OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 11, Nº. 2 (November 2020-April 2021)

JANUS.NET
e-journal of International Relations

THE UNITED NATIONS CIVIL SERVANT: AN IMPORTANT ROLE IN INTERNATIONAL RELATIONS

SAFWAN MAQSOOD KHALEEL
safwan.maqsood@gmail.com
Lecturer in Public Law, University of Sharjah (United Arab Emirates)

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Abstract

Many factors play positively and negatively in international relations. International civil servants are among the most important. They are appointed to work in an international organization (regional or global) to carry out various types of assignments and to influence the conduct of international relations between the country concerned and the organization where they work or between the Member States at other times.

Sometimes international civil servants help to maintain international peace and security (here we are not talking about the peacekeepers). They encourage \development in different countries of the world, as it can unfortunately be the cause of bad relations between countries. They may even commit serious violations qualified as criminal offenses in the exercise of their functions, invoking professional immunity granted by the 1946 United Nations Convention on Privileges and Immunities.

Therefore, the need for a legal framework of their position within the international organisations is of the utmost importance, the same applying to the need to reassess their immunities, since the number of international civil servants has reached tens of thousands in these organizations around the world. The way the European Union has addressed the question of international civil servants is one of the best to date and an example that other organizations should follow.

Keywords

International Civil Servant, Functional Protection, UN Dispute Tribunal, Global Administrative Law, International Civil Service Commission.

How to cite this article

Khaleel, Safwan Maqsood (2020). "The United Nations civil servant: an important role in international relations". In Janus.net, e-journal of international relations. Vol. 11, No. 2 Consulted [online] at date of last visit, DOI: https://doi.org/10.26619/1647-7251.11.2.8

Article received on 7 April 2019 and accepted for publication on 30 March 2020

THE UNITED NATIONS CIVIL SERVANT: AN IMPORTANT ROLE IN INTERNATIONAL RELATIONS[1]

SAFWAN MAQSOOD KHALEEL

Introduction

International organizations are entities with a legal personality independent of the countries that contributed to their creation and must have employees to manage their affairs and implement the objectives they have set for themselves. Of course, the United Nations has a central role to play in the achievement of international peace, security and development. In order to guarantee an efficient and impartial service, certain criteria must be defined for the people working for the organization. It is also important to distinguish the category of international civil servant from other categories staff working in these organizations.

Thus, it is necessary to define the role played by people who manage the UN and ensure the achievement of the above-mentioned objectives, considering the constant increase in the number of employees linked to this organization, which exceeds tens of thousands. It is important to look at the criteria for selecting UN civil servants, because it is an issue that is growing in importance due to the sensitivity of the work and the missions international civil servants are entrusted with.

In addition, the relevance of this issue is linked to the existence of political considerations required in the selection of UN officials, in particular for senior positions. Some Member States intervene in the process of appointing a specific person, sometimes to oppose him. This intervention has a negative impact on the level of loyalty of the organizations' international staff and on their neutrality in the performance of their duties. Thus, many of them have become the reflection and the extension of the policy of their countries, even an extension of the representation of their state within the headquarters of the Organization[2].

I. The emergence of the European international civil service

Some jurists believe that the idea of the international civil service dates back to what are known as the International River Commissions, such as the Organizing Commission for the Navigation of the Rhine, established in 1851, and the Danube Commission, created

[1] Article translated by Carolina Peralta.
[2] Lemoine, Jacques (1995). *The International Civil Servant*. The Hague: Kluwer Law International, p. 18.

in 1856[3]. These organisations had in their ranks a number of officials entrusted with specific powers and who were independent, in the exercise of their functions, from their country, in order to be able to carry out their tasks impartially and fully for the benefit of all Member States. The creation of these commissions required holding regional and international conferences. These conferences had general secretariats, and, therefore, permanent officials working in these conferences to monitor the implementation of the resolutions.

Another example was the Hague Conference for the Peaceful Settlement of International Disputes, which took place between 1899 and 1907 and whose general secretariat had 25 members, appointed by the countries participating in the conference[4]. In addition, the so-called semi-international associations specializing in a number of technical issues have greatly contributed to the emergence of the international civil service. They are the result of the evolution of links and growing exchanges between states, unlike international conferences, as international cooperation and exchanges are continuous and coherent. And there are only administrative powers, subject to the supervision of one of the member states[5]. It should be mentioned that some of these Unions recognized privileges and immunities to officials who occupied their secretariat, such as the International Institute of Agriculture. Its officials enjoyed immunities and privileges vis-à-vis member states and even the host country in the course of their official duties, both internally and externally[6]. In general, these Unions, and before them, the International Conferences, were not considered to be international organizations and did not have their legal personality or mandate. Thus, the sovereignty of their ember states was not restricted. Rather, they were seen as technical coordination bodies in a specific area between countries. It cannot therefore be said that international administrative officials already existed[7].

After the end of the First World War, there were world events whose impact was to disseminate the rules of public international law and the holding of the 1919 Versailles Conference, linked to international organizations, in particular the evolution from the idea of a conference of a few days to an organization that will stay for decades. With regard to our subject, the term "international civil servant" was also used there for the first time and these civil servants were placed in charge by the civil servants of the general secretariat of the League of Nations and those of the International Labour Office in in Geneva.

