



Seventh session
Agenda item 75

REPORT OF THE SECRETARY-GENERAL
ON PERSONNEL POLICY

Note by the Secretary-General

The Secretary-General has the honour to transmit, for the information of the Members of the General Assembly, a copy of a letter dated 2 March 1953 which he has received from the Chairman of the Staff Committee, transmitting a statement on personnel policy approved on 25 February 1953 by the Staff Council of the Secretariat of the United Nations.

LETTER DATED 2 MARCH 1953 FROM THE CHAIRMAN OF THE STAFF COMMITTEE
ADDRESSED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

New York, 2 March 1953

You have kindly offered to make available to delegations the views of the Staff Council on the subject of personnel policy, now on the agenda of the General Assembly.

I am sending you herewith a short statement adopted by the Council on 25 February last, as an expression of its carefully considered opinion on such of the more important aspects of this subject as the Council feels that it can properly discuss at the present time.

On behalf of the Staff Council, I wish to thank you for this opportunity to place before the General Assembly the views of the staff on this important matter.

(Signed) R. Daniel HOGG
Chairman
Staff Committee

25 February 1953

STATEMENT BY THE STAFF COUNCIL ON PERSONNEL POLICY

1. The Staff Council was established under Staff Regulation 8.1 for the purpose of consultation with the Secretary-General on questions affecting the situation of staff members. It is also the principal organ of the Staff Association of the United Nations Secretariat, which is affiliated to the Federation of International Civil Servants' Associations.^{1/} In both these capacities it is deeply interested in the item relating to personnel policy now before the General Assembly, and is therefore grateful to the Secretary-General for the opportunity to present its views on certain aspects of this subject, with special reference to the report of the Secretary-General (A/2364).

Responsibility and authority of the Secretary-General

2. The Staff Council fully concurs with the principles enunciated in the report under this head. It attaches great importance to the principle of the exclusive responsibility of the Secretary-General in administering the Organization's personnel policy "within the guiding lines fixed by the General Assembly" (paragraph 20).^{2/} It understands that whatever advice or information the Secretary-General may receive from an outside authority concerning a candidate for a post in the Secretariat or concerning a staff member, the Secretary-General's decisions in engaging and terminating his staff are to be governed only by the Charter, the Staff Regulations and the directives of the General Assembly.

3. The Staff Council feels that every effort must continue to be made to preserve the independent authority of the Secretary-General, especially in such difficult circumstances as those now prevailing.

^{1/} The Federation was founded in Paris on 26 January 1952 and includes, besides the Staff Associations of the United Nations at New York and Geneva, those of ICAO, ILO, UNESCO, WHO and WMO.

^{2/} Unless otherwise stated, all references are to the report of the Secretary-General (A/2364).

Obligations of staff members

4. The Staff Council considers it self-evident that although staff members are not expected to give up their national sentiments or their political or religious convictions, they must take no part in any activity, either open or secret, aimed at subverting or overthrowing by force the government of a Member State, and must avoid acts and public pronouncements which, though lawful, do not befit or may adversely reflect on their status as international civil servants, or are incompatible with the proper discharge of their duties (Staff Regulation 1.4).

5. The Council also agrees with the statement of the Secretary-General that a staff member's conduct "must be such that he merits the trust and the confidence of the Member nations and their peoples" (paragraph 24). This is not, of course, understood as meaning that a staff member whose opinions and associations, as distinct from his conduct, are known to be at variance with the views of a particular government or administration or with local public opinion at a particular moment, is thereby guilty of misconduct.

Loyalty of staff members to the United Nations

6. The Council would emphasize that a staff member has a positive obligation to discharge his functions and regulate his conduct "with the interests of the United Nations only in view" (Oath of Office, Staff Regulation 1.9), and to "demonstrate, in the performance of his duties, loyalty to the policies established by the organs of the United Nations" (paragraph 25). An international civil servant, in performing his duties on behalf of the United Nations, may have to act, under the authority of the Secretary-General, in a manner contrary to the wishes of a particular government.

7. It would seem essential, however, that so long as a staff member observes his oath of office and the other Staff Regulations, and exercises in all loyalty, discretion and conscience the functions entrusted to him, he should be protected by the United Nations and therefore by its Member States against any infringement of his status as an international civil servant.^{3/}

High standards of the United Nations

8. The Council fully subscribes to the statement of the Secretary-General that it is of fundamental importance "that the Organization should comply with elementary requirements of justice and fairness in dealing with individual cases" and that, in the words of the Assistant Secretary-General for Administrative and Financial Services, "no organization dedicated to law and order in world affairs can hope to survive if its own administrative actions are arbitrary and precipitate, based on mere suspicion and devoid of the due process to which all civilized peoples are dedicated" (paragraph 9).

