



# General Assembly

Distr.: General  
21 November 2013

Original: English

---

## Sixty-eighth session

Agenda items 139 and 147

### Human resources management

#### Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

## Seconded active-duty military and police personnel

### Report of the Advisory Committee on Administrative and Budgetary Questions

#### I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on seconded active-duty military and police personnel (A/68/495). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, who provided additional information and clarifications, concluding with written responses received on 18 October 2013.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution 67/287, in which the Assembly noted the difficulties related to the secondment of active-duty military and police officers against posts and requested the Secretary-General to report on proposals for its consideration. It provides background information on the use of gratis and seconded personnel, the other mechanisms in place for engaging active-duty military and police personnel and the difficulties encountered with the secondment of active-duty military and police personnel. In the report, the Secretary-General also makes a number of suggestions for addressing those difficulties, including amendments to United Nations regulations and rules.

#### II. Background and context

3. Background information is provided in paragraphs 4 to 14 of the report of the Secretary-General. As indicated, with the surge in peacekeeping operations in the 1990s, the General Assembly encouraged the Secretary-General to invite Member States to provide military and police officers as gratis personnel to assist the



Secretariat in the planning and management of peacekeeping operations (resolution [47/71](#)). Subsequently, in the light of the concerns raised regarding the status and accountability of gratis personnel, as well as financial, budgetary and human resources management issues, in its resolution [51/243](#), the Assembly decided that the use of gratis personnel was not an acceptable mechanism for obtaining the expertise of active-duty military and police officers and that such personnel should be replaced by seconded staff recruited against established posts.

4. The Secretary-General indicates that seconded active-duty military and police personnel are selected through a competitive process in which Member States are invited to nominate active-duty officers against classified job openings for posts that are specifically approved for active-duty military and police personnel. Such personnel are engaged on staff contracts and sign a letter of appointment, and are required to affirm their loyalty to the United Nations. The Secretary-General further indicates that, because they remain in active duty with both the national Government and the United Nations, and are thereby subject to the regulations and rules that govern their service with both entities, seconded active-duty military and police personnel have a dual loyalty and/or existing legal obligations, which can give rise to a conflict of loyalty. In addition, the national legislation of some Member States prohibits active-duty military and police officers serving on international assignment or secondment to another entity from accepting financial remuneration and benefits directly from that organization, and/or requires them to continue to receive remuneration from the national Government while serving on international assignment or secondment, in which case the seconded personnel come into conflict with staff regulation 1.2 (j), which stipulates that “no staff member shall accept any honour, decoration, favour, gift or remuneration from any Government”.

5. In his overview report on the financing of peacekeeping operations for the period from 1 July 2011 to 30 June 2012 ([A/67/723](#)), the Secretary-General highlighted a systemic issue that had been detected in the financial disclosure programme of 2012: a number of military and police officers serving on secondment were receiving remuneration and/or benefits from their national Governments. In his report on seconded active-duty military and police personnel, the Secretary-General indicates that, to better understand the issues detected through the financial disclosure programme, the Department of Peacekeeping Operations/Department of Field Support conducted an informal survey of all active-duty military officers serving at Headquarters and in the field. The Advisory Committee was informed that participation in the survey was voluntary and that the data collected through the survey provided only an indication of the problem. The survey revealed that approximately 3 per cent (5 of 177) of officers at Headquarters and approximately 40 per cent (64 of 154) in the field had reported receiving various forms of remuneration and/or benefits from their national Government. Upon enquiry, the Committee was informed that at least 69 officers from 25 Member States were receiving remuneration and/or benefits from their national Governments. The Committee was also provided with information on the distribution of the officers receiving remuneration and/or benefits by Member States, which showed that, of those 25 Member States, 14 had 1 officer receiving remuneration and/or benefits, a further 10 had between 2 and 5 such officers and 1 had 24 officers receiving remuneration and/or benefits.

6. In paragraphs 16 to 24 of his report, the Secretary-General sets out the characteristics of what he considers to be a viable solution, provides information on the options explored and suggests an approach for addressing the potential conflict between the provisions of the staff regulations and rules of the United Nations and the national legislation of certain Member States. He indicates that a number of options were explored, including: (a) engaging active-duty military and police personnel, either as staff officers or as United Nations military observers and police officers; and (b) creating a separate category of personnel for seconded military and police officers, with the status of officials, other than Secretariat officials. The Secretary-General did not consider either of those options to be feasible, mainly because the seconded personnel would not hold a United Nations letter of appointment and would therefore not be able to perform the full range of functions that might be required of the position, including responsibilities for executive direction, supervision of staff and commitment of funds and/or resources. In addition, officials who are not Secretariat officials are not subject to the disciplinary authority of the Secretary-General.