The workforce of the League of Nations, from several European countries, had grown to over 800 employees, including the world's highest administrative official, the Secretary

3 Blanquet, Marc (2001). *Droit communautaire général*, 8th edition. Paris: A. Colin, p. 41
4 Guilhaudis, Jean-Francois (2017). *Relations internationales*, 4th edition. Paris: Lexis Nexis, p. 182.
5 Some federations and unions established at this time included: the International Bureau of Weights and Measures; the International Bureau of Rail Transport; the International Telegraph Union, the World Postal Union, the Union for the Protection of Industrial Property, the International Health Bureau; the International Union for the Publication of Customs Tariffs, the Union for the Manufacture of Sugar. See Pingel, Isabelle , «Observations sur la convention du 17 Janvier 2005 sur les immunités juridictionnelles des États et de leurs biens», (2005) 132 *Journal de droit international* 1047.
6 Pellet, Alain, and Ruize, David (1993). *Les fonctionnaires internationaux*. Paris: PUF, p. 32 ff.
7 Bawindsomde, Ouedraogole (2012). *Le statut Juridique du Fonctionnaire international sous l'angle des fonctionnaires de l'ONU et des fonctionnaires des Communautés européennes: Contribution à l'actualité de la notion de fonctionnaire international*, Ph.D. thesis presented on 23 March, p. 72.

General of the League of Nations, considered the first administrative head of an international organization. This organization published a policy governing the rights and obligations of its employees[8].

With the establishment of the United Nations in 1945, the international civil service achieved great fame. Indeed, the rights and duties of international civil servants, and the privileges and immunities that they enjoy have been enshrined in international conventions. The most notable was the 1946 UN Civil Servants Privileges and Immunity Convention[9]. In addition, the establishment of the International Civil Service Committee, in accordance with resolution 3357 of 1974, has had a significant impact on the development of the international civil service[10]. There is also the advisory opinion of the International Court of Justice concerning the definition of the international civil servant of 11 April 1949, which is one of the most important provisions of international justice and organized an important aspect of the rules applicable today to international functions[11].

II. The UN civil servant: from international administrative law to global administrative law

It is clear from the above that the concept of international function has evolved and affirmed itself away from the influence of the member states of the international organization, notably with the creation of the League of Nations and then the United Nations. The international function notion has become the reason for creating a new branch of public international law: international administrative law, which has split jurisprudence as to its existence as a branch of international law.

French jurists support the existence of this branch of international law and define it as the set of legal principles governing relations between international organizations and their staff. They believe that the objective of this branch of international law is international cooperation and that, like domestic administrative law, it has administrative jurisdiction[12].

The example given in this regard is the creation of an administrative tribunal by the League of Nations to rule on disputes between itself and its employees. The UN also created the United Nations Administrative Court. French jurists also claim that supporting the existence of international administrative law would lead to the recognition of the existence of the international civil service and administrative staff. The other view is that adopted by Italian case law and by some German jurists. Indeed, its supporters believe

[8] For additional information see: Zavala, Daniel (1976). «La Commission de la fonction publique internationale», 22 *Annuaire français de droit international* 501; Klabbers, Jan, «The EJIL Foreword: The Transformation of International Organizations Law», (2015) 26:1 *European Journal of International Law* 55.

[9] Lewis, Patrick (2014). «Who Pays for the UN Torts: Immunity, Attribution, and Appropriate Modes of Settlement», 39:2 *North Carolina Journal of International Law and Commercial Regulation* 263.

[10] Sur, Serge and Combacau, Jean(2008). *Droit international public*, 8th edition Montchrestien, Paris, p.724.

[11] For additional information on this topic, see: ICJ, 11 April 1949, Advisory Opinion, Reparation for Injury Suffered in the Service of the United Nations, Rec. 1949, p. 177.

[12] Nada, Taha (1986)., *Le fonctionnaire international*, [in Arabic], General Egyptian Book Organization, Cairo, p. 33; Lorenzo Casini (2019). Global Administrative Law, in Jeffrey, Dunoff and Pollack, Mark (eds), *International Legal Theory: Foundations and Frontiers*, Cambridge University Press, p. 6.

that there is no international administrative law and deny the existence of international bodies in the form of organizations.

Therefore, they believe that administrative activity within these international organizations is only an internal activity of member states, falling only under national administrative law. They do not recognize the existence of an international civil service[13]. Recently, jurists of public law in general and of international law speak about global administrative law (GAL) as a new branch of international law. The first appearance of the term global administrative law dates back to a study published in 2002 in a legal journal, adopted later in 2004, precisely by a research project prepared by the University of New York, then disseminated to other research institutions. The term global international law replaced what is traditionally called international administrative law, the emergence of which was associated with the creation of international federations, which paved the way for the creation of international organizations[14]. Global administrative law attempts to avoid being part of general international law, as is the case with international administrative law. Global administrative law covers broader subjects than those included in international administrative law, as it regulates the rules relating to international organizations. It is a rule body of international organizations. It also regulates the rules of global private and public institutions where certain public functions are conducted.

