

SOME ASPECTS OF THE LEGAL STATUS OF I.C.A.O. PERSONNEL

Presented by Manuela Lila Sawicki in partial
fulfilment of the requirements for the degree
of Master of Laws.

Institute of Air and Space Law

The International Civil Aviation Organization,
being a specialized agency in relation with the United Nations
could be taken as a case study in international organizations
and as an object of analysis from the international civil
service aspect.

This latter topic is considered in the dissertation
in an attempt to show the efforts of the Organization to
develop a truly international secretariat.

I.C.A.O. has attempted to set up a Secretariat
where conditions of service and personnel policy follow that
used by the whole United Nations family.

Special emphasis is placed on the international
civil service concept, stressing how the law protects the
interests of officials and thereby facilitates the growth
of an independent career service, while meeting simultaneously
the requirements of administrative flexibility.

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by

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presented to the Faculty of Graduate Studies
& Research in partial fulfilment of the
requirements for the degree of Master of Laws (LL.M.)

Institute of Air and Space Law
McGill University - Montreal.

July 1969

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INTRODUCTION

The century in which we are living has been full of interesting phenomena which call for the attention and study of every branch of science. In the intricate field of human relations the experience is amazing. Beyond the simplest relation between one person to another, we face relations in a much broader sense and dimension. International relations, transnational co-operation, the joining together of sovereign nations giving away some of their sovereignty for the purpose of achieving common ends.

The struggle of humanity for survival brought about the new, useful and magic device of international organizations.

They vary in their structure, power, purpose ; and as the years pass, they have perfected the ways and means to fulfill the reason of their existence.

I believe that any of these international organizations constitutes an object of study with regard to the response that the organism gives to the necessity of its creation.

They have much in common and after the United Nations was settled they were begun and developed under the San Francisco Charter conceptions.

I intend here to make a study of one of these international organizations, characterized as one of the specialized agencies in relation with the United Nations according to the terms of art. 57 of the Charter. The object of my observations is the International Civil Aviation Organization (I.C.A.O.) set up by the Chicago Convention on International Civil Aviation of 1944.

From the structure and daily work of I.C.A.O. I will focus my attention on the international civil service aspect, in which I believe to a greater extent lie the elements which brought the organization into life and the reasons for its success or failure.

I submit that an international organization, being composed of sovereign member states and enlarging its composition constantly, has a great deal of limitations and conflicts which could be better sorted out by the development of the principle of the international civil servant.

I do not mean to work for the development of a vicious bureaucracy and I am well aware of Parkinson's theory. The fact is that the organization breathes and beats through its organs, but people are needed to carry out its decisions. Therefore the international organization recruits its staff and should prescribe the lines under which the staff of the organization must be governed.

The aim is to have a truly international civil service, the personnel being conscious of that character and discharging their responsibilities only in the benefit of the organization.

The concept of a truly international civil service could be formed by two essential principles, the one mentioned above, that is international responsibilities, and the second one found in the principle of international composition. Each of these might deserve a full study on their own, and the connotations that both carry are full of meaning.

At this point I should say that the reading of Dag Hammarskjold's lecture, delivered at Oxford on May 30, 1961⁽¹⁾, has strongly influenced my interest in the subject and as I drank from his ideas I am bound to come up with some quotations from his thoughts.

The late Secretary General of the United Nations said at that time⁽²⁾:

"The international civil servant must keep himself under the strictest observation. He is not requested to be a neuter in the sense that he has to have no sympathies or anti-pathies, that there are to be no interests

(1) The international civil servant in law and in fact, a lecture delivered to Congregation on May 30, 1961 by Dag Hammarskjold Secretary General of the United Nations, (Oxford University Press, 1961).

(2) Ibid. at p.27.

which are close to him in his personal capacity, or that he is to have no ideas or ideals that matter for him. However, he is requested to be fully aware of those human reactions and meticulously check himself so that they are not permitted to influence his actions. This is nothing unique. Is not every judge professionally under the same obligation?

If the international civil servant knows himself to be free from such personal influences in his actions and guided solely by the common aims and rules laid down for, and by the Organization he serves and by recognized legal principles, then he had done his duty, and then he can face the criticism which, even so, will be unavoidable.

As I said, at the final test, this is a question of integrity, and if integrity in the sense of respect for law and respect for truth were to drive him into positions of conflict with this or that interest, then that conflict is a sign of his neutrality - and not of his failure to observe neutrality - then it is in line, not in conflict with his duties as an international civil servant." (3)

Together with the conception of an independent, internationally responsible staff we find the idea that the international secretariat should be solely an administrative

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- (3) The lecture delivered by Mr. Hammarskjold is a clear statement of his position taken in regard with the Congo events, which loaded heavy winds from the Soviet bloc against the Secretary General. The so called "troika" idea to replace the post of Secretary General could be understood through the words of Mr. Krushchev as they are told by Walter Lippman in the New York Herald Tribune, April 17, 1961, pp.1,2. According to the article, Chairman Krushchev stated that "while there are neutral countries, there are no neutral men", and the author draws the conclusion that it is now the view of the Soviet Government "that there can be no such thing as an impartial civil servant in this deeply divided world, and that the kind of political celibacy which the British theory of the civil servant calls for, is in international affairs a fiction."

organ. This idea has its roots in the United Kingdom, whereas in other European countries the principle of a permanent civil service based on efficiency and competence and owing allegiance only to the State which it served has been developed.

It is possible to say that the international civil service had its origins in the League of Nations, though the Covenant was silent on the international character of the Secretariat.

Sir Eric Drummond, first Secretary General of the League, should be regarded as the builder upon the vague language of the Covenant of a truly international secretariat.

Arthur Balfour, British member in the Council of the League, submitted a report where the ideas of Sir Eric are reflected. I quote :

"By the terms of the Treaty, the duty of selecting the staff falls upon the Secretary General, just as the duty of approving it falls upon the Council. In making his appointments, he had primarily to secure the best available men and women for the particular duties which had to be performed ; but in doing so, it was necessary to have regard to the great importance of selecting the officials from various nations. Evidently, no one nation or group of nations ought to have a monopoly in providing the material for this international institution. I emphasize the word "international", because the members of the Secretariat once appointed are no longer the servants of the country of which they are citizens, but become for the time being the

servants of the League of Nations. Their duties are not national but international."(4)

These are certainly the ~~guide~~ lines that should govern the selection and composition of the Secretariat of an international organization. Different procedures could be designed in order to achieve it, but always bearing in mind the essence of international co-operation and its potential benefits for all. As Virally said :

"It modifies international relations in depth, and in the long run will perhaps have a greater effect than any other form of action."(5)

By the agreement between the United Nations and the I.C.A.O., celebrated in 1947, I.C.A.O. holds the recognition of its status as a "specialized agency" in accordance with art. 57 of the United Nations Charter. It could be said that I.C.A.O. is an organization of limited competence, a functional organization.

This fact weighs for the development of certain differences, though light ones, in regard with the composition and structure of the I.C.A.O. Secretariat.

Of the various agreements negotiated by the United Nations with the specialized agencies we find a

(4) See League of Nations Official Journal, vol. i, June 1920, p.137.

(5) M. Virally, L'O.N.U. d'hier à demain, (Paris 1961, p.12).

standard clause that recognizes the desirability of a "single unified international civil service" and the agencies agree to develop "common personnel standards" and to consult regarding the establishment of an International Civil Service Commission.

There have been consultations and liaison on a number of matters, such as salaries and allowance scales and recruitment policies ; several agencies participate in the United Nations Joint Staff Pension Fund ; an International Civil Service Advisory Board has been set up and the agencies subscribe either to the United Nations Administrative Tribunal or to the International Labor Organization Administrative Tribunal.

In the constitutional instrument of the I.C.A.O. we find a chapter with three articles regarding personnel. Art. 58, dealing with appointment of personnel, establishes :

"Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State."

We will see, going through the following pages that the Assembly has not taken a vital part in this respect, and it was the Council who produced the necessary regulations and provisions. The Assembly when necessary has taken

some sort of action, but it is the Council, the limited organ which constantly has shown concern for the development of policies and rules regarding personnel.

The aspect of the I.C.A.O. that I am going to deal with must be deemed essential, because it is through the members of the I.C.A.O. staff that the Organization lives and works.

In the course of this work I will review briefly the staff of the organization, the background of the present I.C.A.O. Service Code, an analysis of the contract of employment and the recruitment policy of the Organization. This is not an exhaustive study. There are many aspects deliberately excluded because of the scope and nature of the present work.

The intent is then to describe some personnel problems of the I.C.A.O. ; some of them common with any other international organization.

From the aspects that were studied, I found the problem of national geographical distribution in the Secretariat perhaps the most conflicting and I hope to reach at the Conclusion chapter a sound approach.

CHAPTER I

GENERAL DESCRIPTION OF THE STAFF

The staff structure of I.C.A.O. has been designed in order to fulfill the general and special purposes of the organization, having in mind the principles of a political body and its functions.

Therefore we find different kinds of personnel, with distinctive duties and responsibilities.

A. The President

In the Interim Agreement⁽⁶⁾ there was already a provision establishing the post of President of the Council, for the Provisional International Civil Aviation Organization. Following this, art. 51⁽⁷⁾ of the Chicago Convention, expresses that the Council shall elect its President.

(6) Interim Agreement - art.III, section 3. The Interim Agreement, opened for signature at Chicago on December 7, 1944, establishes a provisional international organization for an interim period which shall last until a permanent convention shall have come into force.

(7) Art.51 : "The Council shall elect its President for a term of three years. He may be reelected. He shall have no vote. The Council shall elect from among its members one or more Vice Presidents who shall retain their right to vote when serving as acting President. The President need not be selected from among the representatives of the members of the Council but, if a representative is elected, his seat shall be deemed vacant and it shall be filled by the State which he represented. The duties of the President shall be to

- a) Convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
- b) Serve as representative of the Council; and
- c) Carry out on behalf of the Council the functions which the Council assigns to him.

The President of I.C.A.O. Council is an international civil servant elected by secret ballot for a term of three years.

He is the chief executive officer of the Organization.

Langrod⁽⁸⁾ said that in any administration, particularly if it is international, the chief plays an essential role. He continues :

"The work done by any unit largely depends on the chief's character, his breadth of view, his human qualities and his ability to handle men. It is more a question of exercising an influence than of giving orders".

Furthermore, in the task of leading an international organization he needs the qualities of a diplomat furnished with the sensibility to pulse potential areas of conflict, override pressures and avoid misunderstandings.

Within the I.C.A.O., the President ought to be a man from the aviation field, acknowledging the complexities of this way of transportation, with an imaginative mind to foresee and cope with the vertiginous growth of the industry, the revolutionary changes and abilities of new aircraft and the desperate need of the public for travelling fast, safely but not at a prohibitive cost.

(8) Georges Langrod : "The international civil service"
A.W. Sythoff-Leyden, 1963, at p.307.

The person who holds the post should bear in mind all these factors and identify himself with the Organization and its ends which he serves.

The I.C.A.O. Council, under the basis of art.51 of the Chicago Convention, had elaborated the rules governing the election of the President and his responsibilities.

On February 8, 1957⁽⁹⁾, the Council adopted the following rule to govern the election of the new President :
"The election of the President of the Council shall be conducted by secret ballot, and shall require a majority of the full membership of the Council."

