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SUPPLEMENTARY PAYMENTS TO INTERNATIONAL OFFICIALS
BY THEIR GOVERNMENTS

Note by the United Nations

I. BACKGROUND

1. At recent sessions of the International Civil Service Commission, both the Consultative Committee on Administrative Questions (CCAQ) and the Federation of International Civil Service Associations (FICSA) have drawn attention to the supplementary payment schemes enacted by certain Governments and indicated that those schemes raise questions regarding the adequacy of the conditions of service as determined by the application of the Noblemaire principle in general and the use of the Federal Civil Service of the United States of America as the comparator in particular. After receiving more detailed information on three of these schemes at its tenth session, the Commission decided to keep this matter under review and included the data it had received in its report to the General Assembly. 1/

2. The salient features of the three legislatively sanctioned systems of supplementary payments are described in annex I, below. Although there are indications that certain other States have from time to time made similar payments to their nationals who serve as officials in international organizations, the United Nations is not aware of any that have adopted comparable legislation on this subject.

3. The supplementary payments made by Governments are usually justified as a means of assisting international organizations in recruiting persons from their countries and civil services who for financial reasons, would otherwise not be attracted to the international civil service. However, these payments raise serious questions of law and equity. They also appear to be in conflict with the Noblemaire principle, under which international civil servants are to be remunerated solely by the employing organization on a uniform basis that reflects the conditions of service of the best paid national civil service.

* Edited text.

1/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 30 (A/34/30), paras. 127 and 128 and annex VII.

II. COMPLIANCE WITH RELEVANT LEGAL INSTRUMENTS

4. The staff members of most intergovernmental organizations are bound by provisions such as the one set forth in paragraph 1 of Article 100 of the United Nations Charter:

"[The Secretary-General and the staff] shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."

Most organizations have also adopted a staff regulation similar to United Nations Staff Regulation 1.6, which is based on the above-quoted Charter provision and reads:

"No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 of the Staff Regulations and with the individual's status as an international civil servant."

It should be noted that the United Nations Regulation, although permitting, in exceptional cases, the approval of certain payments from sources external to the Organization, does not make it possible for the Secretary-General to authorize such payments from any Government (except for war service). Indeed, when in 1954 the Secretary-General requested authority to approve any type of external payment, the General Assembly responded by granting such authority only in respect of non-governmental payments. ^{2/} The Assembly's intention to bar all governmental remuneration was clear.

5. With respect to the obligation of Member States, the constitutional instruments of most intergovernmental organizations also contain provisions corresponding to paragraph 2 of Article 100 of the United Nations Charter, which reads:

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

Even if a Government does not otherwise seek to influence staff members in the discharge of their responsibilities by payments or a system of payments, the very fact that such an offer was made, the acceptance of which is contrary to a staff regulation, could influence the staff members to violate their oath of office. The

^{2/} Official Records of the General Assembly, Ninth Session, Annexes agenda item 54 (A/2777, paras. 10-13; A/2788, paras. 2-8; A/2862, paras. 3-11).

exclusively international character of a staff member's obligations may also be adversely affected, should he be expected to turn over part of his emoluments to his Government.

6. Most intergovernmental organizations also have a provision corresponding to paragraph 1 of Article 101 of the United Nations Charter, according to which:

"The staff shall be appointed ... under regulations established by the General Assembly."

This provision is the basis of the General Assembly's authority to adopt the Staff Regulations of the United Nations and to establish the remuneration of staff members. Plainly, the authority of the Assembly would be undermined by any remuneration that is determined by an authority external to the General Assembly.

7. Finally, paragraph 3 of Article 101 of the United Nations Charter, like corresponding provisions in other constitutions, provides that:

"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."

Thus, the organizations are obliged to provide conditions of service that will enable them to secure staff of the highest standards while recruiting on a wide geographical basis. If the conditions of service provided do not actually make it possible to fulfil this dual condition, as demonstrated by the need perceived by certain Governments to make supplementary payments, then the question might be raised as to whether the organizations are complying sufficiently with this constitutional obligation. Indeed, the possibility of making such payments just to their own nationals may lessen the inducement of these Governments to move the organizations to adjust the general conditions of service to meet their constitutional obligations.