7. The Secretary-General concludes that the current arrangement of appointing seconded active-duty military and police personnel on a fixed-term appointment under the staff regulations and rules is the most appropriate approach because it provides the necessary accountabilities to enable the seconded officers to carry out the full range of functions and ensures that all Member States can participate equally in contributing seconded officers (see [A/68/495](#), paras. 17-19). Upon enquiry, the Advisory Committee was informed that, because they hold an appointment under the staff regulations and rules, seconded active-duty military and police personnel are subject to the same disciplinary process and have the same access to the formal and informal systems of the administration of justice as other United Nations staff members.

8. The Advisory Committee recalls that in paragraph 21 of its resolution [67/287](#), the General Assembly requested the Secretary-General, inter alia, as an exceptional measure not to be extended beyond 31 December 2013, to facilitate the full participation of all Member States in seconding active-duty officers. Upon enquiry as to the measures taken to date in response to that request, the Committee was informed that the Secretariat had not yet exercised flexibility under the exceptional measures authorized by the Assembly, mainly for timing reasons and because the candidates under consideration for the ongoing recruitment exercise had been nominated prior to the adoption of that resolution.

### **III. Suggested amendments to staff regulations and rules**

#### **A. Potential conflict of loyalty**

9. In order to address potential conflicts involving dual loyalty to both a national Government and the United Nations, the Secretary-General suggests that the written declaration to be signed by all seconded active-duty military and police personnel under staff regulation 1.1 (b) be amended to include an additional undertaking that such personnel inform the United Nations of any conflict between the declaration and the oath or affirmation of office made with their national authorities and that they offer to resign in the event of such conflict. Upon enquiry as to the view of the

Secretary-General regarding the compatibility of the suggested approach with the Charter of the United Nations, the Advisory Committee was informed that the additional undertaking would strengthen accountability in respect of Article 100 (1) of the Charter.<sup>1</sup>

## **B. Conflict in relation to remuneration**

10. In cases where the national legislation of the country of seconded active-duty military and police personnel prohibits them from accepting financial remuneration and benefits from the Organization, or where national legislation requires them to continue to receive certain benefits from the Government, such as pension contributions, the Secretary-General suggests amending staff regulation 1.2 (j) and related staff rule 1.2 (k) to allow remuneration from a national Government. He also states that all seconded active-duty military and police personnel appointed by the United Nations should be remunerated in accordance with the staff regulations and rules in order to ensure equal pay for work of equal value.

11. Details on the modalities of the implementation of amended staff regulation 1.2 (j) and staff rule 1.2 (k) are provided in paragraph 23 of the report of the Secretary-General. In cases where national legislation prohibits the seconded officer from receiving remuneration from the Organization, the officer would be permitted to continue to be remunerated by his or her national Government and the United Nations salary would be remitted to that Government. Where national legislation does not prohibit seconded officers from accepting remuneration from the Organization but requires them to accept certain remuneration from the national Government, the officers would be required to disclose the remuneration and/or benefits payable by that Government and explain the national legislation requiring that such payment be made. In such cases, the United Nations would pay the seconded officers in accordance with the staff regulations and rules and would make appropriate adjustments to their United Nations remuneration in order to provide equity of treatment for officers.

12. The Advisory Committee requested further clarification regarding several aspects of the implementation of the suggested amendments to regulation 1.2 (j) and staff rule 1.2 (k), including: (a) the reasons for remitting United Nations remuneration to Governments in instances where national legislation prohibited seconded officers from receiving remuneration from the Organization; (b) how the suggested approach ensured equal pay for equal work in cases where the national remuneration paid to the seconded officer was either lower or higher than the United Nations remuneration remitted to the Government; (c) details on the specific mechanisms envisaged for adjusting benefits and taking into account exchange rate fluctuations and cost-of-living adjustments; and (d) the extent to which United Nations business processes and information systems would have to be adapted to accommodate those mechanisms.

**13. Based on the written responses received and its exchange with the representatives of the Secretary-General, the Advisory Committee is of the view**

---

<sup>1</sup> Article 100 (1) of the Charter stipulates the following: "In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."

that the implementation of the suggested amendments to staff regulations and rules may prove to be cumbersome and present certain operational challenges. Among these could be the practical difficulty of keeping track, on an ongoing basis, of the remuneration/benefits/allowances received by each seconded active-duty officer, of adjusting the corresponding United Nations remuneration/benefits/allowances accordingly, of continuously monitoring the changes made to the relevant provisions of the national legislation of several Member States and of reflecting those changes in the remuneration/benefits/allowances of seconded personnel.

