

# ABHANDLUNGEN

## Charter Powers of the United Nations' Secretary-General with regard to the Secretariat and the Role of General Assembly Resolutions

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### *Introduction*

This article will discuss the impact of certain resolutions adopted by the UN General Assembly<sup>1</sup> on the application and the interpretation of arts. 97 and 101 of the UN Charter.

Art. 97 reads as follows:

“The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization”.

Art. 101 reads as follows:

“1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

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<sup>1</sup> For literature regarding the legal effect of resolutions of the General Assembly of the United Nations, see generally O. Schachter, Alf Ross Memorial Lecture: The Crisis of Legitimation in the United Nations, 50 *Nordisk Tidsskrift for International Ret*, 3 and note 9 (1981). On United Nations Secretariat, see generally T. Meron, Staff of the United Nations Secretariat: Problems and Directions, 70 *AJIL* 659 (1976); Meron, Status and Independence of the International Civil Servant, 167 *Recueil des Cours de l'Académie de Droit International (RdC)* 289 (1980 II), Meron, The Role of the Executive Heads, 14 *New York University Journal of International Law & Politics* 861 (1982), S. Schwebel, The International Character of the Secretariat of the United Nations, 30 *British Year Book of International Law* 71 (1953).

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible".

In light of the legislative history of art.101, which will be discussed immediately below, this article will focus on two main areas: 1. the erosion of the independent powers of the UN Secretary-General to appoint senior officials, especially heads of autonomous or semi-autonomous organizations within the UN system, which sometimes affects even the appointment of the staff at large of such organizations; and 2. the institution of the "desirable ranges" and other criteria by the General Assembly affecting the appointment of the staff of the UN Secretariat and the resultant erosion of the principle of merit. It will thus be possible to observe the metamorphosis of the Charter through the resolutions of the General Assembly in an area of considerable importance: the efficiency, competence, independence and integrity of the international civil service.

The study will focus also on the erosion of the powers of the Secretary-General as the chief administrative officer of the Organization under art.97 of the Charter.

### *I. The Legislative History of Art.101*

The question of the future composition of the UN Secretariat was not one of the main preoccupations of the authors of the several drafts of the Charter prepared in the United States Department of State<sup>2</sup>. Nor was it one of the main concerns of the Dumbarton Oaks Conference or of the San Francisco Conference. The powers of the Secretary-General and the method of his appointment attracted more attention<sup>3</sup>, as did the related question of whether to appoint deputies to the Secretary-General.

However, the history of art.101 shows clearly that the Founding Fathers were intent on establishing a truly international Secretariat and were anx-

<sup>2</sup> For a detailed discussion of the legislative history of art.101, see T. Meron, *The United Nations Secretariat*, 1-12 (1977).

<sup>3</sup> See generally R. Russell / J. Muther, *A History of the United Nations Charter*, 369-77, 431-32, 854-62 (1958).

ious to ensure its international character. They were against the proposal that senior officials be appointed or confirmed by the political or legislative organs of the Organization<sup>3a</sup>. They insisted on the authority of the Secretary-General to appoint even the most senior officials of the Secretariat, subject only to the general regulations to be established by the General Assembly and to the Charter<sup>4</sup>. Such was also the understanding of the Charter by the Preparatory Commission of the United Nations. The Preparatory Commission listed the organization and administration of the Secretariat as one of the principal functions of the Secretary-General<sup>5</sup>. The Commission interpreted art.101(2) of the Charter "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 staff forming part of the Secretariat"<sup>6</sup>.

It appears that the Founding Fathers wanted a continuing, career international civil service. It is clear that they desired the staff of the Secretariat to have the highest possible qualifications, efficiency, competence and integrity. Indeed, it is clear that the principle of merit was to be paramount and prevail over recruiting staff on as wide a geographical basis as possible. But the Founding Fathers gave no thought to the exact relationship of merit to geography, beyond the establishment of the primacy of the former. Neither did they clarify what was meant by "geographical basis" in art.101(3). The simplest and probably the most plausible interpretation of this term would be that the Founding Fathers desired the widest possible "representation" of nationalities in the Secretariat. They wanted a Secretariat organized on a truly international basis. There is no evidence that the Founding Fathers had ever intended "geographical basis" to mean a broad cultural basis, regional basis, or so on. Nor did they consider any system of weighted "representation" in the Secretariat, such as one based on assessments to the budget of the Organization or on population. It may be assumed that the words "geographical basis" in art.101(3) mean something different from the words "equitable geographical distribution" in art.23, that is, art.101 concerns "representation" of States, rather than of regions.

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<sup>3a</sup> Meron, *supra* note 2, at 4.

<sup>4</sup> This procedure may be compared with art.6(3) of the Covenant of the League of Nations, whereby the League Secretariat was to be appointed by the Secretary-General with the approval of the Council.

<sup>5</sup> Report by the Executive Committee to the Preparatory Commission of the United Nations, UN Doc. PC/20, para.8 (1945).

<sup>6</sup> *Id.* at para.30.

## *II. Appointment of Senior Officials and Autonomy of Major Organizations*

It has been pointed out above that the Founding Fathers intended the Secretary-General to be free to appoint all the officials of the Organization, including his most senior aides, without the need to submit such appointments for confirmation to the General Assembly. And, under art. 97 of the Charter, the Secretary-General is the chief administrative officer of the Organization and thus is free to organize the Secretariat and to assign or transfer the various members of the staff as necessary. But these Charter prerogatives have been eroded by the legislative bodies of the Organization, by customs and procedures, and, primarily, by the political pressures exerted by governments and the inroads made by them on the Secretariat.

As early as 1946, Trygve Lie accepted an understanding among the Big Five regarding the distribution to their nationals of posts of assistant-secretaries-general, thus opening the door to future erosion of the Charter powers of the Secretary-General<sup>7</sup>. There is, however, an important difference between a "gentleman's agreement" and informal consultations, on the one hand, and a statutory obligation to make an appointment on the advice of or subject to the confirmation of a particular organ of the United Nations, on the other.

### A. Consultations and Confirmations

The Secretary-General's authority to appoint the most senior officials of the Organization has always been limited with respect to bodies financed from extrabudgetary funds or by voluntary contributions. This has been accepted as practice without an adequate examination of the reasons behind it. Such an examination cannot be carried out in the confines of this article.

The following discussion will focus primarily but not exclusively on the appointment by the Secretary-General of senior officials to autonomous or semi-autonomous bodies whose staff are financed under the regular budget and are part of the main body of the UN Secretariat.

In 1949, the General Assembly decided, by Resolution 319(IV)<sup>8</sup>, that the High Commissioner for Refugees should be elected by the General Assembly on the nomination of the Secretary-General<sup>9</sup>. The Statute of the

<sup>7</sup> T. Lie, *In the Cause of Peace*, 45 (1954).

<sup>8</sup> GA Res. 319, Annex, para. 9, UN Doc. A/1251, at 36 (1949).

<sup>9</sup> The administrative expenditures relating to the High Commissioner's office are borne in the regular budget of the United Nations.

Office of the United Nations High Commissioner for Refugees adopted by General Assembly Resolution 428(V) in 1950 provided, in addition, that the terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly<sup>10</sup>. Although the General Assembly has been given broad regulatory authority under art.101(1) of the Charter, it may be recalled that the Founding Fathers had intended that senior officials be appointed solely by the Secretary-General and that they should not be appointed or be subject to confirmation by political or legislative organs. The Statute also provided that the High Commissioner shall appoint a Deputy High Commissioner of a nationality other than his own and staff which shall be responsible to him in the exercise of their functions<sup>11</sup>. The erosion of the authority of the Secretary-General to appoint members of the staff under art.101(1) had thus begun.

In 1949, the General Assembly adopted Resolution 302(IV) on Assistance to Palestine Refugees, which established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), an agency financed by voluntary contributions. This Resolution requested the Secretary-General to appoint the Director of UNRWA in consultation with the Governments represented on UNRWA's advisory commission<sup>12</sup>. The Resolution authorized the Director to select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General agree are applicable<sup>13</sup>.

In 1950, the General Assembly adopted Resolution 410(V) on Relief and Rehabilitation in Korea, which established the United Nations Korean Reconstruction Agency for the Relief and Rehabilitation of Korea, under the direction of a United Nations Agent General for Korean Reconstruction, to be financed from voluntary contributions. The Resolution requested the Secretary-General, after consulting the United Nations Commission for the Unification and Rehabilitation of Korea and an advisory committee, to appoint the Agent General. The Agent General was authorized to appoint one or more Deputy Agents General in consultation with the Secretary-General<sup>14</sup>. The Agent General was also authorized to

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<sup>10</sup> GA Res.428, para.13, UN Doc. A/1775, at 46 (1950).

<sup>11</sup> *Id.* at paras.14, 15(a).

<sup>12</sup> GA Res.302, para.9, UN Doc. A/1251, at 23 (1949). The Director was to be "responsible to the General Assembly for the operation of the programme". *Id.* at para.9.

<sup>13</sup> *Id.* at para.9(b).

<sup>14</sup> GA Res.410, para.A.7, UN Doc. A/1775 at 31 (1950).

select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Agent General and the Secretary-General agree are applicable<sup>15</sup>.

In 1964, the General Assembly decided, by Resolution 1995<sup>16</sup>, to make the United Nations Conference on Trade and Development (UNCTAD) an organ of the General Assembly. Arrangements were to be made, "in accordance with Article 101 of the Charter, for the immediate establishment of an adequate, permanent and full-time secretariat within the United Nations Secretariat". The UNCTAD secretariat was to be headed by a secretary-general, who was to be appointed by the Secretary-General of the United Nations and confirmed by the General Assembly<sup>17</sup>. The expenses of UNCTAD, including those of its secretariat, were to be borne by the regular budget of the United Nations.

At times, General Assembly Resolutions raised matters directly relevant to the powers of the Secretary-General as chief administrative officer. Thus, by Resolution 2239<sup>18</sup> on Pattern of Conferences, the General Assembly noted that under the Charter and the Financial Regulations of the United Nations and the rules of procedure of the General Assembly, final approval of the annual calendar of meetings and conferences rests with the General Assembly, while responsibility for the organization of the calendar rests with the Secretary-General in his capacity as chief administrative officer<sup>19</sup>.

In 1966, the General Assembly established the United Nations Industrial Development Organization (UNIDO), which will be discussed below in detail. Concerned about the establishment of UNCTAD and UNIDO, the Secretary-General warned the General Assembly in 1967 of the consequences of creating autonomous units in the Secretariat. He stated

"The creation of autonomous units within the Secretariat, and therefore under my jurisdiction as Chief Administrative Officer, raises serious questions of organizational authority and responsibility. Moreover, such a trend is not altogether consistent with the concept of a unified secretariat working as a team towards the accomplishment of the main goals of the Organization. On the contrary, it may tend to have the adverse effect of pitting one segment of the Secretariat against another in competition for the necessary financial and political support

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<sup>15</sup> *Id.* at para. A.5(e)(1).

<sup>16</sup> GA Res.1995, 19 UN GAOR, Supp. (No.15) 1, UN Doc. A/5815 (1964).

<sup>17</sup> *Id.* at II, 26-27.

<sup>18</sup> GA Res.2239, 21 UN GAOR, Supp. (No.16) 87, UN Doc. A/6316 (1966).

<sup>19</sup> *Id.* at preambular para.5.

for its own work programmes ... The process of creating autonomous units should therefore be looked at not only in terms of the possible advantages to the particular substantive programmes but also in the context of a secretariat dependent for reasons of economy and administrative efficiency upon central supporting services”<sup>20</sup>.

It may be observed that the Secretary-General raised organizational, administrative and financial considerations against the practice of creating autonomous bodies in the Secretariat; he did not raise legal objections based on his Charter powers under art.97 or 101(1).

In 1972, the General Assembly decided, by Resolution 2997<sup>21</sup>, to establish the United Nations Environment Programme (UNEP). Under that resolution the environment secretariat is headed by the executive director of UNEP, who is elected by the General Assembly on the nomination of the Secretary-General. The costs of providing the secretariat are borne by the regular budget of the United Nations, while operational programme costs were to be financed from a special environment fund. The administrative costs of the fund were to be borne by the fund itself. In 1973, the Secretary-General referred to the General Assembly the administrative arrangements that he proposed to apply to the employment of the staff who were paid from the resources of the environment fund. According to the arrangements suggested by the Secretary-General, the staff regulations and staff rules which apply to the UN Secretariat would also apply to staff paid from the resources of the fund. He delegated to the executive director of UNEP, however, the direct responsibility of administering, in the name of the Secretary-General, the staff regulations and staff rules in respect of staff paid from the fund. The Secretary-General, in consultation with the executive director, established an appointment and promotion board, whose composition, functions and procedures would be generally comparable to those of the [Headquarters] Appointment and Promotion Board, to advise the executive director concerning staff members paid from the fund. Staff members would, however, be recruited specifically for service with UNEP rather than with the UN Secretariat as a whole and their movement between UNEP and other parts of the Secretariat would be subject to the same conditions and arrangements as those applicable to staff serving with other voluntary programmes of the United Nations. Thus, staff members appointed through the fund were limited to employment with the fund,

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<sup>20</sup> Budget Estimates for the Financial Year 1967, Foreword by the Secretary-General, 21 UN GAOR, Supp. (No.5) IX, para.20, UN Doc. A/6305 (1967).