It also regulates the bases of non-governmental organizations or civil society ones, both local and international. Therefore, global administrative law is a broader term for what used to be called international administrative law. Global administrative law has two levels of rules: local rules and international rules, because it transcends national borders and addresses individuals directly without the need for an intermediary. It is also linked to what is called global governance. The sources of this law are international treaties of all kinds, rules of customary international law, and general principles of customary law, in addition to the national law of states[15].

III. The evolving definition of international civil servant

Many jurists classify all employees of international organizations, whether civil servants or other categories, in the group of international employees, while other jurists reject this view and believe that a distinction is necessary. The supporters of the first opinion are inspired by the definition of the ICJ, in its advisory opinion of 11 April 1949 on the question of the compensation of United Nations officials, which states: "an international employee is any person, paid or not, who works permanently or temporarily, assigned by an organ of the Organization to exercise functions or provide assistance to the functioning of this entity, or each person acting under its authority"[16]. For them, this

[13] Kingsbury, Benedict (2009). «The Concept of Law in Global Administrative Law», 20:1 *European Journal of International Law* 24.
[14] Lorenzo Casini, *supra* note 11- 8.
[15] Kingsbury Bendict, *supra* note 11-25.
[16] *Supra* 10-177; it must be referred that the Community official is defined as (any person who has been appointed under the conditions provided for in this statute in a permanent post of one of the institutions of the Communities by a written act of the power of appointment of this institution). See: Bawindsomde, Ouedraogole, Supra note 6-226.

definition is broad, due to the inclusion of international civil servants and other categories, as is the case today of the Blue Helmets, special representatives assigned to mediation and even technical experts given specific tasks[17]. Of all these categories, only international civil servants provide permanent and exclusive services to the organization and are the only ones to be selected on the basis of the principle of equitable geographical distribution among Member States[18]. On the other hand, another opinion, opposing this view, considers that to regard temporary international civil servants and permanent international civil servants as being all civil servants is unacceptable. In its advisory opinion of 11 April 1949, the ICJ dealt with an individual case involving temporarily appointed international employees, namely Count Folk Bernadotte, and referred to the need not to distinguish between employee and international civil servant in order to justify the organization's right to claim compensation. On the other hand, other categories are subject to their own rules in matters of selection, appointment, rights and obligations, even if they perform missions linked to international organizations, as is the case of international judges, whether they are members of the ICJ or of the International Criminal Tribunals (ICT)[19]. Based on this distinction, we must mention some of the definitions introduced in the law regarding international employees and international civil servants.

An international employee can be defined as follows: "any person carrying out an international assignment on a temporary basis for an international organization". This description applies to those the international organization assigns temporary tasks, such as experts and mediators[20].

As for the definition of an international civil servant, jurisprudence has provided several, of which the one advanced by Professor Paul Ruter was chosen: "an employee of an international organization governed by a specific legal system, not subject to internal law, exercising international functions on a continuous basis".

It can be seen that this definition contains the following elements:

- A time-based element: the function is permanent and continuous.
- A legal element: the worker's compliance, in his working relations with the international organization, with the legal system that it establishes to regulate such a relationship and not with the legal system of a given state.
- The employee performs his work in accordance with the interests of the organization and not those of a state. This element does not prevent the employee from carrying

[17] Dubois, Valerie (1985). *La condition juridique des agents internationaux*, in: Les agents internationaux, Colloque d'Aix-en–Provence, Editions Pedone, Paris, p. 30.

[18] Pellet, Alain (1989), supra note 5-10; ICJ Advisory Opinion, 15 December, Applicability of Section 22 of Article VI of the UN Convention on the Privileges and Immunities, Rec, p. 194.

[19] Note that Susan Bastid adopted this view in her definition of the international civil servant, but later deviated from it, specifically in the 1970s. For additional informatin see: Bettati, Mario (1987). «Recrutement et Carrier des Fonctionnaires Internationaux», IV *Recueil Des Cours de Droit International* 373.

[20] Fakhory, Ammer (2017). «Le statut juridique des fonctionnaires internationaux», [in Arabic], 13 *Revue des droits et sciences politique*s, 114.

out his activity within the territorial framework of a given country, insofar as it is in the interest of the organization[21].

This is what distinguishes international civil servants from other employees of international organizations, who are appointed on the basis of national rights, such as service employees and minor employees. After reviewing these definitions, it is necessary to realize that there is a clear difference between them. This difference is sometimes not clear, in particular because of the complexity of the concept of international function. In the United Nations, for example, the recruitment system allows employees on short-term contracts to benefit from all the privileges and immunities of an international civil servant. Some consider this to be an exception to the general rules that distinguish an international civil servant from an international employee[22].

There is no doubt that the state representatives within international organisations do not enjoy the same status as the international civil servant, because of the nature of their work, the immunities and privileges they enjoy and the official name assigned to them[23]. This is quite normal given the entity to which international civil servants and state representatives report. According to the 1946 United Nations Convention on Privileges and Immunities, the representative category included all representatives, assistants, advisers, technical experts, and mission secretaries[24]. It should be noted that although their place of intervention is the offices of the international organizations, there is a distinction between the two categories. It can be attributed to several factors, including the nature of the work they do.