14. The Advisory Committee considers that the suggested approach outlined in the report of the Secretary-General for addressing conflict between United Nations regulations and rules and national legislation requires further refinement and needs to be based on a more in-depth analysis and assessment of the implications and possible ramifications of the proposed changes.

15. Furthermore, the Advisory Committee is of the view that the suggested approach would not address the situation of seconded active-duty military and police personnel from Member States with national legislation that prohibits them from accepting remuneration from the Organization and that, at the same time, provides a level of remuneration that is not compatible with the cost of living at the duty stations where personnel are located. Nor would the suggested approach rule out overpayment from the United Nations to Member States, or ensure equal pay for work of equal value. The Committee recommends that the Secretary-General be requested to ensure that any proposal on this issue submitted in the future should ensure adherence to the principle of equal pay for work of equal value and address the situation of all Member States that are current or potential contributors of seconded active-duty military and police personnel.

#### **IV. Feasibility of adapting national legislation**

16. The Secretary-General considers it most desirable for Member States to consider amending their national legislation in order to respect the exclusively international character of the responsibilities of United Nations staff, in accordance with Articles 100 to 102 of the Charter, but indicates that this may not be feasible. Upon enquiry as to the reasons why the Secretary-General is of the view that it might not be feasible for some Member States to change their national legislations, the Advisory Committee was informed that, on the basis of efforts made to resolve issues on a case-by-case basis and engagement with the concerned national authorities, the Secretariat considered that it was unlikely that changes to national legislation would be forthcoming in the immediate future for all Member States.

17. The Advisory Committee requested further clarifications regarding: (a) the efforts undertaken to assess the extent to which the national legislation of the aforementioned 25 Member States was in conflict with United Nations regulations and rules; (b) the number of Member States having indicated that they were not in a position to nominate candidates or having recalled their officers after this issue came to light; (c) the number of Member States having thus far confirmed existence of such a conflict in their respective national legislations; and (d) conversely, those having indicated that such a problem did not exist or having already amended their

national legislation to respect the exclusively international character of the responsibilities of United Nations staff. The Committee was informed that, while the Secretariat had consulted individual Member States in an attempt to resolve the specific cases identified, it had not been possible to ascertain the degree to which national legislation was in conflict with United Nations staff regulations and rules.

**18. The Advisory Committee is of the view that it is premature to conclude that it may not be feasible for Member States to change their respective national legislations, that a more comprehensive analysis of the nature and extent of conflict between national legislations and United Nations regulations and rules needs to be made, and that further engagement with Member States is necessary in order to obtain a more comprehensive and accurate understanding of their positions regarding amendments to their national legislations.**

## **V. Conclusions and recommendations**

19. The Advisory Committee notes the effort made to address a complex issue in response to the request of the General Assembly contained in resolution [67/287](#). As indicated in the paragraphs above, the Committee considers that the suggested approach outlined in the report of the Secretary-General requires further analysis and refinement.

20. Furthermore, the Committee believes that Member States should be informed of the issue and given the opportunity to consider reviewing their respective legislations and that all other options should be considered before the Secretary-General suggests amendments to staff regulations 1.1 (b) and 1.2 (j) and related staff rule 1.2 (k), which touch upon some of the most fundamental principles and values regarding Secretariat staff enshrined in the Charter of the United Nations. Recalling the voluntary nature of the contribution by Member States of seconded active-duty military and police personnel, the Committee stresses the need to respect the exclusively international character of the responsibilities of United Nations staff, in accordance with Articles 100 to 102 of the Charter.

21. The action to be taken by the General Assembly is set out in paragraph 26 of the report of the Secretary-General. In view of the above, the Advisory Committee recommends against endorsement by the General Assembly of the approach suggested by the Secretary-General in section III of his report. The Committee also recommends that the Assembly: (a) extend for a further two years the exceptional measures authorized in paragraph 21 of its resolution [67/287](#); (b) request the Secretary-General to intensify his engagement with Member States with a view to identifying alternative solutions for addressing the conflicts between national legislation and United Nations regulations and rules regarding the secondment of active-duty military and police personnel; and (c) also request the Secretary-General to submit a report regarding developments on this issue and, if necessary, a new proposal for its consideration at the main part of its seventieth session, taking into account the comments and recommendations of the Committee set out in the paragraphs above.