<sup>21</sup> GA Res.2997, 27 UN GAOR, Supp. (No.30) 43, UN Doc. A/8730 (1972).

and could not automatically qualify for posts financed under the regular budget of the United Nations. The principle of recruitment on as wide a geographical basis as possible would govern the staff paid from the fund in accordance with the guidelines approved for the voluntary programmes<sup>22</sup>.

The erosion of the central appointment authority of the Secretary-General was even more apparent in the case of the United Nations Industrial Development Organization (UNIDO). This erosion was caused by the persistent pressure exerted by the powerful group of developing countries for greater and greater autonomy<sup>23</sup>. These centrifugal tendencies have culminated in the decision to transform UNIDO into a specialized agency<sup>24</sup>, completely independent of the United Nations.

UNIDO was established in 1966 by General Assembly Resolution 2152<sup>25</sup> as an organ of the General Assembly to function as an autonomous organization within the United Nations. UNIDO was to have an adequate permanent, full-time secretariat appointed in accordance with art.101 of the Charter. UNIDO was also to avail itself of the other appropriate facilities of the UN Secretariat. The secretariat of UNIDO was to be headed by an executive director to be appointed by the Secretary-General and confirmed by the General Assembly. Expenses for the administrative and research activities of UNIDO, but not for its operational activities, were to be borne by the regular budget of the United Nations. In 1971, the General Assembly, in Resolution 2823<sup>26</sup>, expressed the view that it was desirable that UNIDO should have greater autonomy in administrative matters, including recruitment of personnel.

In 1973, the Industrial Development Board, UNIDO's governing body, by Resolution II (VII) requested the General Assembly to examine the

<sup>22</sup> UN Doc. A/C.5/150/Rev.1, paras.8-11 (1947). The General Assembly, at its twenty-eighth session, approved these arrangements. Report of the Fifth Committee, UN Doc. A/9450, para.120(c) (1973); UN Doc. A/PV.2206 (1973). The Secretariat of UNEP (UNEP is financed under the regular budget) is regarded as part and parcel of the UN Secretariat and no special arrangements regarding their recruitment have been made. Regarding the delegation to the executive director of UNEP of various powers of the Secretary-General under the staff rules and regulations, see UN Doc. ST/AI/234, Annex V (1976).

<sup>23</sup> See, e.g., GA Res.2823, para.14, 26 UN GAOR, Supp. (No.29) 65, UN Doc. A/8429 (1971); UNIDO, Report of the Industrial Development Board, 28 UN GAOR, Supp. (No.16) 74 UN Doc. A/9016 (1973); UNIDO, Report of the Industrial Development Board, 29 UN GAOR, Supp. (No.16) 41, UN Doc. A/9616 (1974); UN Doc. A/C.5/1616 (1974).

<sup>24</sup> See UN Doc. A/10112 (1975); UN Doc. A/10202 (1975); GA Res.34/96, 34 UN GAOR, Supp. (No.46) 96, UN Doc. A/34/46 (1979).

<sup>25</sup> GA Res.2152, 21 UN GAOR, Supp. (No.16) 24, at I & II, paras. 17, 18 & 21, UN Doc. A/6316 (1966).

<sup>26</sup> GA Res.2823, 26 UN GAOR, Supp. (No.29) 65, para.6, UN Doc. A/8429 (1971).

question of the transfer to UNIDO of full powers for the allocation of resources, including the appointment and promotion of all its staff members, as well as experts<sup>27</sup>. In 1974, the group of developing countries on the Industrial Development Board claimed in a policy statement that UNIDO's secretariat should be regarded as separate from the UN Secretariat and that the representation of developing countries at higher and policymaking levels in the UNIDO secretariat should be on the same basis as their representation on the Industrial Development Board<sup>28</sup>.

This desire to control appointment and promotion processes in UNIDO, especially by the group of developing countries, was resisted by the Secretary-General in a detailed report on UNIDO's programme budget for the biennium 1974–1975. This time, the Secretary-General based his position not only on administrative, organizational and financial considerations, as he had in 1967, but also on legal grounds. In defending the concept of a single, unified Secretariat, at least with regard to the regular budget of the United Nations, the Secretary-General argued that

“... the resolution [2152 (XXI)] made no reference to the desirability of assigning to UNIDO any special powers or authority with reference to staff management, budget preparation, publications or other aspects of administration. These powers and responsibilities, in so far as they relate to staff are vested in the Secretary-General by virtue of Articles 97 and 101 of the Charter. The Secretary-General cannot be divested of these powers and responsibilities except by amendment of the Charter itself”<sup>29</sup>.

He pointed out, further, that the transfer to UNIDO of full powers over the appointment and promotion of all its staff members as well as experts could not be reconciled with the Secretary-General's role as chief administrative officer of the Organization responsible for the Secretariat under the Charter. Were the Secretary-General to be relieved totally of his responsibilities for the appointment and promotion of UNIDO personnel, those personnel would cease to be an integral part of the UN Secretariat<sup>30</sup>. The Secretary-General enumerated the many powers of appointment and promotion that he had already delegated to the Executive Director of UNIDO. He reserved to himself the authority to appoint, however, for a period of one year or longer, all professional and higher category staff of

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<sup>27</sup> UNIDO, Report of the Industrial Development Board on the Work of its Seventh Session, 28 UN GAOR, Supp. (No.16) 74, UN Doc. A/9016 (1973).

<sup>28</sup> UNIDO, Report of the Industrial Development Board on the Work of its Eighth Session, 29 UN GAOR, Supp. (No.16) 41, UN Doc. 9616 (1974).

<sup>29</sup> UN Doc. A/C.5/1616, at 4 (1974).

<sup>30</sup> *Id.* at 12.

the Secretariat regardless of the organ or office to which they were assigned. This reservation of power arose out of the concept of the Secretariat as an integrated unit. The existence of the central appointment and promotion board ensured the application of the same suitability criteria throughout the Secretariat and made possible the interchangeability of the staff between any of the activities and offices of the United Nations. The only units that were excluded from the purview of the appointment and promotion board were subsidiary organs financed wholly or largely from voluntary funds.

In addition to safeguarding the unity of the Secretariat, the Secretary-General was obliged to carry out the directives of the General Assembly concerning the geographical distribution of the staff. If full powers over recruitment and promotion were to be transferred to individual organizational units, the Secretary-General would have no means of achieving the overall balance for the Secretariat as a whole, as contemplated in art.101. The Secretary-General concluded that as long as UNIDO remained a part of the United Nations Organization, its secretariat should remain an integral part of the UN Secretariat, subject to the same general policies and directives, under the authority and control of the UN Secretary-General, like other organizational units. The Secretary-General proposed, however, with regard to the contemplated establishment of an industrial development fund comprising voluntary contributions to UNIDO, to authorize the Executive Director of UNIDO to appoint and promote the staff that would be financed from that fund, under procedures comparable to those granted to the Executive Director of UNEP with respect to the staff of the environment fund<sup>31</sup>.

The conversion of UNIDO into a specialized agency, which has not yet been implemented, would at least represent an entirely legal and constitutional method of granting that organization complete autonomy without encroaching on the powers of the Secretary-General under the Charter and the principle of the unity of the Secretariat<sup>32</sup>.

The Secretary-General's power of appointment in the UN Capital Development Fund has been made subject to confirmation by the General Assembly. The administrative expenses of the Capital Development Fund were to be borne by the regular budget; while the operational expenses were to be met from voluntary contributions. Art.IX(2) of General

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<sup>31</sup> *Id.* at 15.

<sup>32</sup> See generally Meron, *op. cit.* (note 2), 87-90.

Assembly Resolution 2186<sup>33</sup>, by which the General Assembly established the Fund, provides that the managing director shall be appointed by the Secretary-General and that the appointment shall be subject to confirmation by the General Assembly.

By Resolution 3356, the General Assembly established the United Nations Special Fund, to be financed through voluntary contributions<sup>34</sup>. The chief executive officer of the Special Fund – the Executive Director – was to be appointed by the Secretary-General, subject to confirmation by the General Assembly<sup>35</sup>.

A variant of the procedure of confirmation by the General Assembly of a Secretary-Generals's nominee may be found in General Assembly Resolution 3357<sup>36</sup>, by which the General Assembly approved the Statute of the International Civil Service Commission (ICSC). Art.4 of the Statute provides that the Secretary-General, as Chairman of the Administrative Committee on Coordination (ACC), shall compile a list of candidates for appointment as Chairman, Vice-Chairman and members of the Commission (who are not, it should be observed, members of the UN staff) and shall carry out appropriate consultations "before consideration and decision by the General Assembly". Art.20 of the Statute provides that the staff of the ICSC shall be appointed by the Secretary-General after consultations with the Chairman of the ICSC and, for senior staff, with the ACC. It may be noted that members of the ICSC secretariat are considered interorganizational (not UN) staff.

An interesting case involves the establishment of the Joint Inspection Unit (JIU), another interorganizational body. Under General Assembly Resolution 2150<sup>37</sup>, which approved a report of the *Ad Hoc* Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies, the President of the General Assembly draws up a list of Member States which are requested to nominate candidates. The Secretary-General then appoints the inspectors from the list prepared by the Presi-

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<sup>33</sup> GA Res.2186, 21 UN GAOR, Supp. (No.16) 34, UN Doc. A/6316 (1966). This Resolution has not been fully implemented. By Resolution 2321, the General Assembly invited the Secretary-General to ask the Administrator of the United Nations Development Programme to administer the United Nations Capital Development Fund by performing the functions of the Managing Director as set forth in Resolution 2186. GA Res.2321, 22 UN GAOR, Supp. (No.16) 33, UN Doc. A/6716 (1976).

<sup>34</sup> GA Res.3356, 29 UN GAOR, Supp. (No.31) 76, UN Doc. A/9631 (1974).

<sup>35</sup> *Id.* at art.V(1).

<sup>36</sup> GA Res.3357, 29 UN GAOR, Supp. (No.31) 127, UN Doc. A/9631 (1974).

<sup>37</sup> GA Res.2150, 21 UN GAOR, Supp. (No.16) 81, UN Doc. A/6316 (1966).

dent of the General Assembly, after consultation with the other members of the ACC. As regards the secretariat of the JIU, the General Assembly decided by Resolution 31/192<sup>38</sup> that the staff shall be appointed by the Secretary-General after consultation with the JIU and, as regards the appointment of the executive secretary, after consultation with the JIU and with the ACC<sup>39</sup>.

A case of "simple" consultation involves the appointment of the head of the secretariat of the International Narcotics Control Board (INCB). Under the arrangements approved by ECOSOC Resolution 1196<sup>40</sup>, the head of the secretariat of the INCB is appointed by the Secretary-General in consultation with the INCB.

The appointment of the executive director of the World Food Programme (WFP) – the WFP is considered a joint organ of the United Nations and the FAO – is subject to consultation. The WFP was established in 1961 by the Food and Agriculture Organization (FAO) of the United Nations, subject to the concurrence of the UN General Assembly. The General Assembly approved the establishment of the WFP by Resolution 1714<sup>41</sup>. The WFP was put on a continuing basis by General Assembly Resolution 2095<sup>42</sup>. The General Regulations of the WFP, as amended by the Inter-Governmental Committee and then approved by the Council of FAO and by ECOSOC<sup>43</sup>, provided that the WFP executive director should be appointed by the UN Secretary-General and the Director-General of FAO after consultation with the Inter-Governmental Committee of FAO.

A similar approach was adopted with regard to the executive director of the World Food Council (WFC), established by General Assembly Resolution 3348 in 1974<sup>44</sup>, although the WFC is not a joint organ. Subsequently, the General Assembly, in Resolution 31/120<sup>45</sup> on the secretariat of the WFC, noted the rules of procedure of the WFC. Para.1 of the Resolution and Rule 23 of the rules of procedure of the WFC provide that the Executive Director of the WFC shall be appointed by the UN Secretary-

<sup>38</sup> GA Res.31/192, 31 UN GAOR, Supp. (No.39) 163, UN Doc. A/31/39 (1977).

<sup>39</sup> *Id.* at Statute of the Joint Inspection Unit, art.19(2).

<sup>40</sup> E.S.C. Res.1196, 42 UN ESCOR, Supp. (No.1) 4, UN Doc. E/4393 (1967).

<sup>41</sup> GA Res.1714, 16 UN GAOR, Supp. (No.17) 20, UN Doc. A/5100 (1961).

<sup>42</sup> GA Res.2095, 20 UN GAOR, Supp. (No.14) 32, UN Doc. A/6014 (1965).

<sup>43</sup> 39 (Resumed) UN ESCOR (1400th mtg.) 17, paras.3–6, UN Doc. E/SR.1397–1401 (1965); 39 (Resumed) UN ESCOR, Annexes (Agenda Item 3) 3, UN Doc. E/4127/Add.2 (1965).

<sup>44</sup> GA Res. 3348, 29 UN GAOR, Supp. (No.31) 75, UN Doc. A/9631 (1974).

<sup>45</sup> GA Res. 31/120, 31 UN GAOR, Supp. (No.39) 65, UN Doc. A/31/39 (1976).

