WAES and the UN agreement

Learn about the When Actually Employed contract: What is it? What are the advantages, if any? And, what are the issues its implementation raises in relation to the AIIC/UN Agreement?

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Much has been said about "When Actually Employed" contracts. Indeed, it has been a contentious issue at United Nations New York for the past few years as well as during the recently completed AIIC/UN negotiations. Initially restricted to local freelance interpreters, the WAE practice has become generalized to locals as well as internationals. What is a WAE? Where does it originate? What are the advantages, if any? And, what are the issues its implementation raises in relation to the AIIC/UN Agreement? These are, in short, the concerns to be addressed in this paper.

1. What is a WAE?

WAES are defined in the Secretary General’s Bulletin (ST/SGB/283) dated 29 August 1996 and entitled Use of “When Actually Employed” Contracts for Special Representatives, Envoys and Other Special High-Level Positions.

The above mentioned Bulletin lays out the main features of WAES as follows:

First, the WAE “letter of appointment shall state that the holder has the status of a staff member of the United Nations only when actually employed by the United Nations.”

Second, WAES can be assimilated to “short-term appointments under the 300 series of the staff rules.”

Third, the WAES are designed:

a. For work of an intermittent or discontinuous nature;
b. For assignments whose duration is uncertain, or whose timing is not clearly identifiable in advance;
c. To ensure the availability at short notice of persons with special skills required by the Organisation.”

According to the Bulletin, WAES are “to be used only when standard appointments, (…) or when a standard special service agreement (SSA) would not be appropriate, for example, in peace-keeping operations or for special assignments for the Secretary-General.” As per the title of the Bulletin, they are reserved to special categories of staff.
Fourth, they “should normally be issued for a period of six months at a time, and should specify that the maximum number of days that may be worked in a given six-month period should not exceed four and one half months.”

Fifth, “the holder of a WAE contract must be notified in writing of the days during which his or her services will be required, and his/her acceptance must be in writing. In case of extreme urgency, this may be done on a post facto basis.”

Sixth, “holders of WAE contracts (...) shall be entitled to compensation in the event of injury, illness or death.”

2. WAEs and Interpreters

While not originally intended for interpreters, WAEs were first extended to local freelancers and later to (almost) all freelancers coming to work at UN-HQs. WAEs allowed the Executive Office to reduce paperwork. It also helped curtail payroll delays and allowed chief interpreters to recruit in a faster and more direct manner.

When, later on, regulations regarding G-4 visas (government visas granted to UN international civil servants for entry in the US) became more stringent, WAEs afforded a handy solution (See Information Circular ST/IC/1996/149 dated 5 August 1996). In a word, interpreters, like other temporary staff, used to be able to keep their G-4 visa even after termination of their appointment at the UN. With the new regulations, they became obliged to have their visa cancelled on the Thursday of their last week of assignment, even if they had another one a few weeks later. Such obligation imposed by the host country was cumbersome for both the UN and interpreters, especially to those residing in the United States on a G-4 visa. Clearly, a WAE offered for one year is a way of getting around the problem.

Besides, holding a WAE allows interpreters to remain on payroll. As for local interpreters, it also facilitates access to credit and banking services. There is another advantage of being on payroll, for locals as well as non-locals: payment of salary is faster. Despite the introduction of the Integrated Management Information System (IMIS), accounting practices at UNNY differ from those at other UN Offices in a very curious manner. At the end of a given month, payment is made for work done during approximately the first twenty days of that month. Days worked after the 20th will be paid at the end of the following month. Before the use of the WAE contract, staff members on short-term contracts had to wait six weeks from the first day of the first assignment to get on payroll. This meant that at times a staff member could not expect payment until two months after beginning. Moreover, for final payment at the end of an assignment, it took at least two months to process all the paperwork through separation. WAEs help avoid the problem of induction and separation altogether since staff members remain on payroll and activities are automatically resumed once they come back to work. Moreover, interpreters are not required to fill in X number of forms and they get a building pass for the duration of the WAE.

Although the WAE formula makes interpreters’ lives easier, it still entails cumbersome administrative procedures that differ largely from those applied at UNOG, UNOV and UNON. For instance, in order to receive payment of their salaries, all interpreters are now required to open a bank account in New York. More importantly, there are many discrepancies between WAEs and the provisions of the AIIC/UN Agreement.

3. Discrepancies

I shall go through the discrepancies one by one. First and foremost, however, interpreters should
remember that the AIIC/UN Agreement entitled 'Agreement Concerning Conditions of Employment of Short-Term Conference Interpreters' prevails where there is a difference with “the organisations' rules governing short-term staff” (Art. II/6)."  

Having established this background, I will discuss issues arising in regard to the provisions of the AIIC/UN Agreement due to the WAE system.

