

## SHORTER ARTICLES

### THE INDEPENDENCE OF INTERNATIONAL CIVIL SERVANTS FROM GOVERNMENTS

David R Ruzié<sup>1</sup>

#### WHY IS THE PRINCIPLE OF INDEPENDENCE IMPORTANT?

The independence of international civil servants is important and should be recognised as such. Independence allows international organisations to accomplish their mandate and to express their own opinions as opposed to those of individual member states. It is therefore essential that international organisations are staffed by personnel who, albeit are generally drawn from member states, are independent of the states they come from. The mission of international civil servants is to satisfy the collective needs of the member states of the organisation as a whole, rather than favour the policies of one or other state, particularly their own. The independence of the international civil service *vis-à-vis* the individual member states (or indeed, any other external influence) and the loyalty of the personnel to the organisation in which they work constitute the key elements of their legal status.

#### HOW CAN THIS INDEPENDENCE BE MAINTAINED?

First, the status of the personnel should assure stability and independence within the organisation. This protects the personnel against possible pressure or influence from the authorities of their own states. The independence of the personnel should be assured when they assume their mandate and when they perform that mandate. Their own states should not interfere, directly or indirectly. The principle of broad geographical representation should not be used to justify interference, and the international public administration becoming the prerogative of only a few states should be avoided. Instead, broad geographical representation should be envisaged as an element of international cooperation that promotes the mingling of nationalities.

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<sup>1</sup> Emeritus Professor, Paris University René-Descartes.

Secondly, privileges and immunities are accorded to international civil servants,<sup>2</sup> and conceded exclusively to further the interests of the organisations. The privileges and immunities should be used to assure the independence of the personnel by protecting them against legal actions or other measures that may be taken by member states of the organisation against them. This includes fiscal immunity, so as to prevent, among others, national authorities from using their power to control and bear pressure on the personnel.

Thirdly, protection should be afforded to international civil servants when they are exercising their functions. The organisation should protect them against offences like threats, insults, abuse or defamation, and the protection should be extended to their possessions as well. The protection should be as comprehensive as possible, and respected by as many member states as possible. If not, and if protection is dependent on a single state, the independence of the international civil servant may be compromised, as ruled by the International Court of Justice in the *Reparations for Injuries Suffered in the Service of the United Nations case*<sup>3</sup> following the murder of the United Nations Mediator in Palestine, Count Bernadotte.

### LIMITATIONS TO THE INDEPENDENCE

Regrettably, several cases in the past have revealed examples of interference with international civil servants by their national state. This is in spite of the solemn assurances given by states which are found in international conventions, such as Article 100(2) of the United Nations Charter, which provides the following:

Each member of the United Nations undertakes to respect the exclusive international character of the responsibilities of the Secretary-General and the staff and not seek to influence them in the discharge of their responsibilities.

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<sup>2</sup> For example, see Convention on the Privileges and Immunities of the Specialized Agencies 1947. In Australia, privileges and immunities are granted to organisations and their personnel under the (Cth) International Organisations (Privileges and Immunities) Act 1963 and the Regulations made under the Act.

<sup>3</sup> [1949] International Court of Justice Reports 174.

During the Cold War, eastern bloc states frequently endeavoured to "control" their nationals working in international organisations. Fortunately, cases of pressure aimed at opposition to the renewal of contracts or aimed at obtaining the dismissal of individuals have been reprimanded by international administrative bodies such as the United Nations Administrative Tribunal and the International Labour Organisation Administrative Tribunal pursuant to appeals. Indeed, the existence of these administrative bodies is a significant element in preserving the independence of international civil servants. Even nowadays, from time to time, judgments confirm that there should be no pressure from outside the organisations to recall international civil servants who are not sufficiently sensitive to the interests of their own countries. To a certain extent, financial inducements that certain states offer their nationals to encourage them to join an international organisation may be construed as attempts to compromise the independence of the international civil servant. This is confirmed by the unfavourable reaction to this practice by the United Nations General Assembly.

## CONCLUSION

The independence of international civil servants is first and foremost assured by the absence of interference from outside the international organisation. Basic conventions or rules and regulations on staff generally forbid international civil servants from seeking or accepting instructions from any government, authority or person outside the organisation in which they work. The refusal to accept honours or gifts and the restriction on outside activities are made for similar reasons, as are guarantees on staff promotions. The effective implementation of these measures would leave no room for government interference with the international civil service. Therefore, in this matter, President Khrushchev was wrong when he said in 1961 that even though there were neutral states, neutral people did not exist. Certainly, the main aim that should be pursued by any international civil servant is to exclusively serve his or her organisation.