General in consultation with the members of the WFC and with the Director-General of FAO. The staff of the WFC are appointed by the UN Secretary-General in consultation with the executive director of the WFC.

By Resolution 31/26<sup>46</sup>, on the composition of the Secretariat, the General Assembly requested the Secretary-General to appoint a panel to investigate allegations of discriminatory treatment in the Secretariat in the context of eliminating discrimination of women based on sex<sup>47</sup>.

In 1977, the General Assembly adopted Resolution 32/197 on restructuring of the economic and social sectors of the UN System<sup>48</sup>. That Resolution provides that the Secretary-General appoint a Director-General for Development and International Economic Co-operation "in full consultation with Member States". The Director-General for Development and International Economic Co-operation is also entrusted by that Resolution with important responsibilities to be carried out "under the authority" or "the direction" of the Secretary-General. The Director-General, "acting under the authority of the Secretary-General, would effectively assist him in carrying out his responsibilities as chief administrative officer, under the Charter of the United Nations, in the economic and social fields"<sup>49</sup>. Those responsibilities include the task of "[e]nsuring, within the United Nations, the coherence, co-ordination and efficient management of all activities in the economic and social fields financed by the regular budget or by extrabudgetary resources"<sup>50</sup>.

The following year the General Assembly, by Resolution 33/202 on restructuring of the economic and social sectors of the UN system<sup>51</sup>, reaffirmed the authority and responsibility of the Secretary-General under the relevant articles of the Charter. It also affirmed that in the execution of the responsibilities entrusted to him under Resolution 32/197, the Director-General, under the direction of the Secretary-General, should have "fully and effectively, authority over all services and organs within the United Nations at the level of the secretariats in the economic and social sectors, without prejudice to their respective spheres of competence or the terms of reference as contained in their relevant legislative mandates in discharging the functions envisaged in ... Resolution 32/197 ..."<sup>52</sup>.

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<sup>46</sup> GA Res.31/26, 31 UN GAOR, Supp. (No.39) 147, UN Doc. A/31/39 (1976).

<sup>47</sup> *Id.* at paras.6-7.

<sup>48</sup> GA Res.32/197, 32 UN GAOR, Supp. (No.45) 121, UN Doc. A/32/45 (1977).

<sup>49</sup> *Id.* at Annex, para.64.

<sup>50</sup> *Id.* at Annex, para.64(b).

<sup>51</sup> GA Res.33/202, 33 UN GAOR, Supp. (No.45) 129, UN Doc. A/33/45 (1978).

<sup>52</sup> *Id.* at IV.5(c).

In the course of the last few years, the General Assembly has provided more and more detailed instructions regarding recruitment techniques and personnel administration, going even beyond the question of desirable ranges, which will be discussed in part III of this article. The General Assembly delved into questions which in the past had been left to the discretion of the Secretary-General as the chief administrative officer of the United Nations. It is not clear, however, whether the past practice was based on the conviction that it was required by the Charter.

In 1978, by Resolution 33/143<sup>53</sup> on personnel questions, the General Assembly requested the Secretary-General to adopt a detailed nine-paragraph enumeration of "measures and guidelines" regarding recruitment of professional staff. Actually, the guidelines went beyond questions of recruitment<sup>54</sup>. The Secretary-General was thus requested to draw up a definition of occupational groups together with criteria for a new definition of such groups. Another guideline dealt with increasing the mobility of professional staff between duty stations. While the General Assembly may draw up regulations concerning appointment of staff, the extremely detailed character of such guidelines gives rise to concern as to their compatibility with the authority of the Secretary-General under arts.97 und 101. It appears that no protest has been made by the Secretary-General against a possible encroachment by the General Assembly of his authority in this area under the Charter.

Two years later the General Assembly went even further. Resolution 35/210<sup>55</sup> instructed the Secretary-General "to implement the procedures and mechanisms for recruitment and appointment described in the annex to the present resolution and to report to the General Assembly annually on their implementation"<sup>56</sup>. Resolution 35/210 also contained an Annex entitled, "Recruitment Procedures for Posts Subject to Geographical Distribution in United Nations Secretariat". The 17-paragraph Annex consisted not only of broad and general guidelines, but also of minutiae of personnel administration. For example, it provided that a detailed dossier to be established for each candidate should contain a summary of interviews and that vacancy announcements should incorporate job descriptions.

The General Assembly alone should, however, not be blamed for this far-reaching invasion of the internal administrative domain of the Sec-

<sup>53</sup> GA Res. 33/143, 33 UN GAOR, Supp. (No.45) 205, UN Doc. A/33/45 (1978).

<sup>54</sup> *Id.* at I.1(a)-(i).

<sup>55</sup> GA Res. 35/210, 35 UN GAOR, Supp. (No.48) 236, UN Doc. A/35/48 (1980).

<sup>56</sup> *Id.* at III.

retariat. This development was, at least in part, the result of a power-struggle between the Assistant-Secretary-General for Personnel Services and the Under-Secretary-General for Administration and Management. The former has encouraged the adoption of the recruitment procedures as a "binding" annex to General Assembly Resolution 35/210. This struggle, combined with the reluctance on the part of Secretary-General Kurt Waldheim, whose term of office was to expire by the end of 1981, to take positions which might antagonize influential countries, contributed to the creation of a dangerous vacuum in the leadership of the Secretariat.

This power-vacuum may also explain the establishment by the General Assembly by Resolution 35/211<sup>57</sup> of a committee of governmental experts to evaluate the present structure of the Secretariat in the administrative, finance and personnel areas. Faced with a struggle between two powerful barons in the UN Secretariat over their turf, Secretary-General Waldheim invited, in effect, the intervention of the General Assembly. In a letter of 8 November 1980, addressed to the Chairman of the Fifth Committee of the General Assembly<sup>58</sup>, the Secretary-General referred to the controversy over the pros and cons of centralization or diffusion of authority over control of personnel and control of finance, and to the concern "regarding the adequacy of the present structure of the Secretariat". The Secretary-General concluded that

"The time may well be opportune, therefore to undertake a review of the current administrative machinery which would entail a careful analysis of its short-comings, its strengths and possible improvements. I am aware that this complex task will require a balanced evaluation of the interrelationships involved, not only among the various administrative units at Headquarters, but also between these units and those at other major offices away from Headquarters and, equally as important, between administrative units in general and the substantive activities they are mandated to serve.

If the General Assembly were to consider that a review would be timely and desirable, I would be prepared, as was done in 1968 by U Thant, to establish an independent committee of experts to evaluate the present administrative structure of the Secretariat and to recommend any modifications that might be necessary and appropriate to assist me in the discharge of my responsibilities as chief administrative officer of the Organization under Article 97 of the Charter"<sup>59</sup>.

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<sup>57</sup> GA Res.35/211, 35 UN GAOR, Supp. (No.48) 239, UN Doc. A/35/48 (1980).

<sup>58</sup> UN Doc. A/C.5/35/48 (1980).

<sup>59</sup> *Id.* at 2.

In deciding to establish a committee of governmental experts, the General Assembly in Resolution 35/211<sup>60</sup> went a step further. Without awaiting the report of the committee, it requested the Secretary-General

“pending and without prejudice to the decision to be taken by the General Assembly during its thirty-sixth session on the above-mentioned report, to take such interim measures, within the existing administrative structure, as to ensure that the Office of Personnel Services has the authority necessary to implement effectively the personnel policies outlined in the relevant resolutions of the Assembly”<sup>61</sup>.

Read against the background and in the context of the controversy referred to above, this meant, in effect, that the General Assembly supported the claims of the Assistant-Secretary-General for Personnel Services (who would have “the authority necessary” etc., e.g. reporting to the Secretary-General), rather than those of the Deputy-Secretary-General for Administration and Management. This further intrusion into the Charter powers of the Secretary-General is not surprising, given the lack of leadership shown by the Secretary-General Waldheim. The new Secretary-General Pérez de Cuéllar has recently taken steps calculated to restore his authority to establish reporting channels as he deems necessary<sup>61a</sup> and has taken a more active role in administering and in organizing the Secretariat.

#### B. Concluding Observations

In sum, the appointment authority of the Secretary-General has been considerably eroded. The statutory requirement of consultation by the Secretary-General with, or confirmation of a nominee of the Secretary-General by, States or, more importantly, the General Assembly or other representative bodies introduces political considerations into the appointment of senior officials. Nor are consultations, for example, a mere formality. Obviously, a wise Secretary-General would not appoint the chief officer of one of the subsidiary organizations of the United Nations without first carrying out extensive consultations not only within the Secretariat, but also with representatives of influential States and groups of States. It would be difficult in fact, for the Secretary-General to appoint a person who has not gained support in the process of consultations.

<sup>60</sup> GA Res.35/211, 35 UN GAOR, Supp. (No.48) 239, UN Doc. A/35/48 (1980).

<sup>61</sup> *Id.* at para.4. See also para.6 of GA Res.36/238. UN Doc. A/RES/36/238 (1981). The Secretary-General took such interim measures in UN Doc. ST/SGB/180 (1980).

<sup>61a</sup> UN Doc. A/AC.210/L.1 (1982).

The principal significance of this method of appointing the senior officials of the various subsidiary organizations of the United Nations is its indication that these officials thereby enjoy a measure of independence from the central authority of the Organization, *i.e.*, the Secretary-General. In addition, this practice may affect the right of the Secretary-General to terminate the appointments of some officials who are an integral part of the Secretariat. Moreover, this method of appointment symbolizes the existence of independent power bases for the heads of the various organizations.

The power of senior officials, especially heads of departments of the Secretariat supported by certain great powers or groups of States, has also grown. Senior department heads, themselves often motivated by political considerations, act like powerful "barons", wielding considerable influence over the appointment and promotion process. They frequently succeed in obtaining posts for candidates urged on them by States or groups of States. This has sometimes left the Secretary-General reluctant to fully and appropriately exercise his will with regard to appointments and promotions, even in cases in which the authority asserted by the senior officials has no legislative basis and the units in question are financed through regular budget allocations. The Secretary-General exercises a stronger control of the personnel department, but has less leverage in controlling the substantive departments and their heads.

The Secretary-General must, of course, act in accordance with the regulations adopted by the General Assembly. He operates not only under considerable legal but also under political restraints with regard to the appointment, promotion and, possibly, termination of members of the international civil service.

Allowing politics to outweigh competence, integrity and efficiency in the choice of high officials is a sure road to demoralization and inefficiency in the Secretariat as a whole. In 1980, the General Assembly, through Resolution 35/210<sup>62</sup>, attempted to restore to the personnel department some of the prerogatives of the "barons" but it is too early to evaluate the actual impact of this resolution.

In legal terms, it is not easy to lay down the parameters for the legitimate reach of General Assembly resolutions in relation to the Charter powers of the Secretary-General. It may be recalled that the Preparatory Commission of the United Nations emphasized that the Secretary-General, as head of

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<sup>62</sup> GA Res.35/210, 35 UN GAOR, Supp. (No.48) 236, UN Doc. A/35/48 (1980).

the Secretariat, is responsible to other organs of the United Nations for the Secretariat's work, that he appoints the staff under regulations established by the General Assembly, and that his choice of staff and his leadership will determine the character and the efficiency of the Secretariat as a whole<sup>63</sup>. The Preparatory Commission interpreted art.101(2) of the Charter to mean that the Secretary-General has full authority to move staff at his discretion within the Secretariat<sup>64</sup>. The Preparatory Commission also observed that the tasks of framing and adoption of agreed international policies rests with the organs representative of Member States, but that the tasks of preparing the ground for those decisions and of executing them devolve largely upon the Secretariat<sup>65</sup>.

On the other hand, art.10 of the Charter confers very broad powers on the General Assembly. The General Assembly may discuss any questions or matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter, and, except as provided in art. 12, may make recommendations on any such questions or matters. This broad competence clearly encompasses the Secretariat of the United Nations, which is one of the principal organs of the United Nations under art.7(1) of the Charter. Moreover, the General Assembly under art.17(1) of the Charter considers and approves the budget of the Organization. The budget-making power implies a broad authority to decide on the organization of the Secretariat<sup>66</sup>. Finally, reference must be made to art.101(1) of the Charter, which grants the General Assembly broad regulatory powers with regard to appointment of the staff of the Secretariat. The various powers of the General Assembly must, however, be interpreted so as to avoid conflict with the powers of the Secretary-General under Chapter XV of the Charter. Although some General Assembly resolutions "invite" the Secretary-General to take certain steps with regard to the Secretariat or recommend certain steps for his consideration, other resolutions frequently "request" or "direct" the Secretary-General to carry

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<sup>63</sup> Report by the Executive Committee to the Preparatory Commission of the United Nations, UN Doc. PC/20, at 86 (1945).

<sup>64</sup> *Id.* at 88.

<sup>65</sup> *Id.* at 84.

<sup>66</sup> For an analogous situation in another international organization, see P. Szasz, *The Law and Practices of the International Atomic Energy Agency* 211-215 (1970).

The General Assembly, however, authorizes the Secretary-General, in its resolutions approving the budget of the Organization, to transfer credits between sections of the budget with the concurrence of the Advisory Committee on Administrative and Budgetary Questions. See, e.g., GA Res.36/240, UN Doc. A/RES/36/240, para.A.2 (1981).

out certain acts. In practice, Secretaries-General normally consider themselves bound to carry out also the requests of the General Assembly which are formulated in the language of recommendations.