With regard to the responsibilities of the President, they flew from art.51 and in the Appendix C of the Document A10-WP/5 it is possible to find an adequate definition of the responsibilities of the President.⁽¹⁰⁾

When the Council discussed it, its members pointed out that one of the most important responsibilities discharged by the President of the Council is not merely to consult with the representatives of contracting States on the development of I.C.A.O.'s work and on the implementation of I.C.A.O.'s decisions, but to put forward constructive ideas and take

(9) XXX Session of the Council 30/1/57 - 18/4/57. CA-XXX, pp.2-4. Rule governing the election of the President ; Responsibilities of the President.

(10) See Parag. 5 and 6 of CA-XXX, pp.2-4 and Appendix C of A10-WP/5.

initiative as necessary, and in whatever manner appears appropriate, in the general interest of international civil aviation. (11)

At the tenth session of the Assembly, held in Caracas in 1956, a review of the higher direction of the Organization was included as item 13.

On November 15, 1955, the United Kingdom has proposed amendments to the Convention which would have the effect of abolishing the posts of President of the Council and the Secretary General and inaugurating the post of Director General with functions embracing, but substantially enlarged from, those now exercised by the Secretary General.

The British delegate expressed that it had been the view of the United Kingdom, at least since 1950, that after a formative period it would be necessary to make some changes in the higher direction of the Organization. The founders, in Chicago, had envisaged a governing body - the Council - which would be in continuous session, laying the foundations of I.C.A.O., doing a job which was substantially administrative : determining the structure of the Secretariat, making arrangements with the Government of Canada, etc. (12)

(11) See C.A.-XXX, pp.2-4.

(12) See I.C.A.O. Doc.A10-WP/150. Min. Ex-14 (Minutes of the 14th meeting) at p. 119.

He continued saying that : "I.C.A.O. was the only one of the Specialized Agencies that had a permanent President as chairman of its governing body, and the reason for this was that the Council had been envisaged as a permanent body". (13)

The United Kingdom had always regarded the question of a change in the higher direction of the Organization as linked with that of the need for a permanent council. Now that the Organization in fact no longer had a permanent council, the point arose whether a permanent President was required to preside over it. (14)

The duties of the President included the carrying out of the policy of the Organization during the times when the Council was not in session. This was an essential function, and it involved using the Secretariat as an instrument. The United Kingdom considered it important, as an organizational matter, that the supreme officer of I.C.A.O. should have the control of that instrument and should not need to rely on the goodwill of the chief executive officer in order to have his wishes carried out by the Secretariat. (15)

(13) Ibid.

(14) According to the Rules of Procedure for the Council, Doc.7559/3 Revision 3, the Council shall meet at such times and for such periods as it deems necessary for the proper discharge of its responsibilities. Rule 21 provides for the call of an extraordinary session, provision which was applied early this year for the purpose of considering the complaint of Lebanon against Israel.

(15) Doc.A10-WP/150. Min.Ex-14 at p.119.

Finally the United Kingdom proposal suggested :

- a) to amend the Chicago Convention in order to merge the two chief posts, the President of the Council and the Secretary General.
- b) without amendment of the Convention, to direct the Council to appoint the same individual to the two posts.(16)

The United Kingdom has confirmed, that the proposal described above will be ~~pressed~~ only if it is decided that the Council's working methods should be so changed as to make a substantial reduction in the total duration of the Council sessions, and therefore to make it unnecessary for Council Member States to maintain resident representation at I.C.A.O. headquarters.(17)

The United Kingdom proposal provoked a study of the structure of the Higher Direction in other specialized agencies. The analysis showed that most of the agencies follow the pattern of having one international official of the highest rank, the chairman of the governing body being elected from among the national representatives to these bodies.

(16) Ibid. at p.120.

(17) See A10-WP/5 Ex/3, at the bottom of p.1.

It is useful to mention at this stage, that in the initial period of discussion among the big powers concerning the organization of the United Nations, the organization would have two permanent officers, the President to deal with political and executive matters of concern to the world organization and the Secretary General to manage the internal administration of the Secretariat. (18)

The plan was "seriously" considered by Washington, but later on before the opening of the conversations with the United Kingdom, the U.S.S.R. and China, which were held from August through October of 1944, the State Department decided in favor of a single permanent officer combining the external, political prerogative of the President with the administrative responsibility of the Secretary General. (19)

The United Kingdom proposals did not find enough acceptance within the Assembly and in the absence of support, the British representative withdrew it.

The responsibilities of the President of the Council, according to art. 51 a), b) and c) of the Chicago Convention were described in Document 3120, were special responsibilities for conducting external relations and for maintaining liaison

(18) See Stephen M. Schwebel : The Secretary General of the United Nations, (Harvard University Press 1952), pp.17-18.

(19) Ibid. at p.17.

with both States and International Organizations have been defined. (20)

To complete this outline we must say that the President of the Council, as other officials of the Organization, enjoys such privileges and immunities as are necessary for the independent exercise of his functions.

In the Headquarters Agreement⁽²¹⁾, article IV, Section 19 established :

"The President of the Council and the Secretary General of the Organization shall be accorded, in respect of themselves, their spouses and minor children, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys in Canada."

Because the basic constitutional text of an international organization would not deal in detail with privileges and immunities, the tendency is to supplement the basic texts by a detailed agreement. For the United Nations that detailed agreement is normally the General Convention on the Privileges and Immunities of the United Nations⁽²²⁾, approved by the General Assembly on February 13, 1946, now acceded to by

(20) Decisions of the Interim Council, Doc.3120-C/391, p.16 (15/8/47).

(21) Agreement between the I.C.A.O. and the Government of Canada regarding the Headquarters of the I.C.A.O., ICAO Doc.7147 27/4/51.

(22) I U.N.T.S. 15-32.

more than sixty states. A separate Convention on the Privileges and Immunities of the Specialized Agencies⁽²³⁾ was similarly approved on November 21, 1947, subject to variations for each specialized agency which are determined by the agency concerned and set out in a special annex.⁽²⁴⁾

In the Chicago Convention there is a provision which provides for the enjoyment of immunities and privileges by the President of the Council, the Secretary General and the other personnel of the Organization.⁽²⁵⁾

The Convention on the Privileges and Immunities of the Specialized Agencies provides for the right of the executive head of each specialized agency in respect of himself, his spouse and minor children to the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.⁽²⁶⁾

(23) 33 U.N.T.S. 261-302.

(24) See D.W. Bowett, The law of International institutions, London 1963, at p.282.

(25) Chicago Convention art. 60 : "Each contracting state undertakes so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the Organization, the immunities and privileges which are accorded to corresponding personnel of other public international organizations. If a general international agreement on the immunities and privileges of international civil servants is arrived at, the immunities and privileges accorded to the President, the Secretary General, and the other personnel of the Organization shall be the immunities and privileges accorded under that general international agreement."

(26) 33 U.N.T.S. 261-302, art.VI, section 21.

The term "executive head" is defined in the Convention, art. I, section 1 (vii) as the principal executive official of the specialized agency in question, whether designated "Director-General" or otherwise.

The President of I.C.A.O. Council is certainly not an "executive head" and therefore a special provision was necessary in this respect.

Article X of the Convention on the Privileges and Immunities of the Specialized Agencies set up a special technique for applying the Convention to a specialized agency, and hence, Annex III, received by the Secretary General of the United Nations on August 11, 1948, has a special provision for the President of the I.C.A.O. Council who has benefit of privileges and immunities applicable under section 21 to executive heads. Annex III, 1 said :

"The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to the President of the Council of the Organization."

B. The Secretary General

The Chicago Convention, in art. 58 said that the Council, subject to any rules laid down by the Assembly, shall determine the method of appointment and of termination of appointment, etc. of the Secretary General and other

personnel of the Organization. (27)

The following article emphasizes the international character of the personnel, expressing :

"The President of the Council, the Secretary General, and other personnel shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization. Each contracting state undertakes fully to respect the international character of the responsibilities of the personnel and not to seek to influence any of its nationals in the discharge of their responsibilities."

While the President of the Council is elected by it, the Secretary General is appointed by the Council.

The Chicago Convention is silent with regard to the duties and responsibilities of the Secretary General but in the Interim Agreement we find art. IV devoted to the Secretary General. It said :

"The Secretary General shall be the chief executive and administrative officer of the Organization. The Secretary General shall be responsible to the Council as a whole and, following established policies of the Council shall have full power and authority to carry out the duties assigned to him by the Council. The Secretary General shall make periodic reports to the Council covering the progress of the Secretariat's activities. The

(27) Chicago Convention art. 58 : "Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting state."

Secretary General shall appoint the staff of the Secretariat. He shall likewise appoint the secretariat and staff necessary to the functioning of the Assembly, of the Council, and of Committees of such working groups as are mentioned in the present Agreement or may be constituted pursuant thereto."

Here we can see, the role assigned to the Secretary General is purely an administrative one. He is the chief executive officer as is expressed in art. 54(b) of the Chicago Convention, and when providing for the mandatory functions of the Council this article determines that the Council shall appoint a chief executive officer who shall be called the Secretary General.

Briefly it is possible to enumerate the responsibilities of the Secretary General.

Appointed by the Council, he is the Chief Executive Officer of the international secretariat.

He coordinates and directs the activities of the different departments of the Secretariat.

Acting with the advice of Appointment and Promotion Boards, he appoints the staff of the Secretariat in the Organization Headquarters and in each of the Regional Offices.

The Secretary General is responsible for the preparation of the preliminary budget and he administers the budget voted by the Assembly.

He is also charged with the preparation of the agenda and order of business of the Council.

The Secretary General acts also as the Secretary of the Council⁽²⁸⁾.

The I.C.A.O. Service Code is drawn up in terms of the powers and functions of the Secretary General, but since all those functions cannot be exercised by the Secretary General in person, art. 13 of Part III of the Code, contains the necessary provision for delegation of such of those functions and powers as may be necessary or advisable for the efficient discharge of his responsibilities.

The appointment of the Secretary General is preceded by consultations between the President and the members of the Council.

The appointment of the Secretary General is not subject to the provisions of the I.C.A.O. Service Code in respect of tenure of office and termination of appointment, though it is subject to conditions to be established by the Council, normally at the time the appointment is made.⁽²⁹⁾

(28) Rule 13 of the Rules of Procedure of the Council.

(29) See I.C.A.O. Service Code, Doc.7350/4, Part. III, art. IV, para. 11.

C. Directors and professional category

The I.C.A.O. Service Code set up the different categories of staff.

The staff, under the authority of the Secretary General consist of the following categories :

- 1) Director and Principal Officer category
- 2) Professional category
- 3) General Service category.

In accordance with the recruitment policy of the Organization the recruitment in the Director and Principal Officer category and Professional category is based on the concept of a truly international civil service, with the highest standards of efficiency and technical competence. This recruitment shall be on as wide a geographical basis as possible and shall be directed toward the achievement of a balanced distribution among nationals of the Contracting States. (30)

In order to achieve those aims, the appointments of those officials shall be made on as flexible a basis as is consistent with efficient performance of duties in the Secretariat. This flexibility may be obtained by means of

(30) Ibid., Doc.7350/4, Part I-A Recruitment policy.

of renewable short-term contracts of employment or the loan or secondment of personnel to the Organization.⁽³¹⁾

The Secretary General appoints persons to the positions of Director and Principal Officer category subject to the approval of the President of the Council.