A representative of a Member State has a dual activity: he participates in affirming the objectives and principles of the organization and in achieving its objectives by voting on its resolutions. However, he works in favour of the interests of his state within the organization. The state representative here places the interests of his state before other interests. As a state representative, even if he serves the organization, he is not considered an international civil servant. The terms of appointment of the two are different: the state appoints its representative in accordance with its national legislation. On the other hand, the international civil servant is appointed by decision of the Secretary General of the Organization or by one of its bodies[25]. A state representative cannot invoke the privileges and immunities granted by the Organization and, in the event of damage, claim the responsibility of his state.

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21 Bettati, Mario, *supra* note 18-375.

22 Fouda, Guillaume (2013). «Agents et fonctionnaires internationaux dans un ordre international en mutations», *le journal de droit* 5; Jean-Marc Coicaud(2007), «Lafonction publique internationale en question», 5 *Les carnets du CAP* 47.

23 Langrod, George (1963). *La fonction publique internationale: sa genèse, son essence, son évolution*, Sythoff, Leyden, p. 32.

24 The 1946 Convention on the Privileges and Immunities of the United Nations. It should be noted that according to the Community Law Regulations, European experts are civil servants of the Member States or international civil servants working on a temporary basis, for a period of 6 months to 4 years, for an institution of the European Union. Pingle, Isabelle, *supra* note 4-1048. Bawindsomde, Ouedraogole, *supra* note 6-230 ff.

25 Klabbers, Jan,*supra* note 7-56.

On the other hand, an international civil servant, appointed by the international organization itself, has the right to benefit from immunities and privileges vis-à-vis all member states. Wrongdoing is also the responsibility of the organization itself and not of the state of his nationality. Finally, the organization exercises functional protection towards its employees, while the state exercises diplomatic protection towards its nationals and its representatives within the organization[26].

IV. The UN and the appointment of its officials

The United Nations enjoys a certain degree of freedom in the selection process of international personnel, since it can dispense with the consent of the state to which the candidates belong. Article 101 of the Charter of the United Nations states in its first paragraph: "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly"[27]. This is actually a theoretical basis. In its concrete application, the interventions of the countries appear very clearly, some states intervene in order to designate or prevent the designation of some of their citizens or even of persons belonging to other countries[28].

One notes that the legal qualification for appointing international civil servants has split into two groups: the first considers that it is the same as that applied to civil servants in the internal legal system of the state. The second thinks that international functions have a specific character and are distinct from the public service of domestic law, because the work is carried out in an international community characterized by the weakness or absence of social solidarity between its members[29]. In addition, the civil servant within the state is subject to national laws, and to strict penalties if he violates them.

On the other hand, at international level, the rules for appointing an international civil servant are done in accordance with a contract between him and the UN. The recruitment letter constitutes the agent's affirmation and consent, commonly referred to by international organizations as an employment contract[30]. The individual's membership in the UN requires the publication by the SG of a single appointment decision, whether the individual is recruited by appointment or by selection process. In this regard, he must cease his work in his country of origin, whether governmental or private, when he joins the UN[31].

However, sometimes the major states intervene in the nomination of the candidates, in particular for important positions in the organization. The state proposes certain names with a high record of effectiveness for higher functions and rarely for lower functions[32]. It should be noted that the selection mechanisms are multiple and vary depending on

[26] Lewis, Patrick, *supra* note 8-274.
[27] The UN charter 1945.
[28] Jordan, Robert (1991). «The Fluctuating Fortunes of the United Nations International Civil Service: Hostage to Politics or Undeservedly Criticized? The Fluctuating Fortunes of the UN International Civil», 51:4 *Public Administrative Review* 354.
[29] Fakhory, Ammer, *supra* note 19-117.
[30] Fouda, Guillaume, *supra* note 21-6.
[31] Fouda, Guillaume, *supra* note 21-6.
[32] Devin, Guillaume (2011). «Les Evolutions de l'ONU: Concurrences et Intégration», 53:4 *Critique Internationale* 9.

the nature of the contract between the person and the organization: temporary (fixed-term) or indefinite. The former is generally applied to organizations and specialized agencies and those related to the United Nations[33].

One of the countries' illegal forms of interference in the recruitment process is to exert pressure on the United Nations through the Secretary-General or senior officials, to appoint or prevent the appointment of some of their citizens, for internal or external political reasons. The pressure exerted by the US administration on former United Nations Secretary-General Trygve Lie between 1952 and 1953 is an example. The United States had wanted and succeeded in expelling a number of American and Communist staff from the Secretariat.

In addition, other forms of pressure have been exerted by certain states on the UN and its organs and specialized agencies, with the aim of hindering the selection of employees, such as the enactment by these states of national legislation prohibiting their nationals from entering the service of the international organization without their authorisation[34].

V. Selecting UN officials: Towards a fair and equitable system

There is the need to select highly qualified persons to the organs of the UN and support its bodies in adopting certain principles to be taken into account when selecting candidates for administrative and technical posts.