Learned authors provide little guidance with regard to the questions under consideration<sup>67</sup>.

The Legal Counsel of the United Nations appears to have rendered only two published opinions, both of a fairly limited scope, which have any relevance to these questions. One of these opinions pertained to whether the Secretary-General must consult with members of the Commission on Transnational Corporations before appointing an Executive Director for the Information and Research Center on Transnational Corporations. The Legal Counsel gave the following opinion to the Economic and Social Council (ECOSOC):

“Since the Executive Director is to be a staff member of the United Nations, under Article 101 of the Charter he must be appointed by the Secretary-General under the regulations established by the General Assembly. The General Assembly, in approving the proposal for the appointment of the Executive Director at the Assistant Secretary-General level, did not provide for consultations with the members of the Commission on Transnational Corporations. Therefore, the proposed text of the resolution in imposing a limitation on the Secretary-General’s authority would not be in accordance with the Charter”<sup>68</sup>.

This opinion appears to suggest that the General Assembly may impose on the Secretary-General the obligation to carry out consultations prior to making an appointment as part of its regulatory powers under art.101(1) of the Charter, but that other organs – whether principal or subsidiary – may not require him to carry out such consultations.

The other opinion concerned the effect of General Assembly Resolution 31/197 which requested the Secretary-General “to ensure that the resources which the United Nations Joint Staff Pension Fund holds invested in shares of transnational corporations are invested on safe and profitable terms and, to the greatest extent practicable, in sound investments in developing countries”<sup>69</sup>. The question was whether the General Assembly has the power to advise the Secretary-General with respect to the investment of the assets of the United Nations Joint Staff Pension Fund. Art.19(a) of the Regulations of the Pension Fund provides that the invest-

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<sup>67</sup> See, e.g., H. Kelsen, *The Law of the United Nations*, 136–137 (1950); L. Goodrich / E. Hambro / A. Simons, *Charter of the United Nations*, 574–579 (1969).

<sup>68</sup> UN Doc. E/AC.6/SR.744, at 12 (1975).

<sup>69</sup> GA Res.31/197, 31 UN GAOR, Supp. (No.39) 168, para.1, UN Doc. A/31/39 (1976).

ment of its assets is to be decided upon by the Secretary-General, after consultation with an Investments Committee and in the light of observations and suggestions made from time to time by the United Nations Joint Staff Pension Board on investments policy.

The Legal Counsel of the United Nations gave the following opinion:

"Although it is not specifically foreseen that the Secretary-General might also consult or receive advice from others, he is not precluded from doing so, nor is the United Nations General Assembly precluded from tendering advice. In other words, the Regulations do not contain prohibitions analogous to those in Article 100 of the Charter of the United Nations.

... It is not therefore to be concluded that in resolution 31/197 the General Assembly failed to respect the ultimate authority of the Secretary-General over the investments of the Pension Fund nor that the Secretary-General would interpret the resolution as so doing. Only if the Assembly should attempt to direct the Secretary-General to undertake particular investment policies or decisions, as it has never done, would an issue arise. In other words, as matters now stand the Secretary-General would not be bound by any resolution of the General Assembly in this field. This, however, does not preclude him from following suggestions made, if, in his judgement, in carrying out his responsibilities as trustee, he were to decide that it was in the best interest of the Pension Fund. Such decisions must of course be consistent with the Scope and Purpose of the Fund and with the limitations on the use of the assets of the Fund as set forth in the Regulations of the Fund"<sup>70</sup>.

In this opinion, the Legal Counsel appears to suggest the important distinction between a recommendation of a general policy, which the General Assembly may properly do, on the one hand, and the direction that the Secretary-General take particular investment policies or decisions which the General Assembly may not do, on the other hand.

In a different context, the International Court of Justice in its Advisory Opinion of 1954 on Effect of Awards of Compensation Made by the United Nations Administrative Tribunal considered the relationship between the powers of the General Assembly and those of the Secretary-General. The Court stated:

"The General Assembly could at all times limit or control the powers of the Secretary-General in staff matters, by virtue of the provisions of Article 101. Acting under powers conferred by the Charter, the General Assembly authorized the intervention of the Tribunal to the extent that such intervention might result from the exercise of jurisdiction conferred upon the Tribunal by its

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<sup>70</sup> 1977 UN Juridical Yearbook 200 (1979).

Statute. Accordingly, when the Tribunal decides that particular action by the Secretary-General involves a breach of the contract of service, it is in no sense intervening in a Charter power of the Secretary-General, because the Secretary-General's legal powers in staff matters have already been limited in this respect by the General Assembly"<sup>71</sup>.

The Court also stated:

"This view assumes that, in adopting the Statute of the Administrative Tribunal, the General Assembly was establishing an organ which it deemed necessary for the performance of its own functions. But the Court cannot accept this basic assumption. The Charter does not confer judicial functions on the General Assembly and the relations between staff and Organization come within the scope of Chapter XV of the Charter. In the absence of the establishment of an Administrative Tribunal, the function of resolving disputes between staff and Organization could be discharged by the Secretary-General by virtue of the provisions of Articles 97 and 101. Accordingly, in the three years or more preceding the establishment of the Administrative Tribunal, the Secretary-General coped with this problem by means of joint administrative machinery, leading to ultimate decision by himself. By establishing the Administrative Tribunal, the General Assembly was not delegating the performance of its own functions: it was exercising a power which it had under the Charter to regulate staff relations. In regard to the Secretariat, the General Assembly is given by the Charter a power to make regulations, but not a power to adjudicate upon, or otherwise deal with particular instances"<sup>72</sup>.

The Court thus suggested an important and useful distinction between the broad regulatory powers of the General Assembly and the authority of the Secretary-General to decide specific cases. Carrying this principle somewhat further, it may be suggested that the General Assembly should not intervene in questions of detailed implementation of policies, which must be left to the Secretary-General. The instructions issued by the General Assembly should, in principle, not only be of a general character, in the sense that they do not relate to individual cases, but should also maintain a certain measure of generality in their contents. They should not regulate in excessive detail, especially when it comes to administrative trivia. Matters such as reporting channels within the Secretariat or the minutiae of carrying out recruitment policies (*e.g.*, frequency and content of vacancy announcements), should not be a subject of General Assembly resolutions, certainly not those that "request" the Secretary-General to

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<sup>71</sup> [1977] I.C.J. Reports 60.

<sup>72</sup> *Id.* at 61.

carry out certain actions. The question is how to reconcile such detailed instructions with the authority and the responsibility of the Secretary-General under arts.97 and 101 of the Charter.

This is not to suggest that the General Assembly may not make detailed regulations with regard to the staff of the Organization. Thus, in the recent Advisory Opinion of 20 July 1982 on Application for Review of Judgement No.273 of the United Nations Administrative Tribunal, the International Court of Justice stated that "the General Assembly has the power itself to make detailed regulations, as for example, in Annex IV of the Staff Regulations which sets out the rates of repatriation grant"<sup>72a</sup>. It may be observed that the establishment of such rates is clearly within the budget-making authority of the General Assembly, which was not, however, mentioned by the Court in this context. The Court did point out that in the pertinent General Assembly Resolutions, the General Assembly did not make detailed regulations, but "laid down a principle which was in the usual way left to the Secretary-General to give effect to, first by an administrative instruction, and eventually in a new version of the Staff Rules"<sup>72b</sup>.

Obviously, the question whether the General Assembly regulates in excessive detail is one of degree, depends on the subject matter of the regulations and must be considered in the context of the powers granted to the General Assembly and to the Secretary-General by the Charter.

Resolutions such as General Assembly Resolution 35/210 pose a legal problem because of their extremely detailed character which appear to encroach upon the Charter powers of the Secretary-General not only under art.97 but also under art.101<sup>72c</sup>. The latter aspect will be considered in Part III of this article.

As regards the subjection of specific appointments by the Secretary-General to confirmation or consultations by legislative or political bodies, it has already been pointed out that such requests contradict the intent of the drafters of the Charter, as evidenced by the *travaux préparatoires*. The appointment power is not a shared power. Under art.101(1) it belongs to the Secretary-General alone, to be exercised subject only to the regulations established by the General Assembly, which should be of a general character.

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<sup>72a</sup> [1982] I.C.J. Reports 325 at 360.

<sup>72b</sup> *Id.*

<sup>72c</sup> See text accompanying notes 55-56.

### III. Principles Governing Recruitment<sup>73</sup>

In February 1946, the General Assembly expressed the wish that appropriate methods of recruitment be established to assemble a staff that would be characterized by the highest standards of efficiency, competence and integrity, with due regard being paid to recruitment on as wide a geographical basis as possible. The Secretary-General was asked to follow the suggestions concerning recruitment outlined in the report of the Preparatory Commission of the United Nations<sup>74</sup>.

Initially, the Secretary-General's urgent task was to assemble staff so as to make the organization of the Secretariat a reality. Urgency, rather than broad geographical distribution, was the order of the day. And, although in theory merit was clearly established as the paramount principle governing recruitment, the haste that characterized recruitment to the Secretariat did not make it possible to ensure that the qualifications mentioned in art.101(3) of the Charter were always fully met. The picture of the staff that began to emerge was very lopsided. Thus, in 1946 the nationals of the eleven most substantially represented nations comprised 83.8% of the professional internationally recruited staff. In August 1947, thirteen nations had 721 staff members out of a total of 902 in professional and higher grades recruited internationally, other than those in posts requiring special language qualifications<sup>75</sup>. In 1947, thirty-one Member States were clearly underrepresented, including the Soviet Union, India, and the States of Latin America and the Middle East<sup>76</sup>.

#### A. Early Responses

It became obvious that the Secretary-General had to introduce rapidly a greater measure of geographical balance in the Secretariat. Therefore, in September 1948, Trygve Lie proposed a formula to translate the principle of geographical distribution enunciated in art.101(3) of the Charter into practical administrative guidelines for the recruitment of staff. Thus, the Secretary-General stated that the principle of geographical distribution meant not that nationals of a particular State should have a specified

<sup>73</sup> See generally Meron, *op.cit.* (note 2), 11–25.

<sup>74</sup> UN Doc. A/64 at 15 (1946).

<sup>75</sup> Belgium, Canada, Czechoslovakia, Denmark, Ecuador, France, Greece, Haiti, Netherlands, Norway, Poland, United Kingdom and United States of America. 3 UN GAOR, I Annexes 155, 158–159, UN Doc. A/652 (1947).

<sup>76</sup> *Id.*

number of posts at a particular grade or grades, or that they should receive a particular percentage of the total outlay in salaries, but that the Secretariat should be enriched by the experience and culture which each Member State could provide and that each Member State should be satisfied that its culture and philosophy were making a full contribution to the Secretariat. The Secretary-General felt that any rigid mathematical formula, whether related to national income, literacy, financial contributions to the UN budget or any other criterion, would reduce the necessary administrative flexibility. Nevertheless, in contradiction to the cultural content interpretation of the principle of geographical distribution, Secretary-General Lie concluded that since financial contributions to the UN budget had been based on a combination of pertinent criteria, it would be reasonable to take these contributions as a basis for a weighted system, with the possibility of upward or downward variations within 25% of the level of budgetary contributions allowing a degree of flexibility<sup>77</sup>. Moreover, a national minimum quota not dependent on budgetary contributions was introduced whereby no country would be regarded as overrepresented if there were fewer than four of its nationals in the Secretariat<sup>78</sup>.

It became increasingly obvious that the UN Secretariat had, to a considerable extent, become a body of tenured officials. This development may have been intentional, rather than accidental, but its adverse effect on flexibility in changing the composition of the Secretariat was unintended.

In December 1956, Secretary-General Hammarskjöld observed that opportunity for change in the nationality pattern was limited because of the high degree of staff stability. Ensuring the wide geographical basis for recruitment of the staff prescribed in the Charter therefore required continuing, long-term effort<sup>79</sup>. Hammarskjöld believed that in order to have a high quality Secretariat, the majority of the staff would have to serve on a career basis. Although the Secretariat would not offer a reasonable career unless it had a stable overall structure, the Secretariat should also provide an adequate proportion of posts which would be filled by fixed-term appointments of people made available from national civil services and other institutions. In fact, Hammarskjöld thought that fixed-term appointments could be used to create a quicker turnover which would help in the

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<sup>77</sup> *Id.* at 157; see also GA Res. 153 (II), UN Doc. A/519, at 62 (1947).

<sup>78</sup> Secretary-General Bull. No. 77, 3 UN GAOR, I Annexes 155, 160, UN Doc. A/652 (1947). Regarding the implementation of this policy, see *id.* at 156; GA Res. 233, UN Doc. A/810, at 96 (1948).

<sup>79</sup> 11 UN GAOR, I Annexes (Agenda Item 43) 71, UN Doc. A/C.5/689 (1956).

creation of greater geographical balance without sacrificing the stability provided by a career service. He also advocated greater administrative freedom for the movement of staff within the organization. He argued that since the Secretariat was indivisible, the Secretary-General should be free to transfer both posts and staff between departments and offices so as to use the staff to the best advantage where the individuals were most needed<sup>80</sup>.