The appointments in the Director and Principal Officer category and Professional category are made for a period of two years. At the end of the period of two years a further appointment may be offered either for a period not exceeding three years or a permanent employment, subject to termination in accordance with the staff regulations.⁽³²⁾

At the time the Service Code was presented for approval, there were strong representations from the Staff Association against the statement of recruitment policy inserted in Part I-A, para. 2.1. They said that the provision tended too much towards short term employment and that it should be modified to provide for greater stability of employment.⁽³³⁾

(31) Ibid.

(32) Ibid., Doc.7350/4, Part. III, art. IV, para. 5. However see infra the chapter dealing with appointment of Directors on a non-career basis.

(33) See I.C.A.O., Doc.5381 C/660, para. 19.

D. General Service Category

The recruitment in the General Service category is done, as a general rule, on a local basis.

The appointments in this category are made for a period of one year and at the end of it, the staff member may be offered a further appointment either for a period of one year or a permanent employment, subject to termination in accordance with the Staff Regulations.⁽³⁴⁾

E. Technical Assistance Field Service Staff

This category comprises the persons employed by the I.C.A.O. in connection with the Technical Assistance and Special Fund Programmes of the United Nations and programmes alike related to Technical Assistance⁽³⁵⁾. Their contracts are not subject to the I.C.A.O. Service Code but to the I.C.A.O. Field Service Staff Rules.

They are international civil servants and their responsibilities are exclusively international.

They are appointed by the Secretary General and the types of appointment could be a short-term, an intermediate-term or a long-term⁽³⁶⁾.

(34) Ibid., Doc.7350/4, Part III, art. IV, para. 8.

(35) I.C.A.O. Field Service Staff Rules established and issued by the Secretary General, August 1963, which substitutes the Technical Assistance Board Manual.

(36) Ibid., Part II, Rule 2.2.

F. O.P.E.X. Personnel

The needs of developing countries require not only advisory assistance for the formation and improvement of their administrative systems, provided by the technical assistance programmes, but also qualified personnel to perform the work themselves until the local staff is in conditions to take over.

With this idea, in 1957, at the suggestion of the Canadian Secretary of State for External Affairs, the Secretary General of the United Nations proposed to the Economic and Social Council that an "international administrative service" might be established to provide governments with personnel to undertake executive and operational tasks⁽³⁷⁾.

In 1958, the General Assembly approved the initiation of the new programme on a modest scale and an experimental basis⁽³⁸⁾. The programme is called "provision of operational, executive and administrative personnel" (O.P.E.X.).

(37) See Kirdar, "The International Administrative Service (O.P.E.X.), Provision of Operational Executive and Administrative Personnel" (1962), 38 British Yearbook of International Law, pp.407-420. The author does an excellent study of the legal status of O.P.E.X. personnel.

(38) General Assembly Resolution 1256 (XIII) of November 14, 1958.

The job of O.P.E.X. officers is not to advise, but to perform specific services as national civil servants. Therefore, the character of their function differs from that of the experts provided under Technical Assistance Programmes.

I.C.A.O. was prepared to receive and deal with requests for O.P.E.X. appointments of experts after January 1, 1964⁽³⁹⁾.

It is appropriate to remember that the Council, presenting its views to the 14th Session of the Assembly on the problem of provision of operational personnel, considered that the Assembly might wish to encourage States which have a need for operational and executive personnel in civil aviation to make wider use of the United Nations O.P.E.X. programme⁽⁴⁰⁾.

Due to the particular status of an O.P.E.X. personnel⁽⁴¹⁾ the I.C.A.O. Council felt the necessity to point out that certain types of appointments should be avoided.

(39) See I.C.A.O. Assembly Resolution A14-3 where the Assembly draws the attention of Contracting States to the importance and benefits of the Programme.

(40) See A14-WP/5, EX/3, p.24.

(41) See art.II, para. 2, 3 of the "standard" agreement approved by the T.A.B. for use by all the organizations participating in the E.P.T.A. Programme, as appears in I.C.A.O., Doc.C-WP/3894 - 14/11/63, at p.4.

The areas in which the Council indicated the policy to be followed are :

- a) where the expert appointed under O.P.E.X. will be occupying a post in which he will be making decisions concerning the civil aviation relations of the government under which he is working with other governments, e.g. the negotiation of bilateral agreements;
- b) experts who would occupy positions in the management of a national airline engaged in international operations.

While the experts under O.P.E.X. programme will not be under the control of I.C.A.O., the possibility of conflicting interests might arise and become an embarrassment to I.C.A.O.

The Organization may well prefer to discourage O.P.E.X.-type appointments of this type.⁽⁴²⁾

O.P.E.X. officers are only responsible and are under the executive direction of the government which employs them.

Neither the I.C.A.O. Service Code nor the I.C.A.O. Field Service Staff Rules apply to them. Their contract with I.C.A.O. is set up under different conditions.⁽⁴³⁾

(42) See C-WP/3894 where a detailed study of the O.P.E.X. Personnel is made.

(43) See Appendix E :Contract.

G. Other staff

In the I.C.A.O. Service Code, provisions are made to provide the Organization with the services of persons seconded or loaned to the Organization by Governments, international agencies or educational, scientific and research institutions.

The secondment is done with conditions and periods mutually agreed upon by the Secretary General and the Government, international agency or institution concerned. (44)

Also the Organization may engaged consultants on such terms and for such temporary or part-time service as may be determined in each case by the Secretary General. (45)

(44) See I.C.A.O. Service Code, Part III, art. II, para. 2, 2.1.

(45) Ibid., para. 2, 2.2.

CHAPTER II

P.I.C.A.O. LOOKING FOR ITS PERSONNEL

The Final Act of the Chicago Conference recognized that "the development and maintenance of suitable international standards in matters relating to international air navigation will require constant analysis, by technically qualified personnel, of the development of the pertinent arts and of the various practices existing with respect thereto and therefore it was resolved that the Provisional International Civil Aviation Organization, as soon as possible after its organization, should employ in its Secretariat a suitable body of personnel, experts in the fields of aeronautical science and practice in which continuing study will be particularly needed ; and that such technically qualified members of the Secretariat should be charged to analyse and report to the Provisional International Civil Aviation Organization on problems relating to the drafting of international standards and recommended practices and to conduct and report on such other studies as will promote the safe and efficient conduct of international air transportation."⁽⁴⁶⁾

(46) I.C.A.O. Conference. Final Act - III - Technical Personnel - Chicago, December 7, 1944.

In January 29, 1946 the Interim Council decided that a letter should be sent to all member States calling attention to existing vacancies in the Secretariat in an effort to broaden international representation on the staff of the Organization. (47)

This decision reflects the acknowledgment of the fact that only few States were, at the end of the war, in a condition to provide the highly skilled personnel that the Organization required.

In accordance with this in August 15, 1947, the Interim Council adopted a decision prescribing that the States members shall be requested :

- a) to extend to the Organization the maximum assistance in securing personnel for the numerous and varied key positions which it is urgently desired to fill;
- b) to create such terms of relief or secondment to nationals of their respective countries, who in the circumstances may decide to enter the services of the Organization, as will assure to the personnel concerned the safeguard of their rights of return to duty, continuity of employment and seniority, protection of privilege in respect of pensions and other emoluments and benefits, maintenance

(47) Doc.1293 C/99, paras. 91-98.

of national status and such other rights and privileges of citizenship as the national may appropriately be entitled to;

- c) to encourage by public notice, circular and other means the broadest advertisement of these conditions and of the opportunities afforded by the Organization;
- d) to set a high standard in the selection of persons encouraged to interest themselves in service with the Organization; and finally
- e) to facilitate in every way their freedom of opportunity of entering into the service, their appointment, passage to Montreal with their families, if any, and in general to aid in the preservation of their welfare and well-being following any decision that they might take to enrol in the Organization. (48)

Senior
Officers of the Council

In the early days of P.I.C.A.O., the Organization realized that the approved United Nations Convention on Privileges and Immunities needed some modifications in order that it may be applied to P.I.C.A.O.

(48) Decisions of Interim Council. Doc.3120 C/391, p.249.

Article V, Sec.19 of the United Nations Convention on Privileges and Immunities extends to the Secretary General and the Assistant Secretaries General the privileges and immunities, exemptions and facilities accorded to diplomatic envoys. A provision with an identical text would be inappropriate for P.I.C.A.O., since it would not grant diplomatic immunities and privileges to the President of the Interim Council nor to certain other officials of P.I.C.A.O. who have rank comparable to that of an Assistant Secretary General, but do not actually bear that title.

It was therefore suggested that the action taken to extend the benefits of the Convention to P.I.C.A.O. should be so drawn as to give the specific benefits of article V, Sec.19 to the President of the Council, the Secretary General, the Assistant Secretaries General and such other senior officials of P.I.C.A.O. as may be designated to the Canadian Government by the Secretary General. (49)

This was done in order to enable these international officials to fulfill their tasks as truly international civil servants in the benefit of the Organization.

Appointments

The Interim Council showed deep concern ~~with~~ regard

(49) Ibid., Appendix A. Exchange of letters between the President of the Interim Council and the Secretary of State for External Affairs of Canada (3/1/47).

to the appointments of the first high officials for the Organization and provided that the Council or the President of the Council should have the last word in those appointments.

In August 29, 1945, the Council decided that :

- i) The appointment of the Adviser on External Relations, Airlines and Aviation Operations, the Legal Counsel, Deputy Secretary General and the three Assistant Secretaries General should be referred to the Council for approval; the appointment by the Secretary General of all other persons to positions of grade 2 or higher or to positions as Chiefs of Sections (other than those officers of the Organization for whom election by the Council is specifically prescribed in the Interim Agreement) should be subject to the approval of the President and should be reported to the Council.
- ii) The appointment by the Secretary General of persons other than those mentioned above to positions of grade 3 or lower should be reported to the Council.
- iii) The appointment of the Assistant to the President should be approved by the President.⁽⁵⁰⁾

(50) Docs. 39 and 71, paras.32-53.

Rules for the election of the President of the Council and
the appointment of the Secretary General

In August 30, 1945, the Rules of Procedure of the Interim Council were adopted. ⁽⁵¹⁾

Section IV under the title of "Officers of the Council", contained the necessary provisions to govern the election of the President and Vice-Presidents.

1. The Council shall elect a President from the candidates nominated by the Council members. If no candidate receives a majority of votes on the first ballot, the Council shall vote again on the two candidates who receive the largest number of votes. The President need not be selected from the Council members but if a member is elected, his seat shall be deemed vacant and it shall be filled by the State which he represented. ⁽⁵²⁾ The President shall serve for a term of two years and shall be eligible for re-election. He may be removed from office at any time by a majority vote of the Council members. In the event of his death or resignation, or if the President is otherwise unable to complete his term of office, a new President shall be elected by the Council as soon as possible thereafter and he shall hold office for the remainder of the term of his predecessor.

(51) Doc.3120 C/391, p.373 : Appendix K : Rules of Procedure of the Interim Council.

(52) Interim Agreement, art.III, Sec.3.

2. The Council shall determine the emoluments of the President. (53)
3. The President shall convene and preside at the meetings of the Council but he shall have no vote. He shall act as the Council's representative and he shall carry out such functions on behalf of the Council as may be assigned to him. (54) He shall be available to serve as arbitrator in ad hoc proceedings or in the resolution of disputes among Member States.
4. The Council shall elect from among its members a First, Second and Third Vice-President from the candidates nominated by the Council members. The First Vice-President or, if he is not available, the Second Vice-President or the Third Vice-President in that order shall serve as Acting President in the absence of the President. The moment at which a Vice-President shall commence to serve as Acting President will be determined by the President or the Council. The Vice-Presidents shall retain their right to vote when serving as Acting President, provided, however, that if the period during which a Vice-President is serving as Acting President shall be of such duration as to make it desirable that he should assume an international

(53) Ibid., art.III, Sec.3.