III. NATURE AND PURPOSES OF SUPPLEMENTARY PAYMENTS SCHEMES

8. National payment schemes cannot be measured solely in terms of their impact on the recruitment and service of nationals of a particular country but must also be examined against the broader background of the constitutional, legal and social considerations on which they are based. It is obvious that no employee by virtue of service with an international organization loses or is deprived of the ties with the country of which he is a national. Rather, he remains a citizen, both entitled to that which his country, as a matter of public social policy, offers and obligated to fulfil his duties as a citizen. For example, the salary of a staff member is subject to national taxation unless exempted by specific provisions related to privileges and immunities, although if taxation is not so excluded then its effects on the staff member are neutralized by a reimbursement made by the employing organization. Conversely, a country might offer social benefits to its citizens which by their very nature apply to its nationals serving in international

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organizations. For example, a Government, in pursuance of its broad social policy, might provide a housing subsidy to all its citizens, would its application to United Nations officials be in conflict with the established norm that staff members should not receive payments from their Governments? This type of situation illustrates the difficulties involved in addressing the question of the compatibility of certain entitlements to governmental social support with the obligations of staff to the organizations that employ them. When the expansion of national social benefits also involves changes in the nature of protection that depends upon residency (such as housing for nationals at home and compensation for currency fluctuation for those abroad), the difficulties are compounded.

9. The development of reliable distinctions between the "nationality sphere" and the "international sphere" must take into account not only the legal principles governing international service but governmental policies as well. Among the factors to be considered in this regard are the characterization and timing of payments, the scope of payments, the relationship of recipients to Governments, the automaticity or discretionary nature of payments and the method of calculating payments.

IV. POSITION OF ORGANIZATIONS

10. The United Nations is aware that during the past year a number of international organizations, in particular those represented in ACC, have given serious consideration to the legal and other implications of supplementary governmental payments to members of their staffs. Although the United Nations has learned of various activities or decisions taken by several organizations, its information about these is not complete enough to permit a report; moreover, some of the information was supplied on a confidential basis. It is therefore suggested that when this item is discussed in ACC, each participating organization that has taken any relevant action or decision might report briefly thereon.

11. As for the United Nations:

(a) On 27 July 1979 it addressed a note verbale to the Permanent Missions of the Federal Republic of Germany, Japan and the United States of America, informing them of a communication that had been received on this subject from the President of the Staff Committee at United Nations Headquarters, inviting attention to Staff Regulation 1.6 and informing the Missions that the administrative instruction ST/AI/267 would be issued (see annex II, below). The mission of the Federal Republic of Germany replied to the note verbale on 26 October 1979 (see annex III, below), and the Japanese mission on 10 January 1980 (see annex IV, below);

(b) On 1 August 1979 administrative instruction ST/AI/267 was issued to all staff, inviting their attention to Staff Regulation 1.6 and reminding them of the necessity to adhere strictly to its terms.

V. RECOMMENDATIONS

12. It is recommended that the organizations represented in ACC should report:

(a) Any information that any of them may have concerning governmental payments to international officials;

(b) The texts of any of their legal instruments relevant to governmental payments to their officials;

(c) Any steps they may have taken in relation to governmental payments or offers of payments to their officials.

13. It is recommended that ACC request the International Civil Service Commission to:

(a) Undertake a comprehensive review of the conditions of service of international staff, bearing in mind the requirements laid down in paragraph 3 of Article 101 of the Charter and taking into account the application of the Noblemaire principle and its effects;

(b) Examine the supplementary payment schemes adopted by certain Governments in respect of some of their nationals serving with United Nations organizations, in order to determine whether or not they conform with the underlying principles governing the employment of international staff;

(c) Report its findings and submit recommendations to the General Assembly.

Annex I

NATIONAL LEGISLATION PROVIDING FOR SUPPLEMENTARY PAYMENTS
TO INTERNATIONAL OFFICIALS BY THEIR GOVERNMENTS a/

A. United States of America

1. Section 502 of the United States Foreign Assistance Act of 1969 (Public Law 91-175; 5 U.S.C. Sec. 3582) provides that an employee of the United States Government who is seconded to an international organization for a specified period and is re-employed by the Government (or is prevented by death or disability from being re-employed), is entitled to supplementary payments from the United States Government in respect of the period of his service as an official of the international organization. These payments represent the difference between the emoluments he received from the international organization and those he would have received if he had been posted to the same place by the United States Government. On fulfilment of the stated conditions the payments are automatically due.

2. It was explained to ICSC that this law had been motivated by the difficulty found in persuading United States civil servants to accept assignments in international organizations because of the fact that various service benefits to which they were otherwise entitled ceased to accrue during such periods of detachment. No payment was made during the official's service with the international organizations.

B. Japan

3. Law No. 117 of 17 December 1970 and implementing regulation No. 18.0 of 16 January 1971 provide that officials of the Japanese Government who are released to work in non-profit organizations (such as research institutes or universities) or in international organizations may be paid "during the period of their service in these organizations, an amount not exceeding 100 per cent of their (civil service salary and entitlements)". b/ The amount to be paid may, however, not normally exceed 70 per cent, except where "the remuneration paid to the released officials by those organizations to which they are released is low". Payment may be withheld if the Personnel Board believes it would be highly inappropriate in view of the "special circumstances" of the receiving organization. An

a/ The summaries below are based on annex VII to the report of the International Civil Service Commission to the thirty-fourth session of the General Assembly (A/34/30).

b/ This and other quotes constitute unofficial translations from the Japanese.