Although the principle of geographical distribution requires the maintenance of a balance in the Secretariat as a whole rather than within each individual department, the Secretary-General has a legitimate interest in avoiding a situation in which particular units of the Secretariat are staffed or dominated by persons of one particular nationality or even one particular region or group of countries. In practice, there has been a tendency, therefore, to establish "mini" geographical distribution in the various departments.

In the Fifth Committee of the General Assembly, pressure increased for more rapid improvement of the geographical balance. The States admitted to membership in the United Nations after 1955 were dissatisfied not only with the slow rate of improvement of the geographical balance but also with the substance of the 1948 formula, which, pegged as it was to the scale of assessments, inadequately reflected, in their view, the principle of equality of States and the differences in population. During the twelfth session of the General Assembly in 1957, delegates from underrepresented countries argued that a political organization such as the United Nations could not attach only secondary importance to the principle of geographical distribution in the composition of a principal organ such as the Secretariat<sup>81</sup>.

### B. Desirable Ranges

In 1958, the Secretary-General began to use the term "desirable range of posts"<sup>82</sup> in tables showing the nationality and the number of staff in posts subject to geographical distribution, as defined below<sup>83</sup>. The minimum

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<sup>80</sup> See 10 UN GAOR, Annexes (Agenda Items 38 & 47) 40, 41-42, UN Doc. A/C.5/630 (1955).

<sup>81</sup> See 12 UN GAOR, Annexes (Agenda Item 51) 2, 4, UN Doc. A/3797 (1957).

<sup>82</sup> See, e.g., 13 UN GAOR, Annexes (Agenda Item 53) 1, 2-3, UN Doc. A/C.5/750 (1958).

<sup>83</sup> See note 98, *infra*.

desirable range of posts was one to three for each Member State whose rate of assessment for the regular budget was less than 0.14%. The Secretary-General stressed that analyses of the geographical distribution of the staff in comparison with the desirable ranges were offered as useful tools but that the questions involved could not be dealt with in mathematical terms nor with mathematical precision<sup>84</sup>.

General Assembly Resolution 1436<sup>85</sup>, adopted in 1959, stated that vacancies in Secretariat posts at higher levels should be filled, as far as possible, by qualified candidates who were representative of geographical areas and main cultures either not represented or not adequately represented in such posts. Thus, the General Assembly started stressing the greater representation at senior posts of "geographical areas and main cultures".

In December 1959, the General Assembly, by Resolution 1446<sup>86</sup>, appointed a Committee of Experts on the Activities and Organization of the Secretariat whose mandate was to work together with the Secretary-General to review the activities and organization of the Secretariat and bring about maximum economy and efficiency. Guillaume Georges-Picot, former Permanent Representative of France to the United Nations and former United Nations Assistant Secretary-General, was appointed chairman of the Committee. Although the initial terms of reference of the Committee of Experts did not include questions pertaining to the geographical distribution of the staff, in 1960 the General Assembly decided in Resolution 1559<sup>87</sup> to request the Committee of Experts to study the categories of posts subject to geographical distribution and the criteria for determining the range of posts for each Member State with a view to securing a wide geographical distribution.

The decision to revise the original terms of reference of the Committee of Experts was related to two developments. First, the Soviet Union proposed introducing "troika" arrangements into the Secretariat. The Soviet Union argued that the United Nations could not fulfill its political obligations unless the various regions, with their distinctive political characteristics, were adequately represented in the Secretariat. The Secretariat should equally represent three groups of Member States described as the "socialist" States, the "neutralist" States, and the "United States and its Allies".

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<sup>84</sup> 14 UN GAOR, Annexes (Agenda Item 54) 1, 1-2, UN Doc. A/C.5/784 (1959).

<sup>85</sup> GA Res. 1436, 14 UN GAOR, Supp. (No. 16) 47, UN Doc. A/4354 (1959).

<sup>86</sup> GA Res. 1446, 14 UN GAOR, Supp. (No. 16) 52, UN Doc. A/4354 (1959).

<sup>87</sup> GA Res. 1559, 15 UN GAOR, Supp. (No. 16) 42, UN Doc. A/4684 (1960).

Opposing the "troika" concept, delegates of the western countries argued that geography was subordinate to the paramount consideration of merit under art.101 of the Charter and moreover, that staff members could not seek or receive instructions from governments and Member States for their part undertook to respect the exclusively international character of the responsibilities of the Secretary-General and his staff under art.100. Insistence on the notion of "representation" of Member States in the Secretariat, these countries argued, might defeat the essential purpose of geographical distribution which was enrichment of the Secretariat with personnel of the highest quality reflecting the broadest cross section of differing experiences and cultures. Second, the newly admitted Member States argued that the existing method of determining the desirable range of posts for each Member State was at variance with the Charter which accorded equality to each Member State without reference to material resources<sup>88</sup>.

While opposing the Soviet demands for a "troika" as being contrary to the Charter, the Secretary-General supported the inclusion of population as a factor in the recruitment of staff because any formula based exclusively on the contributions of Member States to the budget would have the effect of penalizing States which were economically weak but could make a good contribution to the work of the Secretariat<sup>89</sup>.

The Committee of Experts submitted its report in June 1961<sup>90</sup>, when the membership of the United Nations had already increased to 99 States. Most of the new members were the newly independent States of Asia and Africa. The Committee of Experts enumerated the arguments advanced by critics of the existing formula for the calculation of desirable ranges: the system was at variance with the Charter principle of equality of States; it gave a preponderant influence in the Secretariat to certain countries; it was faulty in its equal treatment of all posts; and it did not give sufficient weight to population. In view of these criticisms, the Committee of Experts proposed a new formula which would take into account not only financial contributions but also population and the equality of States. The new formula would introduce an element of flexibility by allowing for the allocation of a certain number of posts on a regional basis. A minimum of two staff members from each Member State was to be adopted in order to reflect the expanded membership of the Organization. To reflect popula-

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<sup>88</sup> See generally 15 UN GAOR, II Annexes (Agenda Item 60) 22, UN Doc. A/4642 (1960).

<sup>89</sup> 16 UN GAOR, III Annexes (Agenda Item 61) 47-48, UN Doc. A/4794 (1961).

<sup>90</sup> 16 UN GAOR, III Annexes (Agenda Item 61) 1, UN Doc. A/4776 (1961).

tion, one staff member was to be recruited for each 10 million people up to 150 million people and one additional staff member was to be recruited for each 30 million people in excess of 150 million in each Member State. The remainder of the posts available under geographical distribution would be allocated to Member States in accordance with their contributions to the regular budget of the United Nations. For the most senior posts in the Secretariat (D-2 and higher), the Committee of Experts proposed a similarly constructed formula to distribute posts on a regional basis<sup>91</sup>.

During the sixteenth session of the General Assembly, the report of the Georges-Picot Committee gave rise to a debate in the Fifth Committee which focused on conflicting interpretations of the Charter. Western delegates argued that since the principle of merit was the paramount consideration under art.101(3), it inevitably followed that geographical considerations were subordinate. They argued that the term "geographical distribution" was not to be found in the Charter<sup>92</sup> which instead provided that the staff should be recruited on the basis of certain prescribed qualifications set out in art.101(3). The Charter did not even stipulate that candidates be nationals of any particular country as a condition of their recruitment into the Secretariat. Therefore, it was erroneous to interpret "geographical basis" to mean nationality.

While some delegations interpreted "geographical basis" in a regional sense, others gave it an ideological twist. They argued that the Secretariat was composed of individuals rather than nationals of Member States and its staff must be protected by art.8 of the Charter, thus understood as going beyond the prohibition of discrimination on the basis of sex. The correct way of interpreting art.101, according to this view, was to give it a broad cultural interpretation.

Other delegations maintained that the word "geographical" should be interpreted in its literal sense and certainly not in any political sense. The idea of "representation" of countries or groups of countries within the Secretariat was contrary to the Charter and staff members could not be recruited on the basis of political or ideological considerations.

The Soviet Union, however, continued to insist that the term "geographical" had been used by the authors of the Charter mainly in its political sense since the Charter was a political document and that the contemporary reality of three main groups of nations must be reflected in

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<sup>91</sup> *Id.* at 10-11.

<sup>92</sup> But see UN Charter art.23, para.1 ("equitable geographical distribution"), which relates to the composition of the Security Council.

the composition of the Secretariat. Moreover, according to the Soviet thesis, the Member State alone could decide whether or not a given person was one of its nationals and whether or not he was qualified to "represent" his country in the Secretariat<sup>93</sup>.

The Fifth Committee, confronted with two competing draft resolutions, was unable to reach agreement and asked the Secretary-General for a statement of his views, to be presented to the seventeenth session of the General Assembly in 1962.

In that report, the Secretary-General endorsed the view that a certain number of posts should be allocated on the basis of membership in the Organization. The contribution factor should also continue to be used. But both national wealth and population had a bearing on the determination of the scale of assessments. The report pointed out that of two countries with the same total income, the country with the larger population would have a lower assessment rate and thus would be entitled to relatively fewer posts than the country with the smaller population. The Secretary-General advocated the establishment of a reserve or "float" of a certain number of posts to be used for corrective action instead of the adoption of a separate population factor, even if such a factor were moderated by a floor and a ceiling<sup>94</sup>.

Turning to the scope of application of geographical distribution<sup>95</sup>, the Secretary-General thought that bodies financed by voluntary contributions should not be formally subject to the principle of geographical distribution. These organs were designed to give assistance to countries which requested it. It was not in the interest of such programmes to be bound to a rigid formula, even if it were based on contributions. Given these organizations' relatively small staff and the importance of technical competence, serious consequences could result from the rigidity in administration and the restrictions in choice of staff that a fixed formula could introduce. It was, of course, nonetheless desirable to have as broadly based staffs for such bodies as possible.

In conclusion, the Secretary-General stressed that no statistical formula could be considered a practical substitute for the discretion and good sense of the chief administrative officer. He proposed that for professional posts in the Secretariat (excluding those with special language requirements), equitable geographical distribution should account for a minimum range of

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<sup>93</sup> 16 UN GAOR, III Annexes (Agenda Item 64) 20, UN Doc. A/5063 (1961).

<sup>94</sup> 17 UN GAOR, III Annexes (Agenda Item 70) 2,4, UN Doc. A/5270 (1962).

<sup>95</sup> Regarding posts not subject to geographical distribution, see note 98 *infra*.

1 to 5 posts attributable to membership; a reserve of 100 posts was to be allocated on a regional basis to make up differences in population which do not receive sufficient weight in the other two factors; and the balance of posts should be distributed on the basis of the ratios of assessed contributions. The General Assembly endorsed the Secretary-General's recommendations in its Resolution 1852<sup>96</sup>. That Resolution also called for a more balanced regional composition of the staff at the D-1 level and above.

It is interesting to observe that the Georges-Picot report would have given the factor of population a weight of about 15% in the formula for staff recruitment. The draft resolution presented during the sixteenth session of the General Assembly by Afro-Asian and Latin American countries would have given the factor of population an even greater weight, 33% based on the Secretariat's size at the time. There was a strong, though unarticulated, feeling among the Western countries that either proposal would have given too great a representation in the Secretariat to the highly populated Asian countries<sup>97</sup>.

The formula adopted in Resolution 1852, modified by variations in the relative weight of various factors, forms the conceptual basis of the present system. In 1975, for example, the principle of geographical distribution was expressed in desirable ranges calculated for each State. Each Member State was assigned a range of 1 to 6 posts by virtue of its membership in the Organization. Out of 2,400 professional and higher level posts in the Secretariat proper financed under the regular budget<sup>98</sup>, 200 posts were distributed among the geographical regions, taking into account population. The remaining posts were allocated to each State on the basis of its assessment for the budget<sup>99</sup>. Obviously, as the number of Member States has increased, the number of posts attributed to membership has increased, while the number of remaining posts attributed to contributions to the budget has declined. However, this latter factor is now of minor importance, since the membership of the Organization has been stabilized to a considerable extent.

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<sup>96</sup> UN Res. 1852, 17 UN GAOR, Supp. (No. 17) 53, UN Doc. A/5217 (1962).

<sup>97</sup> See also 17 UN GAOR, III Annexes (Agenda Item 70) 2, 4-5, UN Doc. A/5270 (1962).

<sup>98</sup> Excluded from geographical distribution are professional posts requiring special language qualifications (such as interpreters and translators), general service category posts (as well as manual labor and security posts), posts filled after interagency consultations, expert posts in the technical cooperation programmes, and posts in programmes financed by voluntary contributions.

<sup>99</sup> UN Doc. A/10184, at 6 (1975).

There had been considerable differences in the representation of States from the same geographical region in all posts up to and including the senior levels<sup>100</sup>. It could have been expected, therefore, that there would be an emphasis on distribution of posts within each region. And, indeed, General Assembly Resolution 1928<sup>101</sup> requested that in the future recruitment of staff, the Secretary-General take into special account the equitable distribution of posts among Member States of each region, especially at the D-1 level and above.

### C. Language Balance and Additional Guidelines

Various General Assembly resolutions adopted after Resolution 1852 not only called for preference to be given to candidates from underrepresented States, but also superimposed on the system of desirable ranges additional recruitment guidelines or criteria that are not and cannot be rendered in mathematical terms.