9. The Council also welcomes the statement of the Secretary-General that his authority to dismiss staff members cannot be exercised arbitrarily, and that "such decisions must not only remain within the limit of his powers as defined by the Charter and the Staff Regulations, but must comply with the elementary requirements of justice" (paragraph 94). This is especially true of a dismissal connected with alleged subversive activities since, as is recognized, such a dismissal not only deprives the staff member concerned "of a respected position with the United Nations, but may also gravely impair his prospects of employment elsewhere and subject him to public condemnation in his own country" (paragraph 95).

^{3/} A Statement of Principles adopted by the Federation of International Civil Servants' Associations was sent, on 24 December 1952, to the Executive Heads of all the organizations the staff of which is represented in the Federation.

10. The Staff Council holds that the rights of staff members can be fully protected only within the framework of a sound administration providing both for the clear definition of the rights of staff members and for the establishment and maintenance of representative and judicial organs to safeguard those rights. The Staff Council therefore expresses the hope that a solution will be found to the present difficulties which, by removing uncertainties regarding conditions of termination and providing for due process, will facilitate the working of the representative and judicial organs of the Secretariat such as the Appeals Board, the Administrative Tribunal, the Joint Disciplinary Committee, the Joint Advisory Committee and the Staff Council itself, which it has been the common desire of the Secretary-General and the staff to have working on a sound basis.

Advisory Panel

11. With regard to the Advisory Panel set up to consider cases of staff members against whom derogatory information is submitted by a national authority, the Staff Council notes with satisfaction that in the preparation of its terms of reference "full consideration will be given to the requirements of due process of law" (paragraph 104).

12. The Staff Council considers that if these requirements are to be met, every staff member appearing before the Panel should be fully apprised of all the charges and all the supporting evidence against him, and be given the fullest opportunity and facilities to answer and refute them. The burden of the proof of the charge should in all cases rest with the Secretary-General.

13. The Staff Council trusts that the Panel and the Secretary-General will give its proper weight to each of the elements enumerated in paragraph 98 of the report of the Secretary-General.

14. The principle of due process should be invariably applied in all cases. Any staff member whose termination is contemplated on the ground of derogatory information from a national authority should have the right to go before the Panel, unless the Secretary-General considers the case suitable for submission to the Joint Disciplinary Committee.

Policy in cases of accusation and suspicion

15. Paragraphs 92-105 of the report of the Secretary-General appear to represent the long-range solution proposed by the Secretary-General to difficulties of the kind encountered during the past months. In view of the delicacy of the problems and the difficulty of formulating a solution which will be universally acceptable, the Staff Council appreciates the efforts made by the Secretary-General to meet both the inherent difficulties of the problem and the requirements of sound administration. It notes also that in addition to the general considerations advanced in paragraphs 94-96, the Secretary-General emphasizes the high standard of evidence required to substantiate accusations.

16. The Staff Council considers it hardly possible, in practice, to establish objectively the "likelihood" of a staff member's engaging in the future in subversive activity. Indeed, to attempt to establish such likelihood at all would seem to involve a serious departure from the principle of the presumption of innocence. The Council would therefore have difficulty in endorsing the view that the likelihood of a staff member's engaging in the future in subversive activity could constitute a sufficient ground for his termination. In any case, the Council presumes that if ever it is sought to establish such likelihood, due process will be observed.

17. In any consideration of security problems, certain differences between the criteria applicable to United Nations staff members and national civil servants should be borne in mind. As the Secretary-General points out, "the Secretariat of the United Nations works in a glass house not only physically, but in every respect" (paragraph 10). It is therefore clear that security considerations are here much less important than in certain national government departments.

Use of constitutional privileges

18. The Staff Council recognizes that when a staff member claims a constitutional privilege in respect of questions concerning activities inconsistent with the status of an international civil servant, such as those involving espionage, sabotage or incitement to the violent overthrow of the government of a Member State, this is certainly of concern to the United Nations.

19. However, an international civil servant's use of a constitutional privilege in a national enquiry does not automatically, in itself, justify his dismissal. Such an argument denies the principle of the independence of the Secretariat of the United Nations, and its general application would obviously involve serious practical consequences.