(54) Ibid.

status without the right to vote, the Member State of which he is a representative may on its own initiative, or at the request of the Council, designate an alternate to represent it on the Interim Council until the Acting President shall resume his status as Vice-President.

In case of the replacement of any one of the Vice-Presidents by another representative of his State, except when such replacement is of a temporary character, the Council shall elect a successor to the Vice-Presidency thus vacated.

5. A Secretary General shall be appointed by the Council for the duration of the interim period. He or his alternate shall act as secretary of the Council but he shall have no vote.

These detailed rules were elaborated to provide the Provisional Organization with those elements necessary for its high direction, were later reproduced with some minor differences in the Rules of Procedure for the Council, as revised on June 19, and December 6, 1957.

In regard to the Secretariat, the Rules of Procedure of the Interim Council included Section V - The Secretariat, in which the responsibilities and powers of the Secretary General were determined.

They provided :

1. The Secretary General shall be responsible to the Council as a whole and, following established policies of the Council, shall have full power and authority to carry out the duties assigned to him by the Council. (55)
2. The Secretary General shall appoint the Secretariat and staff necessary to the functioning of the Organization following procedures and methods prescribed by the Council. (56)
3. The Secretary General shall make periodic reports to the Council concerning the progress of the Secretariat's activities. Such reports deemed by the Secretary General to be desirable, in order to inform the Council of matters before the Secretariat and any other reports which the Council may require from time to time. (57)

In Section VIII - Agenda and Order of Business, it is said that the agenda of each session of the Council shall be prepared by the Secretary General and shall be submitted to the President for his approval. (58)

(55) Ibid., art.IV.

(56) Ibid.

(57) Ibid.

(58) Doc.3120 C/391 : Appendix K p.373 : Rules of Procedure of the Interim Council.

As we can see the President of the Council and the Secretary General hold in their hands the substance for the activities of the Organization. On their dynamism and imagination heavily depends the work of the Institution.

Perhaps, the role that the President of the Council has to play is more of a diplomatic character, while the role of the Secretary General is allocated in another level. The President's immediate relation is with Member States. The Secretary General is ~~immediately~~ and closely linked with people of different nationalities, languages and abilities.

As Langrod said :

"The special difficulties of an international administration and the heterogenous nature of its staff mean that the chief's role as organizer, animator and supervisor is still more important. The "climate" in the Secretariat, the staff member's ambition to do his work well without being content merely to despatch current business, the perception of the inner meaning of the collective mission - all depend to a very large extent on the impulsive given by the chief. He must ensure the co-operation of different services, the co-ordination of effort, and the maintenance of human relations within the group. In view of language barriers, differences of origin and training, the complexity of the work, the friction which inevitably arises and the pressures from outside, it is the chief's job to harmonize the whole effort, judiciously delegating part of his powers, but constantly retaining control over the service as a whole." (59)

(59) Langrod, G., op.cit., supra, pp.307-308.

CHAPTER III

CONDITIONS OF SERVICE : "STAFF REGULATIONS" and "SERVICE CODE"

The staff's legal position with an international organization is determined by the contracts of service. But every organization felt the need to organize its secretariat under a more or less permanent structure.

This was reached by drawing up Staff Regulations which will be applicable to all the Staff members and from there on the contracts of employment refer to the Staff Regulations.

As Akehurst said, there has been a tendency for the Staff Regulations and other instruments drawn up by international organizations to become more and more detailed, and for the terms expressly set out in the contract to become less and less important. (60)

This procedure avoids the preparation of lengthy contracts, and allows publicity and uniformity as regards the conditions of service. All that works for the benefit of the organization : if the staff are subject to identical rules, they are likely to think of themselves as part of an inter-

(60) M.B. Akehurst, "The law governing employment in International Organizations", Cambridge 1967, at p.38.

national civil service, dedicated to common goals, and not simply as individual employees. (61)

Furthermore, the Staff Regulations include general statements of the ideals which should guide an international secretariat, impartiality, independence etc. These principles should be observed by the staff, the Administration and, moreover, by the deliberative organs of the organization and the member states. This is no doubt, Akehurst said, a further reason for setting out the conditions of service of international civil servants in Staff Regulations rather than in individual contracts. (62)

A. Organ competent to draw up Staff regulations

We observed, that the constitutional treaties of post-war organizations expressly define the organ competent to draw up the Staff Regulations. (63)

In some international organizations, the Staff Regulations are usually drawn up by the plenary organ, composed of the representatives of all the member states.

(61) Ibid. at p.38.

(62) Ibid.

(63) Art.101 of the United Nations Charter is typical :
" ... the staff shall be appointed by the Secretary General under regulations established by the General Assembly".

Within I.C.A.O. we have art.58 of the Chicago Convention⁽⁶⁴⁾ which states that the power is exercised by the Council of I.C.A.O. "subject to any rules laid down by the Assembly".

Although, the first words of this article imply that the Assembly may lay down rules, in practice the Assembly has gone no further than making general policy statements. It can be said that the Convention requires the Council to deal broadly, with questions relating to personnel.⁽⁶⁵⁾

During the time of P.I.C.A.O. there was a Personnel Committee of the Council with the following terms of reference :

"To make recommendations to the Council :

- a) on the policy to be adopted by the Council on matters related to the personnel of the organization; and
- b) on any specific questions regarding the personnel of the Organization which may be referred to the Committee by the Council or by the President."⁽⁶⁶⁾

(64) See supra, art.58, op.cit., footnote (27).

(65) Art.54 (h) and art.65 of the Chicago Convention expressly put the responsibility under the Council.

(66) I.C.A.O. Doc.C-WP/3208, at p.1.

Through the work of this Committee the Staff Regulations of P.I.C.A.O. were elaborated and we find them as Appendix O to Doc.3120 C/391.

Article I is devoted to outline the Personnel policy of P.I.C.A.O. It can be summarized as follows :

1. The President of the Council, the Secretary General and the personnel of the Organization shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization.
2. Each Member State should respect fully the international character of the responsibilities of the personnel and not seek to influence any of its nationals in the discharge of their responsibilities.

This is a very important premise, because it precludes any influence or pressure of a State on any of its nationals who is a member of the staff. The members of the Secretariat, while not losing their nationality, undertake to serve the Organization, in the benefit of it, overriding interests of single States.

3. The appointment and conditions of service of employees of the Organization shall be based upon the concept of a truly international civil service with the highest standards of efficiency and of technical competence

and to this end the Organization shall co-operate to the fullest extent possible with other international organizations in the establishment of uniform and progressive personnel standards and practices. (67)

4. To achieve the above mentioned objectives, the staff of the Organization shall be selected on the basis of the individual competence, character and integrity, without discrimination on the grounds of sex, race, creed or nationality.
5. Salary standards shall be established at a level which will enable the Organization to secure the employment of persons possessing the highest qualifications within their particular fields of endeavour.
6. No member of the staff of the Organization shall be actively associated with, or financially interested in, any commercial civil aviation enterprise. (68)

(67) The agreement celebrated between the United Nations and the specialized agencies under art. 57 of the United Nations Charter and Staff Regulations of a number of specialized agencies recognize the desirability of keeping in step with the rest of the "United Nations family" over conditions of service.

(68) See Chicago Convention, art.50 (e) which forbids active association with the operation of an international air service or financial interest in such a service by a representative of a contracting State on the Council.

Article II was devoted to Classification and Categories of Staff and article III contained the enumeration of duties and responsibilities of the Staff.

As a condition of appointment every employee should make a declaration,⁽⁶⁹⁾ which points out his relation with the Organization as an international civil servant.

We can see that even after the termination of the appointment, the former staff member is still under the duty not to disclose any information which could be of a confidential nature. This could be considered a contractual obligation that remains even when the relationship has finished.

Any employee, either on full-time or part-time service to the Organization is bound to think and live in accordance with his status as an international civil servant. The sphere where he develops his activities trespasses common boundaries, and susceptibilities in any international field

(69) "I solemnly undertake to exercise in all loyalty, discretion and conscience, the functions entrusted to me as an employee of P.I.C.A.O., to discharge these functions to the best of my ability and to regulate my conduct with its interest alone in view, to abide by the rules laid down by the Organization as long as I am in its employ, not to disclose during the term of my appointment in the Organization, or following the termination of my appointment, any information which is or appears to be of a confidential nature, and not to seek or accept from any authority external to P.I.C.A.O. any instructions in regard to the discharge of my official responsibilities."

should be set aside as far as and as long as it is possible. The success of the international secretariat lies on this basis.

In general it is possible to say that the Staff Regulations approved for the Interim Period strongly influenced the later personnel policy of I.C.A.O., and the regulations contained in the I.C.A.O. Service Code, as approved by the Council in March 23, 1948,⁽⁷⁰⁾ and as they stand today⁽⁷¹⁾ do not differ substantially from those early approved by P.I.C.A.O.

From the Final Report to the Council made by the Working group on Staff and Travel Regulations and Related Matters, which prepared the I.C.A.O. Service Code, it is possible to extract the way that the Organization chose to deal with Staff Regulations.⁽⁷²⁾

Paragraph 1 said that the Working group considers that there will be administrative advantage in having all the rules, regulations and statements of policy affecting employment compiled into one volume, in which each part can be separately and appropriately dealt with while retaining its proper relationship to the whole.

(70) Resolution approving the I.C.A.O. Service Code. Doc.5381 C/660, p.73.

(71) See I.C.A.O. Service Code. Fourth edition, effective January 1, 1965, Doc.7350/4.

(72) Final Report to Council of the Working group on Staff and Travel regulations and Related Matters, I.C.A.O. Doc.5381 C/660. 23/4/48.

In the next paragraph, it is expressed that the Service Code will contain only those rules and regulations of a more or less stable character which are established by or are subject to the approval of Council. The Secretary General is empowered by the Service Code to establish subsidiary rules and procedures which are of relatively lesser importance and are subject to more frequent amendment.

The I.C.A.O. Service Code is a much elaborated instrument destined to meet the requirements of the Organization in regard to personnel and avoiding minutious contracts of employment, which invariably are referred to the Service Code, which becomes a part of the contract.

Though the comprehensiveness of the I.C.A.O. Service Code and the frequent amendments made by the Council, the regulation of legal relations between the Organization and their staff has become too complex to be dealt with entirely by the Council which has other functions to fulfill.

Therefore, the Secretary General, although without a general delegation, is authorized to make rules on specific topics.

More accentuated is the authority that the Secretary General holds in regard to Field Service Staff, whilst the I.C.A.O. Field Service Staff Rules are established and issued by the Secretary General, under the authority of the Council.

The Field Service Rules are established or amended from time to time by the Secretary General under delegation of authority from the Council.⁽⁷³⁾ The I.C.A.O. Field Service Staff Rules govern the conditions of service applicable to field service staff employed under the various I.C.A.O. projects of Technical Cooperation.

B. Unification of Staff Regulations and Staff Rules

The existence of various international organizations since 1945 has resulted in a number of different Staff Regulations and Staff Rules.

In the effort to secure co-ordination between international organizations, there is a consensus towards the unification of conditions of service.