Thus, during the twenty-first session of the General Assembly, following an initiative by France, criticism was levelled at the Secretariat for making an apparent differentiation in its recruitment policy between French-speaking and English-speaking candidates. It was argued that the former were often rejected on the ground that they did not have a sufficient command of English but that knowledge of French was not a requirement for English-speaking candidates. It was further argued that although French was a working language of the Secretariat, French-speaking staff members were judged on the quality of their work in another language. The Secretariat should therefore improve its recruitment practices, so as to reflect more accurately the various cultures of the members of the United Nations. The French initiative was aided by Francophone Africa, the representation of which was lagging. In order to corral the Latin American votes, it was decided at a late stage that the same consideration should be given to Spanish and that no hierarchy among the several working languages should be established. It was proposed that a linguistic factor should be introduced into the guidelines for recruitment. In light of such

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<sup>100</sup> See, e.g., the figures for India and Pakistan, 18 UN GAOR, III Annexes (Agenda Item 66) 1, 7, UN Doc. A/C.5/987 (1963).

<sup>101</sup> GA Res.1928, 18 UN GAOR, Supp. (No.15) 60, UN Doc. A/5515 (1963).

views<sup>102</sup>, the General Assembly, in Resolution 2241 B<sup>103</sup>, requested the Secretary-General to study the methods that should be used to ensure a more equitable use of the working languages and a better balance among those languages in the recruitment of staff.

Some delegates in the General Assembly emphasized again the desirability of introducing a weighted point system that would reflect the level of posts. The Secretary-General repeatedly stated that no advantage would be gained by introducing such a further complication<sup>104</sup>.

In his report to the twenty-fourth session of the General Assembly, the Secretary-General reported that he interpreted Resolution 1852 to mean that candidates from overrepresented countries should not be considered for appointment except in a number of exceptional circumstances, including the case where the candidate, although a national of an overrepresented country, came from a region that was itself substantially underrepresented. Here the Secretary-General interpreted the term "region" as "designating a geographical or linguistic grouping"<sup>105</sup>.

During the debate which took place in the Fifth Committee, doubts were expressed regarding the appropriateness of recruiting nationals of overrepresented countries from underrepresented regions. Indeed, the principle of balanced regional composition had been introduced by Resolution 1852 only for certain senior posts, given the fact that the limited number of senior posts would not lend itself to distribution on the basis of nationality. Moreover, linguistic balance and equitable geographical distribution were separate matters, and linguistic groupings should not be included in the term "region" as used to attain geographical balance<sup>106</sup>. By

<sup>102</sup> See 21 UN GAOR, III Annexes (Agenda Item 81) 26, 27–28, UN Doc. A/6605 (1966). See generally Report of the Committee on the Reorganization of the Secretariat, UN Doc. A/7359, at 36–37 (1968); 23 UN GAOR, II Annexes (Agenda Item 81) 2, 6–14, UN Doc. A/7334 (1968).

<sup>103</sup> GA Res.2241B, 21 UN GAOR, Supp. (No.16) 89, UN Doc. A/6316 (1966). The basis resolution on the use of official (Chinese, English, French, Russian and Spanish) and working (English and French) languages is GA Res.2 (I), UN Doc. A/64 at 9 (1946). Several organs have since passed resolutions adopting additional working languages. Regarding official and working languages of the General Assembly, see Rule 51 of the Rules of Procedure of the General Assembly, UN Doc. A/520/Rev.12 (1974). Concerning working languages of the Secretariat, see also GA Res.2359 B, 22 UN GAOR, Supp. (No.16) 66, UN Doc. A/6716 (1967); GA Res.2480, 23 UN GAOR, Supp. (No.18) 77, UN Doc. A/7218 (1968).

<sup>104</sup> See, e.g., 22 UN GAOR, III Annexes (Agenda Item 82) 2, 7–8, UN Doc. A/6860 (1967).

<sup>105</sup> 24 UN GAOR, II Annexes (Agenda Item 83) 1, 3, UN Doc. A/7745 (1969).

<sup>106</sup> See 24 UN GAOR, III Annexes (Agenda Item 83) 28, 30, UN Doc. A/7851 (1969).

Resolution 2539<sup>107</sup>, the General Assembly reaffirmed the need for an equitable geographical distribution of the staff between regions and within regions, particularly at the level of senior posts, and the need for a better linguistic balance in the Secretariat and once more renewed its invitation to the Secretary-General to give preference to nationals from countries unrepresented or underrepresented. Aware of the growing percentage of staff serving on fixed-term appointments, the General Assembly also stressed that long-term service was conducive to greater efficiency in certain posts entailing complex duties and responsibilities<sup>108</sup>.

In Resolution 2736<sup>109</sup>, the General Assembly dealt with a number of issues involving the Secretariat. Concerning recruitment of staff for the regional economic commissions, the General Assembly stated that if qualified candidates from comparatively underrepresented countries could not be found within a reasonable period, preference should be given to qualified candidates from other countries of the same region that were not fully represented. As regards posts involving complex duties and responsibilities, the General Assembly considered that preference should be given to those who were willing to accept a career appointment or a fixed-term appointment of not less than five years. Given the rising age structure of the Secretariat, the General Assembly also requested that special efforts be made to recruit young men and women for service with the United Nations through the development of more objective selection methods and, wherever appropriate, open competitive examinations.

During the twenty-sixth session, Colombia first moved and later withdrew an amendment to the recruitment formula which was designed to give preference to nationals of developing countries<sup>110</sup>. During the twenty-seventh session, the Fifth Committee agreed to include in its report a text proposed by Costa Rica which would have required that greater attention be given at the time of recruitment, especially to senior management policy posts, to candidates from underrepresented countries, "particularly the developing countries"<sup>111</sup>.

The Secretary-General pointed out that the Costa Rican text raised difficult questions of interpretation. The text suggested that the principle of

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<sup>107</sup> GA Res.2539, 24 UN GAOR, Supp. (No.30) 83, UN Doc. A/7630 (1969).

<sup>108</sup> For the interpretation of GA Res.2539 by the Secretary-General, see 25 UN GAOR, II Annexes (Agenda Item 82) 1, 2-3, UN Doc. A/8156 (1970).

<sup>109</sup> GA Res.2736, 25 UN GAOR, Supp. (No.28) 112, UN Doc. A/8028 (1970).

<sup>110</sup> 26 UN GAOR, Annexes (Agenda Item 84) 1,3, UN Doc. A/8604 (1971).

<sup>111</sup> 27 UN GAOR, Annexes (Agenda Item 81) 1,9, UN Doc. A/8980 (1972).

geographical distribution should be applied to a particular kind of post, namely senior management policy posts as distinguished from senior posts generally. Moreover, it introduced a distinction between candidates of underrepresented developing countries and those who came from other underrepresented countries. Previously, preference was to be given to candidates from underrepresented countries regardless of the degree of their development<sup>112</sup>. The Secretary-General suggested that the balance of factors established in 1962 had already been altered by the introduction of additional guidelines. The fitness of a candidate for appointment had to be assessed against such additional criteria as: (a) the proportion of regional staff to be provided in each of the regional economic commissions<sup>113</sup>; (b) the need to improve the composition of the staff by working language, by age, and by sex; (c) the share of appointments to be assigned to those who were willing to serve on a career or long-term basis and those who could only serve for a relatively short period; and (d) for candidates for senior posts, whether the appointment would bring about a better distribution among the regions and within the region. It was not clear what the relationship was between the various criteria and what weight should be given to each of them. Moreover, given the growing emphasis on adherence to quantitative guidelines, there was a greater reluctance to exercise the administrative discretion that was necessary to take into account the qualitative fitness of a candidate if his or her appointment appeared to fall outside those guidelines<sup>114</sup>.

During the twenty-ninth session of the General Assembly, the Secretary-General presented initial recommendations regarding a revision of the formula for calculating the desirable ranges so as to raise the minimum allowed for the membership factor<sup>115</sup>. The General Assembly, however, endorsed a decision of the Fifth Committee which once more paid lip service to the principle that the use of national and regional desirable ranges was designed to be only a flexible tool of management. The Fifth Committee maintained its request that, in recruiting staff for the senior categories that participate directly in the administrative policy-making of the United Nations, greater attention should be given to candidates from countries inadequately represented in such categories, particularly candidates from

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<sup>112</sup> See UN Doc. A/9120, at 10 (1973).

<sup>113</sup> The policy in the regional economic commissions was to have a "desirable mix" of staff, with 75 % from within the region and 25 % from other regions.

<sup>114</sup> See UN Doc. A/9120, at 35-36 (1973).

<sup>115</sup> See UN Doc. A/9724, at 6 (1974).

the developing countries. The Fifth Committee stressed that the principle of equitable geographical distribution should be applied to the Secretariat as a whole and that no post, department, division or unit should be considered the exclusive preserve of any individual Member State or any region<sup>116</sup>.

In 1975, the [Gardner] Group of Experts on the Structure of the United Nations System proposed that countries within a region or within a sub-region agree among themselves to pool the number of posts allocated to them for purposes of satisfying the requirements of equitable geographical distribution<sup>117</sup>. The Secretary-General supported this concept of regional pooling since it would give him a greater measure of flexibility in the recruitment of nationals in a given region, as long as the region itself was not overrepresented<sup>118</sup>. This would amount, of course, to a shift in emphasis from a national to a regional balance in the composition of the Secretariat. Such a regional approach to recruitment does not appear to be popular among the many underrepresented countries in various regions that view with jealousy the overrepresentation of certain countries within their regions.

In his 1975 report on the composition of the Secretariat, the Secretary-General drew the attention of the General Assembly to the practice of excluding various categories of staff from the principle of geographical distribution<sup>119</sup>, and raised the question of whether the Organization should not take into account the advantages accruing to those Member States whose language was an official or working language, or those Member States on whose territory United Nations offices have been established. In both cases, such States had considerable numbers of nationals working for the United Nations apart from those recruited under the "quota" system<sup>120</sup>. This appeared to suggest that the number of officials from such countries should be decreased.

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<sup>116</sup> One of the departments in which a cultural balance is necessary (e.g. between the common law and the civil law countries) is the Office of Legal Affairs. For additional guidelines, see Report of the Fifth Committee, UN Doc. A/9980, at 12 (1974).

<sup>117</sup> A New United Nations Structure for Global Economic Co-operation, UN Doc. E/AC.62/9, at 27 (1975).

<sup>118</sup> UN Doc. A/10184, at 8 (1975).

<sup>119</sup> *Id.*

<sup>120</sup> Moreover, at the 1975 Sixth Annual [Stanley Foundation] Conference on United Nations Procedures, in which a number of senior officials from the Secretariat participated, the view was expressed that there was less justification for entirely excluding the growing number of language posts from the application of the principle of geographical distribution. See Stanley Foundation, Report of the Sixth Annual Conference on United Nations Procedures, 14 (1975).

In the view of the author, the inclusion of posts with special language requirements, now filled on the basis of objective competitive examinations, among those subject to geographical distribution would make the staffing of such posts extremely difficult. It is also obvious that, if the language staff from countries such as the United Kingdom, China, the Soviet Union and France were added to their nationals serving in posts subject to geographical distribution, the national representation of these countries would be greatly inflated by staff performing basically a servicing function, and those countries would find it more difficult to claim substantive or policy-making posts. Such a proposal would thus be unacceptable to the countries that already have many nationals working in language posts in the Secretariat.

In the same report, the Secretary-General made suggestions for a further increase in the weight of the membership factor<sup>121</sup>. He proposed that the number of posts subject to geographical distribution be raised from 2,400 to 2,600. The minimum range allowed for each Member State by reason of membership alone would be raised from 1 to 6 to 2 to 8. According to this formula, measured by the median of the desirable range, the membership factor would represent 26.5% of the total (in comparison to 20.1% in August 1975), the weight of population would be raised to 8.5% (from 8.3% in August 1975), and the weight of contributions would be lowered to 65.0% (from 71.7% in August 1975). These figures were for a membership of 138 Member States. These tentative suggestions of the Secretary-General aroused, however, concerted opposition on the part of the larger contributors who argued in the course of the thirtieth session of the General Assembly that, as a consequence of the admission of new Member States, the number of posts allocated to the factor of membership was quickly rising at the expense of the number of posts remaining to be allocated to the factor of contributions and that there was no justification, therefore, for changing the formula in favor of the membership factor.

Following the debate in the Fifth Committee, the Secretary-General was asked to present recommendations to the thirty-first session of the General Assembly. Despite the absence of consensus in the Fifth Committee and objections on the part of the larger contributors, it was clear that the trend in favor of greater weight being given to the factor of membership, which reflects the principle of equality of States, at the expense of the factor of contributions, was to continue inexorably.

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<sup>121</sup> See UN Doc. A/10184 (1975).

The increasing emphasis on the principle of geographical distribution for senior posts and, indeed, all posts in the Secretariat has resulted to a considerable extent from the claims of the largely underrepresented developing countries. Some of these countries have regarded references to the principle of merit as merely an excuse for delaying or obstructing the improvement of their nationals' representation in the Secretariat.

Thus, a draft resolution which was proposed in 1975 by a number of underrepresented countries led by Japan (an underrepresented and developed country) which originally requested the Secretary-General to take all necessary measures to recruit the staff who are subject to geographical distribution from the countries unrepresented or underrepresented in the Secretariat<sup>122</sup> was amended by adding the words "in particular from the developing countries" and adopted as General Assembly Resolution 3417 B<sup>123</sup>. Preference for nationals of developing countries over nationals of other underrepresented Member States was thereby introduced for recruitment to all posts in the Secretariat, not only to senior posts, as requested in earlier Fifth Committee reports.

