

UN-Secretariat matters - Committee of Experts 1960-1961 and Appointment of ...

HS L 179:99b



Dag Hammarskjöld's saml.

Appointment of senior staff

5 May 61

Schachter, Oscar (Office of Legal Affairs,
U.N. HQ)

- 1 letter to D.H.
- 1 encl. (Cancellation of Certain Fixed-Term Appointments)

To the Secretary-General,

I think these

points cover the

essentials of the

legal situation - but

if there are other

aspects you think I

should look into,

please let me know.

Oscar Schachter

Cancellation of Certain Fixed-Term Appointments

1. A fixed-term appointment may be brought to an end prior to its date of expiration provided that the staff member receives the agreed remuneration for the period of the unexpired term. This action need not be based on one of the grounds for termination specified in Regulation 9.1 (a) since, by paying the remuneration for the entire life of the contract, the Organization would fully meet its obligation.

2. While it may be maintained in principle that an action of this kind could not be undertaken for reasons which are arbitrary (détournement de pouvoir) or for reasons contrary to the Charter principles, even if full compensation is paid, the cases envisaged would not be subject to attack on this ground. The fact that the action would be taken to improve the geographical representation of the senior staff in the light of the greatly increased membership provides an adequate basis for answering any charge of arbitrariness or discrimination.

3. Should the individuals concerned and the Organization enter into a new contract either at the same or at a lower grade, this new contract would supersede the old appointment, and no additional compensation would have to be paid. If this were not done, the staff member would be entitled to the equivalent of eighteen months salary. A lesser compensation would be payable only if, in any particular case, it was contemplated that

the post would be abolished, in which event the Staff Regulations provide for five days indemnity payable for each month of uncompleted service; i.e. 90 days in total.

4. The fact that an individual holding a fixed-term appointment previously held a permanent appointment would not appear to affect the legal position. By taking a fixed-term appointment at a higher remuneration, the staff member made a new contract which legally superseded and cancelled the prior appointment. One cannot therefore claim that the old permanent appointment automatically revived on the termination of the fixed-term appointment. As a practical matter, it does not seem likely that any problem of this kind will arise. If the staff member should accept a new appointment, the matter is settled in that way; if he should not, he would receive eighteen months indemnity which is twice that allowed for the termination of a permanent appointment.