It is possible to enumerate the advantages for a certain measure of unification :

- 1) Organizations should be able to learn from each other's experience.
- 2) Unification helps the staff to feel that they are part of an international civil service, and that the work which is being performed by their organization, however specialized it may be, fits into a wider scheme of international

(73) See I.C.A.O. Field Service Staff Rules. First edition. August 1963, Rule 0.3.

co-operation. (74)

- 3) Unification facilitates loan, secondment or transfer of staff by one organization to another.
- 4) Unification leads to a rational distribution of staff.

The unification has been carried furthest in the United Nations and the specialized agencies.

The agreement bringing I.C.A.O. into relationship with the United Nations states that the United Nations and the I.C.A.O. recognize that the eventual development of a single unified international civil service is desirable from the standpoint of effective administrative co-ordination, and with this end in view agree to develop common personnel standards, methods and arrangements designed to avoid unjustified differences in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate interchange of personnel in order to obtain the maximum benefit from their services. (75)

The agreement provides for the "widest possible co-operation" in order:

(74) See M.B. Akeburst, op.cit., at p.44.

(75) Agreement between the United Nations and I.C.A.O., art.XII, para.1.

"to the fullest extent possible

- "(a) To consult together concerning the establishment of an International Civil Service Commission to advise on the means by which common standards of recruitment in the secretariats of the United Nations and of the specialized agencies may be ensured;
- "(b) To consult together concerning other matters relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scales and allowances, retirement and pension rights and staff regulations and rules, with a view to securing as much uniformity in these matters as shall be found practicable; ..." (76).

A body was set up by the United Nations Secretary General on the recommendation of the Economic and Social Council as the main instrument for unification and coordination. This is the Administrative Committee on Co-ordination (A.C.C.) consisting of the heads of all the secretariats of the United Nations family, under the chairmanship of the Secretary General of the United Nations. (77)

The A.C.C. is assisted in personnel questions by the International Civil Service Advisory Board (I.C.S.A.B.), a body of nine independent experts appointed by the Secretary General of the United Nations after consulting A.C.C.

(76) Ibid., art.XII, para.2.

(77) Loveday, "Reflections on International Administration", Oxford 1956, at p.274 he said that the A.C.C. is "the nearest approach to an international cabinet that exists".

I.C.A.O. is permanently concerned trying to devise ways and means to achieve the desired unification.

At the time when the I.C.A.O. Service Code was prepared due consideration was given to the general principles involved in the relationship of I.C.A.O. to the United Nations and other international organizations, in particular to art.XII of the Agreement between the United Nations and I.C.A.O. There were strong representations on the part of the Staff Association that I.C.A.O. is on an obligation to consult with the United Nations before adopting its recruitment policy. The Working group, though, did not agree with the Staff Association in that matter, and in the Final Report it is expressed that no such obligation exists. (78)

During the sessions of the Second Assembly, held in 1948, the Administrative Commission expressed that on personnel matters, cooperation with the United Nations should be continued towards the development of common policies. As far as I.C.A.O. is concerned, the development of common policies should be pursued from the starting point of the I.C.A.O. Service Code. The Commission urged that the Council adopt the necessary measures to obtain the full achievement of the aims expressed in art.XII of the Agreement with the United Nations. (79)

(78) Final Report, op.cit., par.4.

(79) See Second Assembly - Administrative Commission Final Report I.C.A.O. Doc.5686-A2-AD/43.

In 1948, in the agenda for the sessions of the Council, an item was included in order to provide for transfers of personnel between the international organizations. (80)

The Secretary General thereon, reported to the Council, (81) on the means whereby the United Nations and its Specialized Agencies might implement their undertaking to "co-operate in the interchange of personnel, when desirable, on a temporary or permanent basis, making due provision for the retention of seniority and pension rights (cf. art.XII Agreement with United Nations which has its counterpart in the other agreements of relationship between the United Nations and its Specialized Agencies)", and proposed an amendment to the I.C.A.O. Service Code to enable the Organization to conclude arrangements for the transfer of personnel. The Code, he added, was so comprehensive that there was a tendency to conclude that everything that was not specifically provided for was prohibited. Therefore he proposed the amendment to enable the Council to enter in those arrangements.

In the Report of the Council to the Fourth Assembly, session held in Montreal in 1950, (82) the Council stated that a procedure has been instituted for permanent transfers of

(80) See I.C.A.O. Doc.6156 C/696. 27/9/48 at p.16 : Agenda Item 7.2 : general staff policy as set out in the I.C.A.O. Service Code. Amendment to the I.C.A.O. Service Code to provide for transfers to other international organizations.

(81) See C-WP/14.

(82) See Report of the Council to the Assembly on the activities of the organization in 1949 - Doc.6968, A4-P/1 : 75, 23/3/50.

staff between I.C.A.O., the United Nations and several of the Specialized Agencies under a provisional working agreement, with the object of improving the opportunities for a career in the International Civil Service.

Further on, the Council reported on the first meeting of the International Civil Service Advisory Board (I.C.S.A.B.), held in March 1949.⁽⁸³⁾ It had been expected that the Board's terms of reference would be so drawn, - the report said -, as to enable it to provide expert advice on all aspects of personnel recruitment and administration in the International Civil Service. However, its terms of reference were in the main restricted to recruitment, thus limiting its effectiveness as a means of promoting the attainment of common conditions of service in the United Nations and the Specialized Agencies.

At that meeting the Board considered two substantive questions :

- a) recruitment methods and standards in the United Nations and participating Specialized Agencies and
- b) establishment of an international centre for training in public administration in accordance with Resolution 246 (III) of the United Nations General Assembly.

(83) The Organization's share of the expenses of the Board in 1949 amounted to \$464.77.

On the first question, the Board decided it could make no report until it had more information from the Specialized Agencies on their recruitment methods and standards.

It was also unanimously of the opinion that, in order to give constructive advice on recruitment, it must necessarily consider conditions of service and other aspects of personnel administration - a view which I.C.A.O. has held since the establishment of the Board was decided upon by the Administrative Committee on Co-ordination of the United Nations and Specialized Agencies in October, 1947 -. (84)

On the second item, the Board considered that it would be inadvisable for the United Nations to establish an international centre for training in public administration at the time, and suggested instead that it might hold periodic international administrative seminars, establish a system of fellowships, assist governments in developing facilities for training in public administration, and encourage the exchange of technical information on matters of public administration. (85)

Coming back to the efforts done in regard to unification of conditions of service between I.C.A.O., the United

(84) See Report of the Council, op.cit., at p.83.

(85) Ibid.

Nations and other international organizations no important steps were taken before 1955. In May of that year the Council referred to the Finance Committee for study and report, a series of amendments proposed by the Secretary General in the I.C.A.O. Service Code to remove what he considered to be unjustified differences between the United Nations and the Organization in certain conditions of service such as salaries, allowances for dependents, termination indemnities, repatriation grants, compensation for service-incurred death or injury, home leave and travel entitlements for children.⁽⁸⁶⁾

A Working group was established and it completed its work and presented its report in March, 1956.⁽⁸⁷⁾ It recommended the approval of all the Secretary General's proposals except on home leave entitlement, on which it recommended retention of the three-year interval instead of the adoption of the two-year interval obtained in the United Nations and other Specialized Agencies. The Council deferred action on this particular question until the report of the committee of experts set up by the United Nations to re-examine conditions of service is available. On all other matters, it approved the Group's recommendations, which means that, by and large, I.C.A.O. staff will have the same terms and conditions of service as the Secretariat of the United Nations.⁽⁸⁸⁾

(86) See I.C.A.O. Doc.7636 A10-P/3 : 57.

(87) See I.C.A.O. Doc.7788 A11-P/1 : 60.

(88) Ibid.

After this development, the Council requested the Secretary General to publish the differences between I.C.A.O.'s personnel arrangements and those of the common system.⁽⁸⁹⁾

He pointed out that the differences were relatively minor⁽⁹⁰⁾ and therefore he suggested that considerable time and work could be saved if it were decided that, as a matter of policy, the dispositions of the common system, as reflected in the decisions of the United Nations General Assembly on conditions of service of staff, would be adopted by the Council except where it could be shown that the special circumstances of I.C.A.O. required a different course of action.⁽⁹¹⁾

After considerable discussion, during which its responsibilities under art.58 of the Chicago Convention were emphasized, the Council decided that "it should be the rule, applying only in respect of new "common system" dispositions specifically adopted by the United Nations General Assembly, that all such dispositions would be brought before the Council by the Secretary General, who would indicate whether, in his judgment, there were any circumstances peculiar to I.C.A.O. rendering the new provisions unjustifiable and therefore calling for an independent and different solution. If the Council found that no such circumstances existed, the new

(89) See C-WP/4035.

(90) The most important differences, in the Secretary General's view, were the policies on recruitment and non-career appointments to Director posts adopted by the Council in 1963. See further on Chapter V.

(91) See A15 - WP/37, EX/4.

provisions would be adopted." (92)

No more was done to eliminate any of the existing differences, which the Council regarded as justified, but it was agreed that they might be removed, or added to, at any time in the event of changed circumstances.

(92) Ibid.

CHAPTER IV
THE CONTRACT OF EMPLOYMENT

The first link between an international civil servant and the organization he is going to serve is the contract of employment. That legal instrument is not only the initial liaison, but it is also destined to govern the status and relationship of the official with the international organization.

It is obvious therefore that in a study of the status of I.C.A.O. personnel some words should be devoted to the nature, content and meaning of that contract.

For I.C.A.O. staff the letter of appointment and the notice of acceptance shall constitute the contract of employment.⁽⁹³⁾

In general the contracts of employment tend to be standardized as to their contents, which are prescribed by Staff Regulations.

The I.C.A.O. Regulations provide that each staff member shall receive, on appointment, a letter of appointment signed by the Secretary General. The letter of appointment shall state :

- i) That the appointment is subject to the provisions
of the I.C.A.O. Service Code in force from time to time,

(93) See I.C.A.O. Service Code, Part III, art.IV, para.4.

- ii) The level and title of the position,
- iii) The effective date of the appointment,
- iv) The duration of the appointment (attention shall be drawn to the relevant provisions of the Staff Regulations concerning periods of notice and probation),
- v) The salary at which the appointment is made, and the salary scale applicable.⁽⁹⁴⁾

The legal nature of the letter of appointment is that of a "contrat d'adhésion", where the officer who is appointed does not discuss the terms and conditions of the contract; the conditions are fixed in advance by one of the parties, and are open for acceptance by the other party. The latter has in general no bargaining power to negotiate the terms of the contract. But also, the letter of appointment is very brief, referring basically to the Service Code, the body of regulations set up by the Organization.

Following what is expressed above, it could be said that letters of appointment should not be regarded as contracts at all and that there is no possible contract between an organization and an official.

Our approach will depend on which system of law prevails in our conception.

(94) Ibid., art.IV, para.2,2.1, 2.2, 2.3, 2.4, 2.5.
See Appendix A, letter of appointment.

For "common law" countries, mainly in the United Kingdom and the Commonwealth, civil servants are traditionally regarded as employed on the basis of a contract. But continental legal systems have a different approach. The civil service is governed by a detailed set of rights and duties included in a "règlement" (legislative act drawn up by the Administration), and the nomination is a unilateral act of authority, by which the Administration places an individual in a status where the "règlement" becomes applicable to him.⁽⁹⁵⁾

The development of an adequate body of law governing conditions of service with international organizations presents the problem of how far the legal relations between international organizations and their servants and agents are to be regarded as statutory or contractual in character.⁽⁹⁶⁾

Jenks said that different legal influences include the conflicting concepts of the civil servant holding office at the pleasure of the crown and of the droit acquis of officials, of a status governed by administrative law and of rights defined by contract, or more briefly of status and of contract.⁽⁹⁷⁾

(95) See Akehurst, op.cit., at p.29/30.