Although Resolution 3417 B, which was to be implemented in accordance with art.101(3) of the Charter, was adopted by the Fifth Committee without objection, another draft resolution pushed by the powerful voting group of the developing countries aroused considerable opposition on the part of the developed countries. The debate on this draft was of particular interest because it focused on art.101(3). The developing countries, led by Iran, proposed a draft resolution that noted in its preambular paragraphs that, although 73 % of the Member States were developing countries, 64.5 % of the staff members occupying senior positions in the Secretariat were nationals of developed countries and that the achievement of the objectives and the goals of the United Nations, especially with respect to the developing countries, required that developing countries be appropriately represented at policy-making levels. The draft resolution requested the Secretary-General to take appropriate steps to increase the number of staff members recruited from among nationals of developing countries for senior posts in the Secretariat. Although this draft did not contain any novel elements (except that principles previously expressed in Fifth Committee reports would now be elevated to the more formal status of General Assembly resolutions), it was opposed by the representative of the United

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<sup>122</sup> UN Doc. A/C.5/L.1271 (1975).

<sup>123</sup> GA Res.3417 B, 30 UN GAOR, Supp. (No.34) 129, UN Doc. A/10034 (1975).

States who stressed that the principle of merit was to be paramount in recruitment and that, in the formula for determining the desirable ranges, financial contributions were the overriding factor. He argued that the representation of developing countries at policy-making levels was already somewhat higher than the midpoint of their assigned range. He was opposed to putting pressure on the Secretary-General to increase the number of officials from developing countries in senior posts when the Secretary-General was already complying with the formula approved by the General Assembly<sup>124</sup>.

The delegate from New Zealand proposed to insert in the operative paragraph the words "taking into consideration Article 101, paragraph 3, of the Charter<sup>125</sup>", but the sponsors rejected the amendment on the ground that the provisions of the Charter were implicit in the draft. The New Zealand amendment was put to the vote and rejected. The draft resolution itself was adopted and became General Assembly Resolution 3417 A<sup>126</sup>.

#### D. Recent Developments

In order to give proper encouragement to the increased employment of women in the Secretariat, the General Assembly recommended a mathematical guideline for the recruitment of women. By Resolution 3416<sup>127</sup>, it requested the Secretary-General to make every effort during the years 1976–1979 to fill a number of posts subject to geographical distribution from each region<sup>128</sup> with qualified women, with priority given to candidates from countries which are unrepresented or underrepresented in the Secretariat. The same provision added, however, that this request should not adversely affect opportunities for recruitment of qualified men from the same unrepresented or underrepresented countries. Whether it is possible to avoid such an adverse impact is, however, open to question. The advancement of the representation of women in the Secretariat was reiterated the following year in General Assembly Resolution 31/26<sup>129</sup>, but this goal was now pressed specifically with regard to professional positions

<sup>124</sup> See UN Doc. A/C.5/SR.1756, at 12–13 (1975).

<sup>125</sup> See *id.* at 15.

<sup>126</sup> GA Res. 3417 A, 30 UN GAOR, Supp. (No. 34) 129, UN Doc. A/10034 (1975).

<sup>127</sup> GA Res. 3416, *id.*

<sup>128</sup> The number was equivalent to 5% of the midpoint of the desirable range of each region. *Id.*

<sup>129</sup> GA Res. 31/26, 31 UN GAOR, Supp. (No. 39) 147, UN Doc. A/31/39 (1976).

at the policy-making level, with the object of improving the proportion of women in senior positions.

Resolution 31/26 also accepted a number of proposals on staff recruitment made by the Secretary-General<sup>130</sup>. It adopted a new minimum desirable range of 2 to 7 posts for Member States and urged the Secretary-General to increase the proportion of younger people in the Secretariat. It also reiterated the request that the number of staff from developing States in senior and policy-making posts be increased.

The different goals reflected in Resolution 31/26 were repeated in subsequent resolutions, often with varying emphasis. For example, General Assembly Resolution 32/17 B<sup>131</sup> urged the Secretary-General to make greater efforts to appoint younger people, but this time the focus was placed on their appointment to senior posts.

In 1978, the Secretary-General reviewed the various recruitment guidelines which had been established in the course of time by the General Assembly and the progress made in their implementation<sup>132</sup>. The multiplicity of guidelines required particular attention:

“In its resolutions over the years, the Assembly dealt with various aspects of the composition of the Secretariat and set out recruitment policies to guide the Secretary-General in the selection of the staff. At different times the following matters have been the subject of the Assembly’s concern: methods of selection, recruitment missions, competitive examinations, long-term recruitment planning, recruitment standards, the development of standard qualifications, balancing the needs for new talent and the use of existing talent, the proportion of fixed-term and career staff, the type of staff to be preferred in posts involving complex duties and responsibilities, the representation of all Member States, priority to be given to nationals of unrepresented and under-represented Member States, the composition of the staff at senior levels, the linguistic balance of the staff, the age distribution of the staff, the proportion of men and women on the staff, the principle that no post should be considered the exclusive preserve of any Member State or group of Member States and the proportion of staff from the region in regional offices”<sup>133</sup>.

Of these many and sometimes contradictory guidelines, the Secretary-General identified four major concerns which had guided his recent recruitment efforts: (a) the compatibility of the merit principle with

<sup>130</sup> See, e.g., UN Doc. A/31/154, at 8 (1976).

<sup>131</sup> GA Res. 32/17 B, 32 UN GAOR, Supp. (No. 45) 183, UN Doc. A/32/45 (1977).

<sup>132</sup> UN Doc. A/33/176 (1978).

<sup>133</sup> *Id.* at 4.

recruitment on as wide a geographical basis as possible<sup>134</sup>; (b) that priority in recruitment be given to the nationals of unrepresented and underrepresented Member States; (c) the importance of equitable geographical distribution and of the representation of women and nationals of developing States at the senior level of the Secretariat; and (d) the importance of recruiting women and younger persons to all levels of the Secretariat<sup>135</sup>. The Secretary-General also drew attention to the fact that despite art.101(1) of the Charter, which gave the Secretary-General the authority to appoint staff, the General Assembly had given to the heads of the secretariats of a number of subsidiary organs an independent power of appointment<sup>136</sup>.

The General Assembly ventured further into determining more precise mathematical guidelines for the recruitment of certain categories of staff during the same session in which that report was released. In its Resolution 33/143<sup>137</sup>, the General Assembly requested the Secretary-General to try to reserve 40% of all vacancies which arose in professional posts subject to geographical distribution during 1979/80 for the appointment of nationals of unrepresented and underrepresented countries. This would ensure that all such countries achieve their desirable ranges during that period, "while ensuring that the representation of countries which are within desirable ranges does not decrease". Secondly, the Resolution requested the Secretary-General to increase the number of women in posts subject to geographical distribution to 25% of the total over a four year period<sup>138</sup>.

In attempting to comply with this Resolution, the Assistant Secretary-General for Personnel Services issued new guidelines for recruitment in which he stated:

"The aim must be to ensure that at least two of every five candidates put forward for vacancies in each Department and Office are nationals of an unrepresented or under-represented Member State. At most, three of every five candidates put forward should be nationals of another Member State, if possible, that is within its desirable range... Recruitment of nationals of over-represented Member States should be limited to those cases in which no qualified candidate from an

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<sup>134</sup> The Secretary-General believed that the two principles were compatible, given that the Secretariat should reflect the varied cultures and technical competence of its Member States, should have a truly international character, and should avoid undue predominance of particular national practices. *Id.* at 4-5.

<sup>135</sup> *Id.* at 5-6.

<sup>136</sup> *Id.* at 6.

<sup>137</sup> GA Res.33/143, at II 1, 33 UN GAOR, Supp. (No.45) 205, UN Doc. A/33/45 (1978).

<sup>138</sup> *Id.* at III 1.

unrepresented or under-represented or well-represented Member State has been found through the normal recruitment process”<sup>139</sup>.

As regards the employment of women, the administrative guidelines stated that in view of the numerical goals established by the General Assembly, “at least two out of the same five appointments to posts at the Professional level and above should be of women...”<sup>140</sup>.

These guidelines, taken together with the 40% goal established by Resolution 33/143, gave rise to criticism, voiced by some delegates in the Fifth Committee to the effect that candidates from over-represented countries were discouraged from applying for posts regardless of their qualifications. In a new memorandum on Recruitment Policies and Procedures, the Assistant-Secretary-General for Personnel Services rejected the “erroneous impression that we are not concerned with competence”<sup>141</sup>. He added:

“Our policy must be to consider all candidates. If there are several equally qualified candidates, priority will be given to those from unrepresented and under-represented countries, to women, and to young candidates in the order given as mandated by the General Assembly. However, superior candidates, that is, whose outstanding merit is clearly established, should always be put forward with other candidates for review by the Appointment and Promotion machinery even if they are from over-represented countries. This would particularly apply to female candidates”<sup>142</sup>.

These points were repeated in the 1980 Report of the Secretary-General on the Composition of the Secretariat<sup>143</sup>.

Given the absence of examinations as a major method to determine the merit of candidates, and the continuing pressure for the application of the desirable ranges, *i.e.*, quota system, statements such as these are likely to be of limited practical significance. The lip service paid by the General Assembly to the compatibility of the merit principle with the principle of geographical distribution has become more and more a mere ritual<sup>144</sup>.

A similar ritualistic statement is the constant reaffirmation by the General Assembly that no post should be considered the exclusive preserve of

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<sup>139</sup> Internal memorandum, issued June 4, 1979, on Recruitment and related Policies and Procedures, paras.4–5, in the author’s files. In a somewhat different version, these administrative guidelines appear in the Report of the Secretary-General on the Composition of the Secretariat, UN Doc. A/34/408, at 8 (1979).

<sup>140</sup> Internal memorandum, issued June 4, 1979, para.7, note 139, *supra*.

<sup>141</sup> Internal memorandum, issued March 10, 1980, para.4, in the author’s files.

<sup>142</sup> *Id.*

<sup>143</sup> UN Doc. A/35/528, at 10 (1980).

<sup>144</sup> See, *e.g.*, preambular para.8, GA Res.35/210, 35 UN GAOR, Supp. (No.48) 236, UN Doc. A/35/48 (1980).

any Member State or group of States<sup>145</sup>. This reaffirmation, too, has not been followed by the consistent and rigorous application of an administrative policy against "national preserves" in the Secretariat. Even more dangerous is the exemption given to officials from the Soviet Union and other East European countries in the Secretariat from the official policy against national preserves. Despite the principle of sovereign equality of States enunciated in art.2(1) of the Charter, General Assembly Resolution 35/210, while reaffirming that no post should be considered the exclusive preserve of any Member State or group of States, requested the Secretary-General "to continue to permit replacement by candidates of the same nationality ... in respect of posts held by staff members on fixed-term contracts ... to ensure that the representation of Member States whose nationals serve primarily on fixed-term contracts [a euphemism for East European nationals] is not adversely affected"<sup>146</sup>.

There have been persistent demands by States which are not major contributors to the assessed budget of the United Nations for an increase in the membership allocation and indeed, in the course of time, this allocation has gone up. In 1979, the General Assembly, by Resolution 34/219<sup>147</sup>, requested the Secretary-General to present to it a series of alternative tables of desirable representation for all Member States on the basis of a redistribution of the percentages then used for contribution and membership so as to reflect an allocation of staff posts based equally on contribution and membership in the Organization, while maintaining the existing percentage for population. In 1980, such alternative tables were presented to the General Assembly by the Secretary-General<sup>148</sup>. General Assembly Resolution 35/210<sup>149</sup> then requested the Secretary-General to calculate new desirable ranges for all Member States, to apply from January 1, 1981, on the following bases: (a) the base figure for the calculations would be 3,350 posts; (b) the membership factor would be based on 7.75 posts as the midpoint of the minimum desirable range; (c) the population factor, to which 240 posts would be allocated, would be distributed among the vari-

<sup>145</sup> See Mer on, *op. cit.* (note 2), 93-101 for a discussion of "national preserves" in the UN Secretariat.

<sup>146</sup> GA Res.35/210, at I(3)-I(4), 35 UN GAOR, Supp. (No.48) 236, UN Doc. A/35/48 (1980). See also T. Mer on, *In Re Rosescu and the Independence of the International Civil Service*, 75 AJIL 910, 923 (1981).

<sup>147</sup> GA Res.34/219, 34 UN GAOR, Supp. (No.46) 223, UN Doc. A/34/46 (1974).

<sup>148</sup> See A/C.5/35/36 (1980).

<sup>149</sup> GA Res.35/210, 35 UN GAOR, Supp. (No.48) 236, 236-237, UN Doc. A/35/48 (1980).

ous regions in proportion to their populations; and (d) the contribution factor would be based on the distribution of the remaining posts in proportion to the scale of assessments. The General Assembly further decided that in the future, 10% of all additional posts should be added to the allocation for population, and the remaining posts should be assigned equally to the membership and contribution factors<sup>150</sup>. These were important steps, calculated to have, in the long run, a significant impact on the composition of the Secretariat<sup>151</sup>.