1. Membership

International organizations tend to exclude applicants from non-member countries. They must therefore belong to one of the member states of the organization, which is a natural consequence of a country's membership of the entity. The international organization cannot include nationals of countries that do not belong to it, because their principles may be different from its own. We can therefore wonder about the intentions of people among the nationals of these non-member countries who come forward to work there. According to current jurisprudence, the refusal of the international organization to accept the appointment of persons belonging to third countries, despite a potentially higher level of competence than nationals of Member States, is accepted. And the third-country national does not have the right to appeal to international tribunals and administrative jurisdictions[35].

2. Amount of the financial contribution to the organization

[33] Bettati, Mario, *supra* note 18-303.
[34] Lemoine, Jacques, *supra* note 1-49; It should be mentioned that some countries in the Middle East such as Iraq before 2003, Syria and Gadafi's Libya have criminalized their citizens who have been selected to international organizations without their consent. See: Guilhaudis, Jean-Francois, *supra* note 3-187.
[35] Pellet, Alain (2007), *supra* note 5-32; Cot, Jean-Pierre et Allain Pellet, *La Charte des NU,* 3rd edition, Economica, Paris, p. 1349 ff.

This rule is based on the principle that who pays the most should have the largest share of employees in the organization. The United Nations decided in resolution of the GA no. 42/220 of 29 January 1988 that the minimum amount in the bank account should be US $2,700 for a state to appoint its nationals as UN international civil servants.

3. Principle of equitable geographical distribution

This principle is mentioned in article 101, paragraph 3, of the United Nations Charter, which was a pioneer in its implementation. In accordance with the declaration made by United Nations Secretary-General U Thant in 1968, this principle means that the organization must be concerned with the experience and culture of each nation or Member State[36].

A ccording to this point of view, this principle envisages the contribution of the state or culture or a people to the activity of the organization, the minimum which should not be waived in its demands for the appointment of its nationals. The number has been set at four officials per country. This means that, according to United Nations statistics, the staff of the Secretariat, which includes thousands of people, must be from all Member States and have at least four employees per Member State[37]. The report issued by UNESCO is an example of the imbalance with regard to the nationality of international civil servants, as the majority of people employed by this IO comes from Western countries[38].

In addition, 60% of the staff of the UN General Secretariat were from European countries and North America[39].

Adopting this principle is one of the most difficult issues facing international organizations in the selection of staff. Some countries may not be able to provide the required number of citizens to work in the organization. This principle will automatically give the state the inherent competence to identify employees who may not have the required qualifications, which will affect the performance and activity of the organization itself[40]. But some countries, such as the countries of Eastern Europe during the communist era and of the Middle East, have chosen candidates for positions in the UN and specialized agencies supposed to be in favour of the current regime. This means excluding qualified skills belonging to these countries from standing as candidates for an international civil servant position[41].

[36] Plantey, Alain (2005). *Fonction publique internationale*, CNRS Éditions, Paris, p. 285.
[37] Weiss, Thomas (2010). «The John Holmes Lecture: Reinvigorating the International Civil Service», 16:1 *Global Governance* 47; Jordan, Robert*, supra* note 26-354.
[38] Ismayil, Meryll (2014). «Les politiques de présence des Etats Occidentaux au sein des Organisations Internationales», 45:2 *Etudes Internationales* p. 287.
[39] *Ibid.*
[40] Cot, Jean-Pierre and Allain Pellet, *supra* note 32-1352.
[41] It should be noted that the UN Administrative Tribunal says that the only way to recruit international civil servants is through the calls organized by the UN. For more details on these judgments, see Ruize, David (1988). «Jurisprudence de Tribunal Administratif des NU», 44 *Annuaire française de droit international* 422.

4. Applying the principle of merit

In order to deal with the problems raised by the previous principle, jurisprudence began to search for a principle or a rule aimed at limiting it. The appointees must be highly qualified and competent with scientific qualifications and have received specific training. Supporters of this principle believe that they strive to revitalize the work of international organizations by providing them with scientific and professional skills, through candidates with varied skills, chosen from among the most qualified, even if they must belong to a Member State that has exceeded its quota. This is what the UN Legal Adviser and its specialized agencies has authorized[42]. It should be noted that Article 101, paragraph 3, of the Charter of the United Nations refers to the principle of merit, which states: "The paramount consideration in the employment and determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity". It is based on this principle that the United Nations and its agencies select and appoint their staff[43].

5. Principle of the independence of the international civil servant

The principle of independence is one of the fundamental principles enshrined in all the fundamental charters and regulations of international organizations. The member states of each IO are bound to respect the international character of this official and do not have the right to influence him in his functions, even if he has their nationality[44]. In its advisory opinion on the request for reform of judgment no. 33 of the United Nations Administrative Tribunal (UNAT), the International Court of Justice (ICJ) affirmed that the independence of the international civil servant is a fundamental guarantee of the proper functioning of international organizations. This independence is protected in the event that the heads of these organizations have appointed persons for a fixed period[45].