Administrative Circular (NIN-K1 No. 145 of 1 April 1975) provides that the official may designate a member of his family or dependant to whom the payment of his Japanese salary is to be made.

4. It was explained to ICSC that this provision had been intended for, and was applied to, civil servants detached for service with many institutions other than international organizations. Its aim was to ensure that they would be equitably remunerated while working outside of the country. Payment could be made only for a limited period and could be withheld if deemed appropriate.

C. Federal Republic of Germany

5. "Guidelines for supplemental compensation of German employees of international organizations" c/, approved by the Bundestag on 1 April 1979, provide that "persons of German citizenship, employed in (international organizations) may, upon application, receive supplemental compensation if the Federal Republic of Germany has a special interest in paying such compensation". A determination of whether the Government has such an interest should be made on the basis of whether:

(a) The Federal Republic wishes to maintain or improve its representation in the organization, in particular "to occupy key positions";

(b) "In the individual case, the salary of the person in the international organization's employ is ... considerably lower than the salary of a comparable Federal or State civil servant posted in the same location";

(c) The individual's employment in the position concerned will benefit both the organization and the Federal Republic;

(d) The individual's application for employment was presented or supported by the national authorities or looked upon favourably by the local German representatives.

6. The supplemental compensation is in the amount of 80 per cent of the difference between the international employee's salary and the salary of a comparable Federal or State Civil servant posted abroad. The grade equivalencies between the international and national posts are determined according to a fixed scale if the German citizen was a civil servant, or on the basis of previous income if he came from the private sector. The elements of remuneration to be taken into account on either side are defined (e.g., the United Nations emoluments include all entitlements except reimbursements of expenses incurred - namely, dependency allowances, education grants and post adjustment). The supplementary payment, which is subject to a minimum of DM 300, is made monthly. It may continue for five

c/ This and other quotes constitute unofficial translations from German.

years or, exceptionally, in the case of officials of grade P-5 and upwards, for eight years. However, on leaving the international organization, the staff member must pay over to the Government the terminal payments he has received from the organization, up to the amount of the supplementary payments he has received, "in so far as the recipient would be unfairly favoured (by those terminal payments) in relation to a comparable foreign-based civil servant".

Annex II

ADMINISTRATIVE INSTRUCTION (ST/AI/267)

To: Members of the staff

From: The Under-Secretary-General for Administration,
Finance and Management

Subject: ACCEPTANCE OF REMUNERATION FROM SOURCES
EXTERNAL TO THE ORGANIZATION

1. The attention of all members of the staff of the United Nations is invited to staff regulation 1.6, which reads as follows:

"No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 of the Staff Regulations and with the individual's status as an international civil servant."

2. The Secretary-General wishes to remind all members of the staff of the contents of this regulation and of the necessity to adhere strictly to its terms.

Annex III

NOTE VERBALE BY THE PERMANENT MISSION OF THE FEDERAL REPUBLIC
OF GERMANY TO THE UNITED NATIONS

26 October 1979

The Permanent Mission of the Federal Republic of Germany to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to acknowledge receipt of the latter's note of 27 July 1979.

The Mission wishes to point out that German equalization payments are granted for a limited time only. They are intended to redress disadvantages German nationals encounter while working with international organizations and to enable them to cope with hardship situations caused by the necessity of meeting continuing substantial commitments in their home country in spite of the fundamental shifts in the US-Dollar-DM exchange rate. On the basis of the wording, spirit, interpretation and practice of the United Nations Charter and staff regulations it is the considered opinion of the German authorities that the German administrative measures are consistent with those texts and not related to the discharge of the responsibilities of German United Nations-staff-members.

The Permanent Mission of the Federal Republic of Germany avails itself of this opportunity to present to the Secretariat of the United Nations the assurances of its highest consideration.

Annex IV

NOTE VERBALE BY THE PERMANENT MISSION OF JAPAN
TO THE UNITED NATIONS

10 January 1980

The Permanent Mission of Japan to the United Nations presents its compliments to the Secretariat of the United Nations and, with reference to the latter's note dated 27 July 1979, has the honour to inform the latter that the arrangement, based on the Personnel Detachment Law of the Government of Japan, pertains to those civil servants who are seconded to the United Nations and for whom the requirement of occupational loyalty to the Government of Japan has been waived. Therefore, the Government of Japan believes that the performance of United Nations duties by detached personnel will in no way be affected by the arrangement.

The Permanent Mission of Japan to the United Nations avails itself of this opportunity to renew to the Secretariat of the United Nations the assurances of its highest consideration.