(96) See C. Wilfred Jenks : The proper law of International Organizations, London 1962, at p.63.

(97) Ibid.

The same author submits that "while the process of evolving an appropriate synthesis of these conflicting concepts is far from complete, the general trend has been one from contract to status rather than from status to contract". (98)

It is submitted that it is not possible to state that the officials of international organizations are always recruited by contract, or always by an act of authority. It is necessary to look at each particular case to see which system has been adopted by an international organization in practice. Though we will not find a contract in the classic Roman conception, the elements of a contract are present, and the notice of acceptance constitutes the required consensus.

This problem is far from a merely doctrinal discussion, it is of practical importance in connexion with the unilateral amendment of conditions of service.

The contents of a contract of employment in an international organization are limited and the contract refers to the conditions of employment set out in the Staff Regulations. There have been cases in which the problem has arisen of the extent to which rights conferred by a contract, can be affected by an amendment to Staff Regulations.

(98) Ibid.

On one hand we have the necessity for the organization to amend the Staff Regulations, putting them in accordance with the times, new requirements and the different personnel policies that the organization wishes to undertake. On the other, there is an official engaged under certain conditions, which determine his rights and duties, and he does not want those conditions to be changed without his consent.

In general it could be said that an organization cannot deprive its officials of rights given by their contracts, unless the officials give their consent to such amendments. The problem appears in borderline cases and International Administrative Tribunals have had the opportunity to study them and deliver judgments.

Before we see those pronouncements, it is useful to review the approach taken by our Organization.

The Staff Regulations of P.I.C.A.O. prescribed that the notice of appointment "shall further state that the appointment is subject to the provisions of the Staff Regulations and to all amendments which may be made thereto". (99)

(99) P.I.C.A.O. Staff Regulations, Doc.3120 - C/391 - 15/8/47
Appendix O, art.IV, para.2.

Expressly, art.XII, under the heading of "Amendment of Staff Regulations", gave the power to the Council to amend the Regulations. It said :

"The provisions of the foregoing Regulations may be amended at any time by the Council, provided that such amendments do not prejudice the acquired rights of employees of the Organization."(100)

At the time I.C.A.O. Service Code was considered for approval by the Council the opinion of the Working group on Staff and Travel Regulations on the subject was followed.

In the Final Report⁽¹⁰¹⁾ the Working group said that it is :

"unable to recommend the practice adopted by P.I.C.A.O., requested by the Staff Association and followed by some other international organizations of making the Staff Regulations an integral part of the contract."

It continued saying :

"The Staff Regulations and other related regulations and rules must be subject to amendment and if the Council is to carry out its obligations to Contracting States, it must be free to make such amendments as it deems necessary in the interests of the Organization or of the staff. The making of contracts which maintain for each employee the precise regulations in force at the time he was appointed would produce a state of administrative chaos which it is impossible to contemplate. It is proposed therefore that the contract shall be subject to the regulations in the I.C.A.O. Service Code in force from time to time."

(100) Ibid., art.XII, para.1.

(101) Final Report to Council of the Working group on Staff and Travel Regulations and Related Matters, I.C.A.O. Doc.5381-C/660, 23/4/48, para.62.

As we can see from these words, the position of the Organization is clear and although the letter of appointment refers to the Service Code, it also mentions the applicability of the Code "as amended from time to time". (102) It would be impossible to fix the provisions of the Service Code in force at the time the appointment is made, and to keep it unchanged as long as the relationship continues : for this would give rise to a chaotic state of affairs where each official would be subject to different regulations.

Nevertheless, the Legitimate interests of the staff should also be preserved and therefore art.XV of the Service Code provides :

"These regulations may be amended at any time by Council, provided that no such amendment may adversely affect entitlement to the following : for all staff members, any benefits actually earned through service prior to the effective date of the amendment." (103)

The Working group expressed in regard to this article that :

(102) See Appendix A "Letter of appointment".

(103) I.C.A.O. Service Code, Part III, art.XV : Amendment.

"beyond this the staff must be satisfied with the guarantee inherent in the fact that they are employed by an Organization of high standing to whom, in at least as great a degree as in national government administration, the principles of public service apply".(104)

Thereon, it was proposed and accepted, that all appointments should be made subject to the Staff Regulations in force from time to time and that the regulations should not be embodied in the contract.

The Working group noted that the words "acquired rights", used in P.I.C.A.O. Staff Regulations, were first adopted in the League of Nations and it gave rise to much difficulty of interpretation. The phraseology has been however repeated by other international organizations in their staff regulations. The Working group foresaw no necessity for I.C.A.O. to place itself in the same difficulty and emphatically recommended that such terminology should be avoided.(105) The Report finished saying :

"The Council is responsible for the administration of the Organization and must be free to amend the regulations, which it will only do with a due sense of its responsibility."

During the third session of the Council, Sir Frederick Tymms (United Kingdom Council representative),

(104) Final Report, op.cit., para.63 at p.25.

(105) See Final Report, op.cit., para.109 at p.35.

Chairman of the Working group, in drafting art.XV of the I.C.A.O. Service Code, wanted to avoid the expression "acquired rights", which had given international organizations - he said -, a great deal of trouble.⁽¹⁰⁶⁾ Sir Frederick was the main architect of the Service Code and the British civil servant conception is reflected in the principal provisions.

He devoted his eloquence to support the decision of the Working group in drafting art.XV. He explained :

"Literally interpreted, the doctrine of acquired rights meant that no amendments could be made in the Staff Regulations, since every amendment would in some way affect what might be termed "acquired rights". The Working group considered that the Council should be free to amend the regulations at any time and had made provision accordingly, while at the same time preserving for all members of the staff entitlement to benefits earned through service prior to the effective date of amendment and for the staff on short-term contracts entitlement to additional (home) leave as provided in the Staff Regulations in effect on the date of the letter of appointment. The Staff Regulations would not be an integral part of the contract, as they had been in P.I.C.A.O. Appointment would be subject to the provisions of the I.C.A.O. Service Code in force from time to time."⁽¹⁰⁷⁾

(106) See I.C.A.O. Doc.5694 C/665, para.13, at p.4.

(107) Ibid. In 1952 Sir Frederick Tymms reaffirmed that under the I.C.A.O. Service Code the contract of employment embodied the Service Code with such changes as might be made in it from time to time: See I.C.A.O. Doc.7291-2 C/845-2 16/7/52, para.28 at p.20.

The "Kaplan" case⁽¹⁰⁸⁾ reflects the problem and the judgment of the United Nations Administrative Tribunal could be considered as embodying the current view on the subject.

The case was brought by a former United Nations official who argued that the obligation to state reasons for dismissal constituted an acquired right which survived all modifications of the Regulations.

The Tribunal made a distinction between the contractual elements and the statutory elements of the staff's legal position, holding that the guarantee relating to acquired rights, inserted in the Staff Regulations, only applied to the contractual elements. The position is defined in the following terms :

"The Tribunal considers that relations between staff and the United Nations involve various elements and are consequently not solely contractual in nature.

Article 101 of the Charter gives the General Assembly the right to establish regulations for the appointment of the staff, and consequently the right to change them.

The General Assembly under that article established new Staff Regulations and decided that these new Staff Regulations should become effective on March 1, 1952 and supersede all previous staff regulations.

It follows from the foregoing that notwithstanding the existence of contracts between the United Nations and staff members, the legal regulations governing the staff are established by the General Assembly of the United Nations.

(108) J.U.N.A.T. (Judgments of the United Nations Administrative Tribunal), Judgment no.19, pp.71-75.

"In determining the legal position of staff members a distinction should be made between contractual elements and statutory elements; All matters being contractual which affect the personal status of each member - e.g., nature of his contract, salary, grade; All matters being statutory which affect in general the organization of the international civil service, and the need for its proper functioning - e.g., general rules that have no personal reference.

While the contractual elements cannot be changed without the agreement of the two parties, the statutory elements on the other hand may always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members.

The Tribunal interprets the provisions of regulation 28 of the Provisional Staff Regulations and article XII of the new Staff Regulations in this manner.

With regard to the case under consideration the Tribunal decides that a statutory element is involved and that in fact the question of the termination of temporary appointments is one of a general rule subject to amendment by the General Assembly and against which acquired rights cannot be invoked." (109)

The United Nations Administrative Tribunal had the opportunity also to consider a case brought before its bench by an I.C.A.O. staff member where the Tribunal was called to establish if any "acquired rights" of the applicant had been overthrown by amendments done in the I.C.A.O. Service Code. This was the first appeal from an I.C.A.O. staff member before the U.N.A.T. (110)

(109) Ibid., pp.73-74.

(110) In 1960 the Organization concluded the necessary arrangements accepting the United Nations Administrative Tribunal as the ultimate appeals authority for I.C.A.O. staff. Previously, appeals against administrative decisions of the Secretary General had been referred to ad hoc tribunals.

The cause of the complaint was the application to the appellant of an amendment to the I.C.A.O. Service Code, adopted by the Council in 1960, changing the definition of dependent, as a result of which he lost entitlement to the dependency allowance for a spouse and the higher rate of post adjustment payable to a staff member with a dependent.

The appellant claimed that he had an "acquired right" to the dependency benefits in question ; thus the appeal raised an important constitutional issue : the power of the Council to make amendments to the Service Code adversely affecting an existing contract of employment.

The Tribunal held that the Council did have that power. It rejected the appellant's contention that the personal allowance granted to him by the Secretary General when applying the new definition should have been higher and should not be subject to reduction by the amount of any future increases in salary, and he also lost his claim for damages and costs. (111)

This is the case of Paul-Auguste Puvrez against the Secretary General of the International Civil Aviation Organization. (112)

(111) See Council Report to the Assembly, I.C.A.O. Doc.8219 A14-P/4, April 1962, at p.93.

(112) J.U.N.A.T. Judgment no.82, pp.78-89.

The appeal came before U.N.A.T. after the Secretary General of I.C.A.O. rejected on June 16, 1961 the recommendation made by the Advisory Joint Appeals Board. (112)

Mr. Puvrez', from now on called the Applicant, principal contentions before U.N.A.T. were :

1. "The I.C.A.O. Council has not power to amend unilaterally the rules concerning the determination of a dependent wife thus affecting, to the detriment of the Applicant, the dependency allowance and the post adjustment. Since these allowances are, in fact, part of the salary, they constitute, in accordance with settled jurisprudence of the Administrative Tribunal, a contractual element of the legal situation of staff members and, consequently, do not fall within the statutory power of the Organization. Besides, they give rise to acquired rights and are, thereby, removed by paragraph 1.1 of art.XV of Part III of the Service Code from the unilateral power of amendment granted to the Council by paragraph 1 of that text." (113)
2. "In addition, the Organization could not validly have included in the Service Code a provision reserving to the Council the right to amend unilaterally such an important element of the contract of staff members as the salary and related benefits. Such a provision would, in effect, be tainted with a double nullity, since it would be contrary both to the Chicago Convention and general principles of law which prohibit leonine clauses." (114)
3. "By establishing a maximum figure for spouse's income beyond which the allowance for dependent wife would be abolished and the post adjustment reduced, the amendments to the Service Code adopted by the Council on June 17, 1960 unilaterally amended the system of benefits which the Applicant had enjoyed until that time. Therefore, these amendments were not applicable to him and he could not, with a view to their implementation, be forced to furnish the information requested in Form P-10 Provisional concerning the personal income of his spouse." (115)

(113) J.U.N.A.T. Judgment no.82, pp.78-89.