The guarantees of the independence of international staff are found in international legal documents[46], in particular in the legal system that governs relations between international organizations and states (charters and treaties, agreements between the organization and Member States and organization's individual acts)[47]. International civil servants enjoy less privileges and immunities than those granted to diplomats. They are conferred on them on the territory of the Member States, since they must be able to

42 Lemoine, Jacques, *supra* note 1-194.
43 Udom, Udoh (2003). «The International Civil Service: Historical Development and Potential for the 21st Century», 32: 1 *Public Personnel Management* 102.
44 David, Meryll (2008). «Les stratégies d'influence des États membres sur le processus de recrutement des Organisations internationales: Le cas de la France», 126:2 *Revue français d'administration publique* 269.
45 See Advisory Opinion of 27 May 1987 on the Interpretation of the UNAT Judgment No. 333 of 1984, p. 226.
46 The enjoyment of the immunities and advantages of an international civil servant is enshrined in all legal documents produced by international organizations. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 constitutes the fundamental basis of other international organizations. These immunities sparked a legal debate, in particular on the level of profits by the experts of the special missions and the rapporteurs of the sub-committees. This forced the United Nations to ask the ICJ to issue an advisory opinion on the possibility of applying the 1946 Convention to these categories. Members of special missions and human rights commissions benefit from the scope of the Convention. Read: ICJ Advisory Opinion, 15 December 1989, Applicability of Section 22 of Article VI of the Convention on the Privileges and Immunities of the UN, Rec.
47 Jordan, Robert, *supra* note 26-354.

exercise their functions independently of the influence of different countries. On the other hand, senior international officials such as the Secretaries General and the Director General of the World Organization enjoy immunities similar to those of foreign diplomats[48].

There are two types of immunities granted to United Nations officials. Ordinary officials enjoy only one type: immunity related to office. It is only granted to them during their work. The United Nations accepted this immunity on the grounds that the crime committed by its ordinary officials does not fall within their professional obligations. The official must therefore be held responsible. As for senior officials, including the Secretary-General, his assistants, heads of cabinet, his special representatives and heads of agencies linked to the United Nations, they enjoy two immunities: that relating to office and personal immunity. They are not prosecuted for their acts even if they constitute crimes within the meaning of the law of the host country[49].

6. Gender parity: a new challenge for the UN system

In addition to the previous principles, many international organizations started adding a new principle related to gender equality two decades ago. This is a new term, somewhat broader in scope than the traditional principle of equality and than the principle of non-discrimination on ethnic, religious, linguistic, cultural and national grounds. This new principle finds its origin in the rule of non-discrimination between genders as an international legal principle. Gender parity was instituted by the Cairo Conference on Population in 1994 and by the Beijing Declaration in 1995, as indicated in article 7, paragraph 3, of the Rome Statute of 1998 of the ICC, which aimed for equality between genders[50].

Historically, for centuries women have been the subject of blatant discrimination within the national framework, especially at the level of work: lower wages and benefits - fewer employment opportunities, which has pushed the UN to act and deal with this apparent marginalization. The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which a large number of UN member states have adhered, attempted to avoid this discrimination[51].

With regard to gender discrimination, in IOs such as the UN and specialized agencies, it should be noted first of all that the European Union has made great progress in implementing the rule of prevention of discrimination based on gender in a way unmatched in other international organizations, in particular by introducing the prohibition of discrimination based on gender as one of the rules for recruiting officials of

48 See Articles 18-19 of the 1946 UN Privileges and Immunities Convention.
49 Freedman, Rosa (2018). «UN accountable: A New Approach to Peacekeepers and Sexual Abuse», 29:3 *European Journal of International Law* 966.
50 Weiss, Thomas, *supra* note 34-43.
51 Devin, Guillaume (2017), *supra* note 29-16; Achieving Gender Parity on International Judicial and Monitoring Bodies - Report presented by the International Human Rights Law Clinic in the University of California, October, p. 16.

the European Union. The occupancy rate of important positions and lower jobs by women in institutions of the European Union is very high[52].

For the UN and its related bodies, it should be noted that the quota of women obtaining jobs is still very low and tends to strongly favour men. In an important report published by the UN Secretariat in December 2017, the situation was considered very negative: among the high-level positions in the UN and in the bodies and institutions associated with it, the occupation quota for positions of responsibility by women does not exceed 29% against 71% for men. As for those of the assistants to the Secretary-General, special rapporteurs, special representatives, chairpersons of committees and even research institutes associated with the UN, the same applies. When it comes to lower jobs, although the rule of preventing gender discrimination is spelled out in the United Nations recruitment rules, the rate of women getting a job and even entering the selection process is very low compared to men.

In view of the criticisms that continue to be led by NGOs concerned with women's rights on the imbalance of jobs, the UN Secretariat set up a task force in January 2017 to study this great disparity in the percentage of women applying for a job. This team has developed a strategy entitled "Women and the United Nations" to be applied to all organs of the organization without exception, even in peacekeeping missions. Since the beginning of 2018, the strategy obliges each organ or administration of the United Nations to set up a mechanism for monitoring the application of the rule of preventing gender discrimination in the occupation of jobs. And the issue did not stop at this point, but spread to the Member States themselves, the General Secretariat informing them and urging women to apply to the organs of the organization[53].