1. *WAEs are reserved for special categories of staff.* Interpreters are not a “special category of staff” in the administrative UN sense. However, interpreters’ skills and expertise were thought special enough to compel the UN to negotiate with AIIC “special conditions of employment (that) differ from those established in the 300 series of the Staff Rules.”

2. *WAEs should be used "for assignments whose duration is uncertain, or whose timing is not clearly identifiable in advance."* Clearly, this formula is not relevant to conference interpretation. Furthermore it is in total contradiction with Articles 6(b) and 9(b), (c) and (d) of the Agreement (respectively "Letters of Appointment" and "Cancellation or Termination of Appointment"...)

3. “*The holder of a WAE contract must be notified in writing of the days during which his or her services will be required, and his/her acceptance must be in writing. In case of extreme urgency, this may be done on a post facto basis.*” For a long time, this provision has not been adhered to. In the absence of any written confirmation from the Office of Personnel, interpreters could not prove that they had confirmed offers from UNNY. This was partially addressed when the Interpretation Service decided to issue written confirmations. This issue is, however, doubly problematic because these confirmations have actually no legal status. First, they allow the Administration to evade the implementation of the cancellation policy as set forth in Article 9 of the AIIC/UN Agreement. Second, it is not held admissible by tax authorities as a proof of work at the United Nations.

4. “*Holders of WAE contracts (...) shall be entitled to compensation in the event of injury, illness or death.*” The first result of the WAE practice has been the cancellation of the Van Breda Emergency Insurance Policy offered to freelance interpreters assigned to New York. The cancellation of the policy intervened unilaterally. There were also instances where interpreters suffered accidents on UN premises. When they could not report to work for a few days, their salaries were curtailed. This is clearly in contradiction with both the Secretary-General’s Bulletin and Article 9(a) of the Agreement.

5. After commenting on the general rules governing WAEs, I would like to go on to the “contract” interpreters sign for each WAE period. Although entitled "Letter of Appointment", this document does not fulfill the requirements of such a Letter as set forth in Article 6 of the Agreement.

Paragraph 1 is not in conformity with Article 6 as it should indicate such information as "a) the place of work; b) the relevant dates; c) the net salary rate; d) the gross salary equivalent, where staff assessment is applicable; e) a reference, if possible to "Caisse" and accident and sickness insurance, and the percentage to be deducted; f) whether daily subsistence allowance is payable, and in what form." (my emphasis)

Paragraph 2 states: “This temporary appointment for a short-term may be terminated prior to its expiration date in accordance with the relevant provisions of the Staff Regulations and Staff Rules, in which case the Secretary-General will give one week’s notice in writing. No termination indemnity will be paid.” This clause is in contradiction with paragraph 4b of the same document,
which reaffirms the primacy of the AIIC/UN Agreement, and with the cancellation clause of that Agreement (Article 9).

As it fails to indicate the number of travel days and remuneration for such days, the so-called WAE Letter of Appointment is in violation of Article 12 of the Agreement.

4. Conclusion

While WAEs have some advantages to both interpreters and the administration at Headquarters, it is difficult to envision the benefits that either would derive from its extension to all UN offices. Nonetheless, there have been various attempts in that direction. In Geneva, interpreters have flatly refused the WAE. In Vienna, AIIC representatives have sought and received assurances from the Office of Human Resources Management. In a letter, it was confirmed to AIIC:

- "That acceptance of WAE does not mean waiving of the formal letter of appointment for each assignment in the sense of Article 6 of the CCAQ/AIIC Agreement.
- That remuneration for each period will indeed be paid promptly at the end of each assignment.
- That compensation for cancellation or termination of confirmed offers of appointment shall continue to be made in accordance to Article 9 of said Agreement, that acceptance of specific dates subsequently proposed would depend on your availability at the time."

However, despite all these assurances, UNOV tried to back-track on the above-quoted commitments. After talks between UNOV and AIIC representatives, freelance interpreters working in Vienna get both the WAE and a normal letter of appointment. Even more recently, the Negotiating Delegation was called upon by its African representative to react to attempts at UNON to force on interpreters a new form of contract entitled “Contract for Individual Contractor” that contains provisions blatantly contradicting the terms of the Agreement.

In view of these alarming developments and taking into account all the contradictions between the WAE and the provisions of the UN/AIIC Agreement, it is imperative to stop the extension to the whole UN System of a practice that is in violation of said Agreement. This issue should be closely monitored by the Negotiating Delegation and put on the agenda of the next world-wide UN sector meeting.

It should be recalled that the Agreement was signed at the highest level of the UN Administration (i.e. by the Secretary-General’s Office) and that it should be applied and observed by both parties. Should any attempt be made to change their terms of employment, interpreters ought to call on the Negotiating Delegation to take the matter up. They should always remember that the AIIC/UN Agreement supersedes any WAE provision and can be invoked to redress any contradiction between the two instruments.

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1 AIIC Professional Delegation to UNOV. September 27, 1999. Vienna.

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