(114) Ibid. at p.82.

(115) Ibid. ,

The Secretary General's, hereafter the Respondent, principal contentions were :

1. "The I.C.A.O. Service Code, not only in the version in force at the time of the signature of the Applicant's permanent appointment, but also in later versions, expressly reserved to the Council the right to amend unilaterally the salary of I.C.A.O. staff members. By this, the Code gave to the salary, and in particular to benefits due under the two allowances at issue, the character of a statutory and non-contractual element (116) of the legal situation of those concerned. The jurisprudence of the Administrative Tribunal relied upon by the Applicant in support of the argument to the contrary was exclusively concerned with the United Nations and was based on Staff Rules which, unlike the I.C.A.O. Code did not authorize a unilateral amendment of the salary. Therefore, that jurisprudence could not be applied to the legal situation of I.C.A.O. staff members." (117)
2. "In any event, the amendments made on June 17, 1960 to the system of the two allowances in dispute were based on the power to amend this system unilaterally which was granted to the Council by the express provisions of paragraph 7 - at the time paragraph 8 - (118) of Part V of the Service Code in regard to the allowance for dependent wife, and of art. XV of Part III in regard to post adjustment." (119).
3. "Although these provisions were not expressly included in the Applicant's contract, they were nevertheless part of the contract, in pursuance of the clause of this contract which applied the whole of the Service Code to the permanent appointment of the Applicant. Besides, the provisions, whether leonine or not, were in conformity with a well-established practice of international organizations the validity of which had been recognized by the Administrative Tribunals of the League of Nations and the United Nations". (120)

(116) Underlines supplied

(117) Ibid. at p.83.

(118) Now paragraph 10 of Part V.

(119) Ibid.

(120) Ibid.

From the judgment of the Tribunal, the following paragraphs could be regarded as the most relevant :

1. "The tribunal notes that the Chicago Convention on International Civil Aviation has, in articles 54(b) and 58, laid down the powers of the I.C.A.O. Council concerning the personnel of the Organization... In the application of these provisions, the Council drew up a Service Code which at present has seven parts. Article IV of Part III provides that each staff member shall receive a letter of appointment signed by the Secretary General. The appointee accepts his appointment by signing and returning to the Secretary General a notice of acceptance, a form of which is enclosed with the letter of appointment. In accordance with paragraph 4 of Article IV, the letter of appointment and the notice of acceptance shall constitute the contract of employment.

According to the provisions of Article IV, paragraph 2, the letter of appointment must contain various particulars (level and title of the position, the effective date of the appointment, the duration of the appointment, the salary at which the appointment is made, and the salary scale applicable). It should also state that the appointment is subject to the provisions of the Service Code in force."(121)

2. "The contract which at present governs the situation of the Applicant is constituted by two documents dated respectively July 29 and August 15 1949. It contains the particulars mentioned in Article IV of Part III of the Code. It also includes a provision concerning the deduction for the pension fund and a provision concerning deductions in lieu of income tax, which expressly provides for the possibility of an amendment of the system employed by I.C.A.O.

The Tribunal notes that the contract of the Applicant contains no mention of the dependency allowance or of the post adjustment. However, it recognizes that at the date of the contract there was provision in the system of deductions in lieu of income tax for a dependency exemption which later underwent various amendments before the dependency allowance was introduced by decision of the Council on September 30, 1957.

(121) Ibid. at p.84.

The post adjustment appears to have been provided for in the Service Code only by a decision of the Council on September 30, 1957 in pursuance of a decision in principle dated June 11, 1957. At the date of the contract, there was only a cost-of-living bonus established by the Council which underwent successive amendments before being replaced by the post adjustment." (122)

3. "Under these circumstances, when, by decision of the Council dated June 17, 1960, there was introduced a new dependency definition capable of modifying the rights of staff members in relation to the post adjustment and dependency allowance, the terms of the contract of the Applicant, as established in 1949, were affected only to the extent that the Service Code to which this contract referred had been amended. No other provision of this contract is involved in the case. Therefore, the stipulations concerning salary therein found are not under discussion." (123)
4. "The reference by the Applicant's contract to the Service Code has the effect of subjecting the Applicant himself to rules which might be adopted by the Council in pursuance of the Chicago Convention; this power to adopt general provisions implies in principle the right to amend the rules established. However, the Council itself can regulate its right of amendment and has in fact done so in several provisions. As long as these provisions concerning amendments are in force, they must be respected by the Council." (124)
5. "The Applicant submits that Article XV obliges the Council, in exercising its right to amend the Service Code, to respect the acquired rights of staff members and that the amendment made to the determination of the dependent wife is, in so far as he is concerned, contrary to acquired rights. He considers, in effect,

(122) Ibid. at p.85.

(123) Ibid.

(124) Ibid.

that previous provisions of the Service Code established a contractual right in his favour which could not, without his consent, be later amended by the Council to his detriment.

In the opinion of the Tribunal, this interpretation is not in conformity with the provisions of art.XV. -... Art.XV means simply that no amendment of the regulations may affect the benefits and advantages accruing to the staff member for services rendered before the entry into force of the amendment. Hence, no amendment may have an adverse retroactive effect in relation to a staff member, but nothing prohibits an amendment of the regulations where the effects of such amendment apply only to benefits and advantages accruing through service after the adoption of such amendment." (125)

6. "The grant of the dependency allowance and the post adjustment was linked by the Council to a certain definition of dependent wife ; it follows from what has just been stated that the Council had the power to adopt another definition in 1960 by statutory action without the staff members who had a right to the previous system being able to continue to enjoy that system after the entry into force of the amendment in question.

In conclusion, the Tribunal considers that no right arising out of the 1949 contract permits the Applicant to claim the maintenance of benefits under the definition of dependent wife in force before the decision taken by the Council on June 17, 1960.

The Tribunal also notes that, in the case in hand, the whole of circumstances preceding the introduction of the new system in I.C.A.O. show that there was a change common to several international organizations, the various aspects of such change having been studied at length by a committee of the General Assembly of the United Nations and the heads of the secretariat concerned." (126)

(125) Ibid. at p.86. Underlines supplied.

(126) Ibid. at p.87.

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(125) Ibid. at p.86. Underlines supplied.

(126) Ibid. at p.87.

As we can see from the discussions of the Tribunal, it examined whether certain rights accorded to the plaintiff were contained in his contract or in the Staff Regulations of I.C.A.O., to which the contract referred, before interpreting the provisions governing amendments to the Staff Regulations.

Akehurst said :

"that it seems to be clearly established that an organization may not deprive officials of rights conferred directly by their contracts, unless the officials give their consent to such amendments." (127)

Moreover, he sees the contractual nature of conditions of service at the biggest limitation on organizations' legislative powers of amendment (128) and it could be said that the actual trend is to establish the relationship between an organization and the employees on a contractual basis more than under an act of authority.

It appears clear that a contractual relation exists between the international organization and the staff members of its Secretariats by virtue of which the rights of the latter may not be altered without their consent. (129)

(127) Akehurst, M.B., op.cit., at p.207.

(128) Ibid. at p.240.

(129) This view is reflected in the Advisory Opinion of the International Court of Justice on the effect of awards of compensation made by the United Nations Administrative Tribunal : Effect of Awards of Compensation made by the United Nations Administrative Tribunal, Judgment of July 13, 1954, (1954) I.C.J. Rep. 47, 53.

CHAPTER V

RECRUITMENT POLICY

The nature of an international organization involves the concept of an international composition in its staff. Therefore there is a tendency to look at the Secretariat as a reflection of the organization as a whole.

As Langrod said :

"the aim is variety of recruitment in order that the Secretariat would have the benefit of different cultures, trainings and traditions." (130)

If the organization is to be regarded as a really international body it is necessary to avoid the preponderance of anyone civilized culture or of a single national training and tradition. (131)

It is desirable :

"that the Secretariat will be enriched by the experience and culture which each Member nation can furnish and that each Member nation will, in its turn, be satisfied that its own culture and philosophy make a full contribution to the Secretariat." (132)

The author mentioned above expressed that :

"an effort must be made to reconcile what at first sight seems irreconciliable": (133)

(130) Langrod, G., op.cit., at p.94.

(131) See art.2 of the Statute of the International Court of Justice which provides that the Court shall be composed of a body of independent judges, elected regardless of their nationality.

(132) General Assembly of the United Nations, 3rd session, meeting of Sept. 2, 1948 (Doc.A/652, para.7).

(133) Langrod, G., op.cit., at p.94.

the necessity to look for the best interest of the organization, then selecting the staff with the highest standards of efficiency and technical competence and at the same time the fair distribution of posts in such a manner as to ensure the international character of the Secretariat,

"its independence from any government influence and its role as a melting pot of different currents and national traditions." (134)

Directing attention now to the International Civil Aviation Organization, it is not possible to find either in the Interim Agreement or in the Chicago Convention, an express statement prescribing the criteria to be followed in the selection of the staff.

However, the Council and, in this respect, the Assembly too, had elaborated the recruitment policy, including the basic criteria which follow the pattern set up by the United Nations.

The first part of the I.C.A.O. Service Code is devoted to the recruitment policy.

Paragraphs 1 and 2 within section A clearly established the rules which govern the selection of the staff. They prescribed :

(134) Ibid.

1. "Recruitment of the staff of the International Civil Aviation Organization shall be based on the concept of a truly international civil service, with the highest standards of efficiency and technical competence. Staff members shall be selected on the basis of individual competency, character, integrity, and where appropriate, professional ability. There shall be no distinction on the grounds of sex, race or creed."
2. "Recruitment in the Director and Principal Officer category and Professional category shall be on an international basis. Subject to the conditions in paragraph 1, this recruitment shall be on as wide a geographical basis as possible and shall be directed toward the achievement, so far as practicable, of a balanced distribution among nationals of Contracting States throughout the Secretariat. Recruitment in the general Service category shall, as a general rule, be on a local basis."

It is submitted that the Council when drawing up the recruitment policy had fulfilled the task charged to it by art.58 of the Chicago Convention.

The same article allows the Organization to "employ or make use of the services of nationals of any contracting state." While mentioning the possibility of employment of any national of a contracting State, neither that article nor any other disposition of the Convention disallows the employment of a national of a State not a party to the Chicago Convention : it should be considered an interesting problem to ascertain if any constitutional provision debars the Organization from contracting the services of a person not being a national of any Contracting State member of the organism.

The objectives of I.C.A.O. are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to ensure the safe and orderly growth of international civil aviation and encourage design and operation for peaceful purposes ; to encourage the development of air navigation facilities, to prevent economic waste caused by unreasonable competition, to avoid discrimination and promote safety and the development of all aspects of international civil aeronautics. (135)

As we can see the "State interest" is very predominant, though the nature of air transport is so international that the main efforts are made to world wide civil aviation linking every city of the world where air services are required.

If the organization works in the interests of its members, the objectives of the agency are well above the interest of the Contracting States.

Therefore, it is submitted that if the Organization is going to work to achieve those ends the fact that a potential staff member has not the nationality of any of the members of the Organization should not preclude his appointment.

(135) See art.44 Convention on International Civil Aviation, Chicago 1944.