VI. The legal link between the International Organization and its officials

The qualification of the legal link between international civil servants and the UN is one of the questions whose emergence was linked to the development of the international function within the UN, making it necessary to define the nature of these relations. This resulted in the emergence of three points of view[54].

Supporters of the statutory character consider the relationship between the official and the UN as a statutory or disciplinary one. The civil servant is completely subject to the organization and to its will, his legal status being similar to that of a civil servant in administrative law within a state. It should be emphasized that this compliance is not limited to the rules applicable to the civil servant at the time of his entry into the international post, but also to upcoming changes in his status or in what are called resolutions relating to civil servants. They consider that the counterpart is the existence of rules relating to the rights of civil servants, in the event of a dispute. Administrative

[52] Udom, Udoh, *supra* note 38-123.
[53] ITU Gender Parity Strategy: Report presented by the ITU to the UN secretary General in April 2018. Doc C18/63-E, p. 7.
[54] Guilhaudis, Jean-François, *supra* note 3-183.

tribunals have been created by the various international organizations, which have given them the competence to examine the requests and complaints of their employees[55].

On the other hand, certain jurists criticize the statutory character and base the relationship between the civil servant and the UN or one of its organs on a contractual character, based on an employment contract between the official and the organization. This contract gives both parties an equal legal status, determines the rights and obligations of the parties, in particular in relation to the expiry of the contract, and is based on the principle pacte sunt servanda, which means that the parties cannot be freed from the obligations arising from the contract, where there is no similarity between the civil servant's relationship with his state and that with the OI. Consequently, the guarantees established during the exercise of the international function are more like those of the civil service at the internal state level, unlike the international function. In addition, the adaptation of the contract has the aim of restricting the UN from developing the rules of the international civil service[56].

The third opinion, considered to be conciliatory, recommends combining the two opposing points of view, by considering the relationship between the civil servant and the organization as an organic and contractual relationship at the same time, and that the civil servant is subject to the conditions of the contract. The organization gives him more freedom to face any circumstances that may affect the interests of the organization, forcing him to modify the terms of the contract[57]. In our opinion, this point of view cannot be adopted at the level of international action, because it has not brought anything new to adapt this relationship. Rather, it combines two antagonisms. For us, we must give the organization more freedom to adopt the opinion that it considers appropriate to its own situation and to allow it to amend and even modify the regulations in its own interest, provided that the necessary guarantees are given regarding the rights of civil servants, giving them the right to be tried by administrative tribunals created for this purpose[58].

VII. The UN official: Exceptional protection and criminal liability

1. The criminalization of UN officials

The criminal liability of UN officials for the acts they commit, which sometimes constitute crimes under criminal law, has captured the attention of United Nations Member States, especially over the past three decades due to the large number of complaints against UN-affiliated peacekeepers, or even officials and experts of the UN[59]. In addition, the issue of accountability was on the agenda of the Sixth Committee of the United Nations General Assembly at its annual meetings, notably with the release of Prince Zaid's 2006 report, which presented explicitly the question and identified how to address it. Hence the exceptional importance of this issue due to the fact that it has a significant impact

55 Dubois, Valerie, *supra* note 16-25.
56 Plantey, Alain, *supra* note 33-78.
57 Pellet, Alain, et Ruize, David, *supra* note 5-26.
58 Bawindsomde, Ouedraogole, *supra* note 6-416.
59 Freedman, Rosa, *supra* note 44-963

on the reputation of the UN on the one hand, and, on the other, on the reparation of the victims of these acts[60].

As for the violations committed by the peacekeepers, the truth is that they are increasing dramatically and exponentially with their wide deployment in various areas of the world, especially in Africa, the Middle East and in the Balkans. These forces often commit the crime of sexual rape against the civilians they are supposed to protect. These civilians were shocked to find that members of these protection forces committed heinous and degrading crimes.

As for soldiers and officers of international forces, the principle is that they should be tried in military tribunals belonging to their country, but unfortunately intentional neglect of complaints from civilian victims has led to the spread of a culture of amnesty. In this regard, we cite the example of the complaint filed by a Somali citizen accusing these forces of having destroyed his property in 1992 during their missions in Somalia, known as the Askar case against Boutros Ghali (former Secretary-General of the United Nations). His complaint was rejected by the United Nations on the basis of Article 2 of the 1946 General Convention[61].

The cholera issue in Haiti in 2010 has not changed much so far. The roots of this problem go back to October 2010, when a cholera epidemic suddenly spread to the world's poorest country. This happened after Nepalese forces who had just arrived from their country, Nepal, ranked by the WHO as the third country in the world where the epidemic is raging, were deployed as part of the peacekeepers. Despite the evidence from medical reports confirming allegations of the role of Nepalese forces in the spread of cholera, these forces were not examined prior to their deployment. Unfortunately, the UN has knowingly neglected the complaints presented by more than five thousand Haitians asking for the members of these forces to be trialed, especially since their arrival in Haiti, the number of deaths due to the epidemic exceeded two thousand a day.