#### E. Proposals to Institute "Rotation" Contracts and Article 101

It is necessary to consider also the impact on arts.100 und 101 of the Charter of the proposals made by the JIU and by the Salary Review Committee to institute the so-called "rotation" contracts.

A useful starting point for our discussion is provided, once more, by the Preparatory Commission of the United Nations. It should be recalled that the Preparatory Commission was of the view that unless members of the staff could be offered some assurance of being able to make their careers in the Secretariat, many of the best candidates would inevitably be kept away. It observed that "members of the staff [cannot] be expected fully to subordinate the special interest of their countries to the international interest if they are merely detached temporarily from national administrations and remain dependent upon them for their future"<sup>152</sup>. Although it was important that officials from national services should be enabled to serve in the Secretariat so that personal contacts between the Secretariat and national administrations might be strengthened and a body of national officials with international experience created, they could serve for periods not longer than two years under a system of secondment or leave without pay<sup>153</sup>. Secondments are mentioned in UN Staff Rule 104.12, which reads as follows:

"The fixed-term appointment, having an expiration date specified in the letter of appointment, may be granted for a period not exceeding five years to persons

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<sup>150</sup> *Id.*

<sup>151</sup> The Secretary-General put into effect the new desirable ranges for the geographical distribution of the Secretariat pursuant to GA Res.35/210 on January 1, 1981. Those ranges are reflected in the tables annexed to the 1981 Report of the Secretary-General on the Composition of the Secretariat, UN Doc. A/36/495 (1981).

<sup>152</sup> Report by the Executive Committee to the Preparatory Commission of the United Nations, UN Doc. PC/20, at 92 (1945).

<sup>153</sup> *Id.*, at 93.

recruited for service of prescribed duration, including persons temporarily seconded by national Governments or institutions for service with the United Nations. The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment"<sup>154</sup>.

In 1971, Inspector Maurice Bertrand of the JIU suggested that cooperation between the United Nations Secretariat and the national civil services in the field of interchange of personnel should be institutionalized. Interested governments should conclude agreements with the Secretary-General concerning the system of secondment of national civil servants to the Secretariat. The relevant staff rules should be amended to enable a number of staff members holding permanent appointments to suspend their service with the United Nations for periods of up to five years in order to resume employment in their national civil services. Such suspension would be permitted only after five consecutive years of service with the United Nations. Within the 75 percent of career posts proposed by the Secretary-General to the General Assembly in 1965, a proportion of about 15 percent might be reserved for the system of alternating secondments<sup>155</sup>.

In 1974, the Secretary-General rejected the JIU proposed system of alternating secondments or secondments in reverse. The Secretary-General considered that, although there would be some advantages to such a proposal, there would also be disadvantages, especially in the interruption of the continuity of work in the Secretariat and in difficulties that would result for improved career development and promotional patterns. As regards the principle itself, the Secretary-General expressed concern as to the possible effect of such a system of secondments on the international character of the Secretariat which he had an obligation to safeguard in a manner consistent with the intent and purpose of art. 100<sup>156</sup>.

The Secretary-General may be commended for his clear rejection of the Bertrand recommendation pertaining to secondments in reverse. In the view of this writer, such secondments would have had serious consequences regarding the international character of the Secretariat and the independence of the international civil service.

The Special Committee for the Review of the United Nations Salary System, composed of government experts from a number of countries,

<sup>154</sup> UN Doc. ST/SGB/Staff Rules/1/Rev.5 (1979). For a discussion of secondments in the context of arts. 100–101 of the Charter, see Meron, *op. cit.* (note 146), 910.

<sup>155</sup> Report of the Joint Inspection Unit on Personnel Problems in the United Nations, A/8454 at 291 (Part II) (1971).

<sup>156</sup> UN Doc. A/C.5/1601 at 8–9 (1974).

appointed in pursuance of General Assembly Resolution 2743<sup>157</sup>, also expressed views – in its 1972 report – supporting exchanges of national and international officials. In its view, such exchanges would help the Member States and especially the developing countries to train their young graduates. This might take the form of exchanges of national and international officials for periods of not more than three to five years. The committee regarded such a system of exchanges as essentially an extension of the concept of fixed-term appointments<sup>158</sup>. Strangely enough, the committee did not pause to consider whether this was a proper context for training programmes, nor whether such a scheme would accord with the provisions of the Charter concerning the international character of the Secretariat.

The members of the committee designated by the governments of the Soviet Union and of Poland went much further and proposed that the United Nations Secretariat should introduce a so-called “rotation contract”. The rotation contract, unlike the permanent contract, would provide for the periodic rotation of staff between the secretariats of international organizations and national services. After working in the United Nations for five to seven years, the staff member would be given extended leave without pay and would return to his country. According to its proponents, the rotation contract would prevent the bureaucratization and the decline in staff members’ efficiency, which – it was alleged – was observed in the case of permanent contracts. Such a system would ensure a constant flow of new blood into the Secretariat. The international organization could decide whether to engage a staff member for a second or third period of service on the basis of an assessment of his other previous work in the organization. Incompetent workers would thus not be able to return to the United Nations. The rotation contract would make it possible to place recruitment of United Nations staff on an organized basis in agreement with the governments of Member States. International organizations could not ensure lifetime careers for staff members<sup>159</sup>.

The views of the Polish and Soviet members of the committee reflect, of course, the continuing opposition of Eastern European countries to the concept of career service in the Secretariat. Obviously, these proposals, which were not accepted, would have gone a long way towards converting the Secretariat from an international Secretariat into an intergovernmental

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<sup>157</sup> GA Res.2743, 25 UN GAOR, Supp. (No.28) 117, UN Doc. A/8028 (1970).

<sup>158</sup> 1 Report of the Special Committee for the Review of the United Nations Salary System, 27 GAOR, Supp. (No.28) 26, UN Doc. A/8728 (1972).

<sup>159</sup> *Id.* at 37.

one. It is of interest to observe that the Eastern European countries increasingly follow in their actual practice the principle that they advocated in their proposals for rotation contracts. More and more Eastern European nationals seconded to the Secretariat for a limited number of years are being sent back to the Secretariat for another period of time after an intervening period of service in their home country. This appears to be the Soviet answer to the need to increase the influence and authority, as well as the effectiveness, of the Soviet staff members in the Secretariat while reconciling it with the official policy of not allowing Soviet nationals to stay permanently in the employment of the United Nations<sup>160</sup>.

In 1981, the JIU revived the proposal to institute rotation contracts in the context of reducing the extensive use of permanent contracts which, in the view of the Inspectors, "has an adverse effect on the attainment of an equitable geographical distribution of staff"<sup>161</sup>.

The JIU proposed

"that a new type of interruptible (or rotation) fixed-term contract should be introduced. This system would have the following characteristics should it be accepted: a staff member, generally seconded from a national Government or institution, would be allowed to serve in the Secretariat for a period of, for example, 4 to 6 years, to be followed by a period of equivalent duration (or less) in his releasing national organization, before returning for another period of service, if his/her performance has proved satisfactory with the United Nations. The precise modalities of the system would have to be defined. Use could be made either of 'alternative secondment contracts' (granted under a secondment agreement with a national authority) or by considering the period of service away from the Organization as special leave without pay. Other methods may also be possible. Naturally, such a system, if adopted, would be available for use in appropriate circumstances for nationals from all Member States who serve under fixed-term contracts.

The Inspectors recognize that the above proposal would have to be carefully stipulated in legal contract terms including, if necessary, any amendments to the Staff Rules . . ." <sup>162</sup>.

The Secretary-General reacted to the proposal as follows:

"While the modalities of such an arrangement have not been specified, the Secretary-General considers that the disadvantages inherent in the original proposal would continue to be present in this proposal. It would interrupt the continuity of the work being undertaken in the Secretariat and result in increased difficul-

<sup>160</sup> See generally, Mer on, *supra* note 146.

<sup>161</sup> UN Doc. A/36/407, paras.33-34 (1981).

<sup>162</sup> *Id.*, at para.35.

ties for the career development and the administration of the staff. The Secretary-General is nevertheless appreciative of the valuable services rendered by individual staff members serving with the Secretariat on secondment from their Governments. It would be mutually advantageous to have the arrangements for such secondment regulated in a more systematic manner so that the Organization may obtain maximum benefits from the services of such seconded officials without the introduction of a new type of appointment<sup>163</sup>.

While the reaction of the Secretary-General was thus reserved, it is regrettable that he did not adduce legal considerations based on the Charter against the proposed system, as he did in 1974 with regard to the earlier proposals of Inspector Bertrand.

#### F. Concluding Observations

In conclusion, it may be observed that the General Assembly has developed a chaotic system of recruitment guidelines which are often contradictory (for example, in the varying emphasis on region in relation to individual States, or the degree of development in relation to nationality) and which, to a large extent, fall outside the intent of the Charter. The Secretary-General, who is given the power to appoint officials to the Secretariat by the Charter, is thus in the unenviable position of having to weigh and reconcile constantly changing and often contradictory guidelines. The contradictions and the chaotic nature of the system tend at times to hamper the exercise of administrative discretion; in other cases they may give the administration too great a latitude in choosing between the various guidelines. It is clear that despite the occasional ritualistic reaffirmation of the principle of merit, that principle, which according to the Charter was to be paramount, has been relegated to a secondary position. Successive Secretaries-General have interpreted desirable ranges as flexible tools of management or as criteria which are administratively workable without impairing administrative discretion<sup>164</sup>. As the number, complexity and detail of the guidelines have grown and as the mathematical goals have become more specific and peremptory, it is increasingly difficult to maintain that appointment policy is based primarily on the merit principle.

It is only fair, however, to observe that the peremptoriness and the increasingly detailed nature of the resolutions of the General Assembly

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<sup>163</sup> UN Doc. A/36/407/Add.1, para.21 (1981).

<sup>164</sup> See e.g., UN Doc. A/31/154, at 5 (1976).

may have been due, in part, to the belief that the Secretary-General and his senior aides had often in the past disregarded the strictures of the General Assembly about recruitment from underrepresented countries, women, age, etc.

This author does not wish to suggest that there is an inevitable and inherent contradiction between the principle of merit and the principle of geographical distribution. If, for instance, recruitment to the Secretariat would normally be through competitive examinations or an equivalent method, it may have been possible to find a way of reconciling these two principles. Such a system of examinations has served, however, only as a minor channel of recruitment. Instead, the increasingly peremptory and detailed instructions of the General Assembly have created an environment in which geographical distribution has obtained preeminence over merit. The Secretary-General has, on occasion, cautiously hinted at the difficulty of respecting fully one principle without slighting the other<sup>165</sup>, but these such caveats have, on the whole, been ignored by the General Assembly.

The new Secretary-General, Mr. Pérez de Cuéllar, in his first address to the staff sought to raise the morale of the international civil service. He promised that the career service of the staff will not be adversely affected by any considerations unrelated to merit and, specifically, that "nationality as such will not be considered as a relevant factor"<sup>166</sup>. It may be significant that the Secretary-General did not mention the principle of merit in relation to recruitment. There is no question that the resolutions of the General Assembly have brought about a metamorphosis of the Charter. As observed by Jacob Robinson, the resolutions of the General Assembly which give greater emphasis to recruitment "on as wide a geographical basis as possible" rather than on "highest standards of efficiency, competence, and integrity", are "not in accordance with the hierarchy of qualifications fixed in Article 101"<sup>167</sup>. This is clear with regard to the powers of appointment granted the Secretary-General under art. 101 of the Charter and even more with regard to the relegation of the principle of merit to a secondary role.

The developments and trends discussed in this article should not be of interest only to scholars. They are of considerable practical importance because they contribute to the politization and the declining quality of the international civil service. The international community needs an effective,

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<sup>165</sup> See *e.g.*, text accompanying notes 29, 112-114, 134-136, *supra*.

<sup>166</sup> UN SG/SM/3236, at 2 (1982).

<sup>167</sup> Metamorphosis of the United Nations, 94 RdC 493, 557 (1958).

impartial and independent civil service in order to advance international peace and security, development and other principal objectives of the United Nations. Yet, if no major reforms are introduced and implemented we may expect the recent trends which weakened the international civil service to continue and even intensify.

The international civil service of the future is therefore likely to resemble a more multinational, rather than an international body. If less heed is paid to merit both by the Secretariat and by member States, the staff would be technically less efficient. Officials will be less independent of their governments and less impartial. The national, regional, and group loyalties of the officials are likely to grow concurrently with their increasing dependence on their governments. They might be unable to play an effective role in situations of crisis when they must not only show efficiency, but command the confidence of member States.

In order to reduce the impact of such trends, it is vital that Charter principles be strictly upheld and that the role of law in the United Nations be reinvigorated. But this requires political will, which is lacking. The difficulties are caused primarily by political rather than technical or legal factors. They result from a power struggle, an attempt to control the United Nations and its activities. The General Assembly and, indeed, the Organization as a whole, reflect and mirror national and group attitudes. While much depends on the leadership and courage of the Secretary-General, only member States can stop the deterioration and reform the system. This will happen only when and if a sufficiently large number of States, especially those in positions of leadership, realize that it is in their own interest to bring about such a change. There is no evidence so far that such a realization is near.