20. It follows from Article 100 of the Charter that the use of a constitutional privilege against self-incrimination, while justifying the concern of the Organization, should in most cases be only the starting point of an enquiry by the United Nations in accordance with the procedure laid down in paragraph 101 of the Secretary-General's report, the final determination remaining the exclusive responsibility of the Secretary-General and depending upon the merits of the case.

Application of the Staff Regulations

21. On the basis of an interpretation advanced for the first time in the opinion of the Commission of Jurists the Secretary-General, invoking Staff Regulation 1.4, has terminated staff members who used the privilege against self-incrimination in official enquiries concerned with subversive activities and espionage. The Commission of Jurists believed that the Secretary-General had an "inherent right to terminate a contract for fundamental breach under article 1.4 or article 1.8" which was distinct from his rights expressly conferred by the Staff Regulations.

22. The Staff Council has indicated above that it does not consider that the use of the privilege against self-incrimination automatically, in itself, constitutes a violation of a fundamental obligation. Apart from this, it is also the Council's view that the Secretary-General's powers with regard to discharge of staff members are limited to those expressly conferred by Staff Regulation 9, concerning termination, and by Regulation 10, concerning disciplinary measures. Accordingly, no new power of discharge can be added by interpretation, and if a breach of obligation is to constitute ground for discharge, it must amount to serious misconduct or unsatisfactory conduct under Regulation 10, or must come within one of the grounds for termination set out in Regulation 9.

23. It should, however, be recalled that Regulations 1.4 and 10 relate to the conduct and attitude of staff members only during the period of their employment as international civil servants. If, therefore, it is felt that there may be cases involving a demonstrated and serious lack of the integrity required by Article 100, paragraph 3, of the Charter, but would not be covered by Regulation 10 as presently drafted, and if it is desired to make provision for such cases, then Regulation 10 should be amended to provide also for termination on clearly specified grounds, as an administrative measure, in cases of this kind.

Definition of terms

24. The expression "subversive activities" is used by the Secretary-General "in its ordinary sense, which denotes activities directed toward the overthrow

of a government by force, including conspiracy towards such overthrow and incitement and advocacy of it" (paragraph 97). However, the concept of "subversive activities", and in particular the related words "conspiracy", "incitement", and "advocacy" should be defined for the purposes of the Staff Regulations.

Conclusion

25. In general, the Staff Council endorses the principles outlined in the report of the Secretary-General, although it is concerned about the application of these principles to recent terminations of staff members.

26. In order that every individual case may be justly and fairly dealt with, the Staff Council considers:

- (i) That the use of a constitutional privilege before a national authority must not be regarded as constituting automatically, in itself, grounds for the termination of a staff member;
- (ii) That the vague concept of "likely future subversiveness" must be recognized as involving a dangerous departure from the principle of the presumption of innocence;
- (iii) That terminations should be effected only under specific provisions of the Staff Regulations relating to terminations, i.e. Regulations 9 and 10;
- (iv) That the Administrative Tribunal, to which all terminations are appealable, must in every case be apprised of the reasons for the termination if it is to discharge its responsibilities effectively;
- (v) That the powers and procedures of the Advisory Panel should include the following elements:
 - (a) The competence of the Panel should be extended to include all cases in which the charge against a staff member is based on derogatory information furnished by a national authority which makes the case unsuitable, in the view of the Secretary-General, for submission to the Joint Disciplinary Committee;

- (b) The staff member should be fully apprised of the charges and supporting evidence against him, and be given a proper opportunity to refute them;
- (c) The burden of proof of the charge should lie with the Secretary-General.

27. Finally, the Council wishes to emphasize that the comments made in this paper are made in a constructive spirit, and that it has sought to take account of all the factors in a very difficult and complicated situation.

28. On the one hand, the Council and the staff in general fully agree to the proposition that no person against whom there is adequate evidence that he is engaging in activities incompatible with his status as an international civil servant should remain in the employment of the United Nations. On the other hand, the Council and staff believe it essential that the requirements of due process and fairness should be fulfilled, in order that the independence of the Secretariat - a principle laid down in the Charter and ever since considered vital to the Organization - may be maintained, and in order that the staff may have, in the words of the Secretary-General's report, "that reasonable security of tenure which has repeatedly been recognized as indispensable to the creation of an efficient and devoted international civil service" (paragraph 94).