In 2013, a UN report on the issue of Haiti concluded that the claims for compensation from people affected by the epidemic caused by Nepalese forces were unfounded, which confirmed the conviction of jurists that the UN and its officials enjoyed absolute immunity, even if this is not stipulated in the 1946 UN Convention on Immunities[62]. The same is true of United Nations officials and experts, as their serious violations qualified as criminal offenses continue in the countries where they are, a fact linked to the weakness of the legal and judicial systems of countries where they reside[63].

However, this has not stopped them from committing crimes in other stable countries where rule of law is enforced. Here, the issue goes beyond small offenses or even manslaughter, but rather theft, rape and other financial crimes. The UN has put in place mechanisms to reduce these violations, including the internal investigation unit within the UN itself. When there is a complaint or information regarding the involvement of a

60 Weiss, Thomas, supra note 34-48.
61 Freedman, Rosa, *supra* note 44-966.
62 Lewis, Patrick (2014). «Who Pays for the UN Torts: Immunity, Attribution, and Appropriate Modes of Settlement», 39:2 *North Carolina Journal of International law and Commercial Regulation* 260.
63 Hovell, Devika (2018). «UN accountable: A Reply to Rosa Freedman», 29:3 *European Journal of International* 988.

UN official or expert in a crime in accordance with the law of the host country, this unit checks its validity. If it is committed in accordance with the requirements of his work, there is no liability [64, 65].

What is true, however, is that the officer committed the crime for his own personal gain, and in this case, UN officials must accept the jurisdiction of the host country's courts to try him in its domestic courts or accept his extradition to the country of his nationality, provided that in both cases there is no violation of fair trial standards or of human rights principles. As for the second mechanism, it consists in referring the person to the United Nations Dispute Tribunal, which is an organ created by the United Nations as an alternative to the United Nations Administrative Tribunal, which has two degrees: the first degree and the appeal. This judicial mechanism has been reserved for the trial of its officials and experts for the crimes they commit, violations that cannot be qualified as criminal acts, only as contractual or administrative violations relating to their work[66].

Some of the most significant obstacles to repressing violations committed by United Nations officials are those related to the fair trial standards we have explained above. If the two countries do not respect them, what is the solution for the accused official? In addition, there is no specific definition in criminal laws for sexual crime. This difference has therefore led to multiple interpretations by countries to define sexual crime, some of which allow the act and others criminalize it. Besides other objective factors, in particular the weakness of the judicial institutions in the countries which host these forces and even of the personnel of the United Nations. The UN is also under pressure from the state of the perpetrator to prevent his prosecution or hearing in the courts of other countries, otherwise it will withdraw its forces[67].

2. Functional protection

Public international law establishes for international civil servants a protection similar to that granted by the states to national civil servants and includes everything that may affect international civil servants in the exercise of their jobs. The protection exercised by the UN does not prevent the state of the civil servant's nationality from exercising diplomatic protection[68].

This was confirmed by the International Court of Justice (ICJ) in an advisory opinion on the case relating to compensation for the assassination of Count Folk Bernadotte. The ICJ had recognized the right of the state of Sweden, of which the Count was a national, to seek redress for his death from the Israeli government, as well as from the United Nations, since he was one of its officials. But the Court imposed the condition that this

64 Freedman, Rosa, *supra* note 44-967.
65 Klabbers, Jan, *supra* note 7-14.
66 Freedman, Rosa, *supra* note 44-971.
67 Freedman, Rosa (2014). «UN Immunity or Impunity? Human Rights Based Challenge», 25:1 *European Journal of International* 242.
68 The Rules on the Staff Regulations of the West African Economic and Monetary Union provide in Article 20 that the staff member is entitled to the protection of the Union in the exercise of his functions and that the terms and conditions of this protection are defined by implementing regulations for these Rules. See: Fouda, Guillaume, supra note 21-12.

does not result in double compensation for the same act or damage, which is a stable rule from a criminal point of view[69].

On the other hand, nothing in public international law indicates which state or organization has priority in the exercise of functional protection and, therefore, in the compensation thereof. However, jurisprudence provides a theoretical solution to the problems that may arise in this regard. The Organization and its Member States can enter into agreements to resolve these issues[70].

In our opinion, granting the organization the right to exercise its protection on behalf of its officials, in the event of problems or harassment in the course of their work or even when they suffer prejudice, deserves to be taken into account so that the Organization can perform its task in the best possible way, especially given the complexity of the tasks conducted[71].

Conclusion

We have discussed the issue of disagreement over the definition of the international civil servant and the possibility of including all employees of the international organization. Supporters of the idea of including all employees in this term have found support in the jurisprudence of the ICJ. With regard to the appointment of an international civil servant within an international organization, we can make a clear distinction between the international civil service and the national one, which is reflected in the nature of the sanctions imposed on each and by the weakness or the strength of the official's affiliation with the organization or state where he operates.

Regarding the independence of the organization in the selection of candidates, this often becomes fictitious because of the strong pressure exerted by large states, either by direct pressure on senior officials of the organization, or through internal legislation that restricts the process of selecting citizens in the international organization.

The result of this intervention is that appointees favour the policies of their governments over organizational representation, which undermines the performance of the organization at all levels and prevents it from moving forward.

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69 Freedman, Rosa, *supra* note 75-967.
70 Sur, Serge, *supra* note 9-718.
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