts anterior to the appointment of the staff member and relevant to his suitability come to light which, if they had been known at the time of his appointment should, under the standards established in the Charter, have precluded his appointment.

No termination under sub-paragraphs (i) and (ii) 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.

The Secretary-General may finally terminate the appointment of a staff member who holds a permanent appointment if such action would be in the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned.

STAFF REGULATION 9.3 (additional paragraph)

The Secretary-General may, where the circumstances warrant and he considers it justified, pay to a staff member terminated under the final paragraph of staff regulation 9.1 (a) an indemnity payment not more than 50 per cent higher than that which would otherwise be payable under the staff regulations.

Draft resolution II

AMENDMENT TO THE STATUTE OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

The General Assembly

Adopts, as an amendment to the Statute of the Administrative Tribunal, the text annexed to the present resolution. This amendment shall become effective from the date of its adoption.

ANNEX

ARTICLE 9 (amended text)

1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same

time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgment, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.

2. Should the Tribunal find the procedure prescribed in the staff regulations or staff rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded the Tribunal may order the payment of compensation, not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay.

3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 12.

Draft resolution III

REVIEW OF THE STAFF REGULATIONS OF THE UNITED NATIONS, INCLUDING THE PRINCIPLES AND STANDARDS APPLIED IN THEIR IMPLEMENTATION

The General Assembly

1. Decides to undertake, at its tenth session in 1955, on the basis of a report to be submitted by the Secretary-General and of the comments thereon of the Advisory Committee on Administrative and Budgetary Questions, including their recommendations as to such further action as may be required of the General Assembly, a review both of the principles and standards progressively developed and applied by the Secretary-General in his implementation of the Staff Regulations and of the Staff Regulations themselves;

2. Requests the Secretary-General to circulate to governments of Member States, not later than four weeks before the opening date of the tenth session of the General Assembly, the report and comments referred to in paragraph 1 above.

ACTION TAKEN BY THE GENERAL ASSEMBLY

At its 471st plenary meeting on 9 December 1953, the General Assembly adopted draft resolutions I, II and III submitted by the Fifth Committee (see above). For the final text, see resolution 782 (VIII).

CHECK LIST OF DOCUMENTS

Document No.	Title	Page	Observations and references
A/2364	Report of the Secretary-General		Official Records of the General Assembly, Seventh Session, Annexes, agenda item 75
A/2533	Report of the Secretary-General	1	
A/2534	Report of the Secretary-General		Official Records of the General Assembly, Eighth Session, Annexes, agenda item 38
A/2554	Report of the Secretary-General		Ibid., Eighth Session, Annexes, agenda item 48