The Report of Commission 5 of the First Assembly⁽¹³⁶⁾ affirms that art.58 of the Chicago Convention should be interpreted as not prohibiting the employment of nationals of non-contracting States, but expressed the view that they should only be engaged in exceptional circumstances.

However, the Working group on Staff and Travel Regulations in its final report did not share the Commission's conclusion in this aspect, and it was expressed that the intention of the Convention is to preclude the employment of nationals of non-contracting States and the statement of recruitment policy has been drafted accordingly.⁽¹³⁷⁾

Nevertheless, the Council when adopting this part of the Working Group's report, deleted from the Service Code the specific statement barring employment of nationals of non-contracting States.

It is possible then to say, that under the provisions of the Service Code, I.C.A.O. could recruit its staff widely, appointing for any vacancy, the most qualified, competent and efficient person for any particular post.

(136) I.C.A.O. Doc.4383 A1-AD/29. Appendix "P" at p.59.

(137) See Final Report, op.cit., para.16.

In practice the selection of the staff has been limited to nationals of Contracting States⁽¹³⁸⁾ and so far the Organization has not faced the question and be required to pronounce officially in favor of one or another interpretation.

Another aspect to be considered with regard to the same sentence of art.58 is whether the Organization should ask for the clearance of a potential staff member by its government prior to employment in the Secretariat.

Let me recall again the words of art.58 :

"... and may employ or make use of the services of nationals of any Contracting State."

It seems that as a matter of principle the selection of the staff should be made on the Organization's own responsibility.

Dag Hammarskjold said that :

"the interest of the governments in placing certain nationals and in barring the employment of others had to be subordinated, as a matter of principle and law, to the independent determination of the Organization."(139)

(138) Except for the General Service category, where the recruitment is generally made on a local basis and Field Service Staff members which are employed in connection with the Technical Assistance and Special Fund Programmes of the United Nations. - Technical Assistance field missions are not considered a part of the Secretariat. -

(139) D. Hammarskjold, op.cit., at p.16.

Within I.C.A.O., the Service Code acknowledges the concern about this problem.

At the time the Service Code was drafted the Staff Association opposed paragraph 7 of Part I-A, which provided for consultations between the Secretary general and the government of the State, before appointing any of its nationals.

The grounds for the opposition by the Staff Association were found in the fact that "in the present disturbed state of the world, objections might be based on political grounds"⁽¹⁴⁰⁾ rather than in an honest and objective appraisal of the professional abilities of the person in question.

The Council when adopting paragraph 7 of Part I-A of the Service Code made an amendment providing that a Contracting State will be informed of the intention of the Secretary General to appoint one of its nationals, but not specifically invited to submit its views.⁽¹⁴¹⁾

(140) See Final Report, op.cit., para.19.

(141) Para.7 of Part I-A of the Service Code says : "Before making an appointment to a Director or Principal Officer position, the Secretary General shall advise the government of the State of which the selected candidate is a national of his intention, in order that any information which that government has to present may be considered."

Thus we see that the Organization, wisely, had set aside the possibilities of pressures by any State at the time of appointment of a staff member.

It can be said that the Organization has succeeded in affirming the idea of a dedicated professional service "responsible only to the Organization in the performance of its duties and protected so far as possible from the inevitable pressures of national governments".(142)

A. Geographical distribution in the Secretariat

An international organization should recruit its personnel on an international basis. A principle of effective administration requires it. As one author says "No nation or region has a monopoly of human wisdom. The Secretariat needs a diversity of cultures, traditions, and beliefs."(143)

It is not necessary to justify the principle, although the need arises when more than one aim has to be considered in recruiting the staff for an international organization.

(142) See D. Hammarskjöld, *op.cit.*, at p.19.

(143) Sidney D. Bailey, "The Secretariat of the United Nations", United Nations Study no.11, New York Carnegie Endowment for International Peace 1962, at p.80.

The aim is to obtain the highest standards of performance and integrity, and at the same time to ensure that the Secretariat is "enriched by the experience and culture which each Member nation can furnish" and that each member state should be satisfied that "its own culture and philosophy make a full contribution to the Secretariat." (144)

It is necessary to cite the report presented by the International Civil Service Advisory Board in 1950. The Board recommended that :

"Every effort should be made immediately following the creation of an international organization to maintain a proper balance between competence and geography as the staff is recruited. If, for whatever reason, the balance of geographical distribution is poor, it must be recognized that the process of correcting this state of affairs must be gradual if the efficiency of the organization is not to be seriously damaged. Otherwise competence will be sacrificed for the sake of geography..." (145)

The terms of the problem could be represented by three words : "merit versus geography". Our thinking is that a question mark should be added to these words.

Art.101 paragraph 3 of the United Nations Charter seems to establish priorities.

(144) G.A.O.R.: 3rd Sess., Annexes, Agenda item 40 (A/652, 2 Sept. 1948, para.7).

(145) Report Co-ord/Civil Service/2/Rev.1 (op.cit.) para.10(a) (p.8).

As Bailey said⁽¹⁴⁶⁾, the first sentence of the paragraph states what shall be the paramount consideration in the employment of the staff and in the determination of the conditions of service. It shall be the necessity of achieving the highest standards of efficiency, competence, and integrity. The second sentence points out the due regard that should be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

The same order of priorities is found in the I.C.A.O. Service Code where in the part that deals with the general policy, recruitment policy in particular, it is established that the recruitment shall be on as wide a geographical basis as possible and shall be directed toward the achievement, so far as practicable, of a balanced distribution among nationals of Contracting States throughout the Secretariat.⁽¹⁴⁷⁾ However this aim is subject to the conditions set up in the preceding paragraph which states that the recruitment shall be based on the concept of a truly international civil service, with the highest standards of efficiency and technical competence. Individual competency, character, integrity, and where appropriate, professional ability shall be the paramount consideration.⁽¹⁴⁸⁾

(146) Bailey, S., op.cit., at p.81.

(147) See I.C.A.O. Service Code, op.cit., Part I-A, para.2

(148) Ibid., Part I-A, para.1.

Going through the I.C.A.O. Documents, it is possible to see that as early as 1950, the Assembly felt the necessity to lay down directions to the Council with regard to the problem of national distribution in the Secretariat. It is remarkable that this is one of the few items in relation with personnel where the Assembly has taken steps making use of the power given to it by art.58 of the Chicago Convention.

The resolution adopted under the heading of "National Distribution in the Secretariat" says :

".....

WHEREAS the Assembly, pursuant to Article 58 of the Convention, may lay down the rules governing the determination by Council of the method of appointment and of termination of appointment of the Secretary General and other personnel of the Organization ;

WHEREAS the principles contained in the I.C.A.O. Service Code (Part I - General Policy, A. Recruitment Policy) include a provision that recruitment shall be on as wide a geographical basis as possible and shall be directed toward the achievement, so far as practicable, of a balanced distribution among nationals of Contracting States throughout the Secretariat.

WHEREAS it is apparent from the report of the Council to this Assembly (Doc.6980, A4-AD/1) that it has not been possible to achieve full implementation of these principles up to the present time and that the internationally recruited personnel belongs, in a large proportion, to a group of States of the same historical and political origin, which make use of a common language ;

"THE ASSEMBLY DIRECTS :

The Council to take, without prejudice to the essential of efficiency, or to the express responsibility which devolves upon the Secretary General, appropriate measures to insure a balanced distribution among nationals of Contracting States in the personnel of the Organization." (149)

The preamble to the resolution exposed in plain words the problem, and the true fact that a considerable proportion of the internationally recruited staff were nationals of a group of States, namely the United States, Canada and the United Kingdom.

I do not think that these countries were exercising a monopoly in the Secretariat and the heavy contribution of its nationals to the Organization shows the mere fact that at that time those were the few countries with aviation capabilities, its population furnished with the background, training and experience necessary for the efficient functioning of the I.C.A.O.

In I.C.A.O., as in all the other Organizations making up the United Nations family, there is no question as to the desirability of a wide geographical distribution of nationalities in the staff of the Secretariat. The problem is essentially one of the degree to which this end can be achieved and of the means to be employed rather than of the end itself.

(149) Res.A4-31. Doc.8770 - Assembly Resolutions in force
(as of September 26, 1968) at pp.117-118.

The Assembly resolution A4-31, which is reproduced above, had as an immediate consequence a study submitted by the Secretary General to the Council.

The paper⁽¹⁵⁰⁾ arising from the Assembly resolution, directed the Council to take appropriate measures to ensure a balanced geographical distribution in the Secretariat suggested the manner in which balanced distribution should be defined, and that its achievement is a matter for judgment and not of precise calculation. The objective must be achieved gradually.

The Secretary General underlined two considerations of principle which he regarded as fundamental to the study of the Assembly's resolution :

- 1) "the problem of the United Nations, with its general political character and its broad range of activities, is different from that of a small specialized agency which concentrates on technical and largely non-political work and which has a relatively small number of staff members."
- 2) "if, from whatever reason, the balance of geographical distribution is poor, it must be recognized that the process of correcting this state of affairs must be gradual if the efficiency of the Organization is not to be seriously damaged. Otherwise competence will be sacrificed for the sake of geography."⁽¹⁵¹⁾

(150) Council, 12th Session, C-WP/873 - 19/3/51, Recruitment policy - National Distribution in the Secretariat.

(151) Ibid. para.4. The Secretary General reproduced some of the conclusions included in the Report presented by the International Civil Service Advisory Board (op.cit.), para.10.

The proper approach to the question of geographical distribution in the view of the International Civil Service Advisory Board

"must be one which strives for a reasonable contribution from different backgrounds and cultures throughout the various programmes and levels of the Organization." (152)

The Secretary general believed that in stating the "proper approach" the Board has in effect defined, as closely as it can be defined "balanced distribution". It is a matter of judgment, he said, whether and when "a reasonable contribution from different backgrounds and cultures" has been achieved. (153)

The following were the conclusions reached by the Secretary General :

- a) "Any attempt to measure "balanced distribution" by means of a rigid mathematical formula would fail to achieve realistic and practical results.
- b) "The aim must be to achieve the widest possible national representation in the Secretariat in the sense of representation from different backgrounds and cultures, due regard being paid to efficiency and competence, and the degree to which achievement has succeeded must be, at any point in time, a matter for judgment.

(152) Ibid.

(153) Ibid.

- c) "Drastic measures to change the balance at any time would be both impolitic and harmful to the Organization's work programme." (154)

The problem we are considering was brought to the attention of the Assembly again in 1962.

In April 1962, the Director general of Civil Aviation of Pakistan requested to the Secretary General that the item "Compliance with the principles of equitable geographical representation in the posts of the I.C.A.O. Secretariat" should be included in the Provisional Agenda of the 14th Session of the Assembly to be held in Rome (from August 21 to September 17, 1962).

The body responsible for Civil Aviation in Pakistan attached to the request a document giving aspects of the problem. (155)

The document recalled article 58 of the Chicago Convention and the policy laid down by the Council in the Service Code providing for recruitment on as wide a geographical basis as possible directed towards achieving, so far as practicable, of a balanced distribution among nationals of Contracting States throughout the Secretariat.

(154) Ibid. at p.7.

(155) See A14-WP/1, P/1, 13/4/62. Addendum no.3.

It is noticed however, the paper said, that 469 posts in the Secretariat are manned by the nationals of only 41 states, out of a number of 90 Contracting States.

In the professional and higher category appointments 139 posts are held by only 19 nations. (156)

Pakistan felt the necessity of correcting this imbalance.

The paper concluded saying :

"The wider geographical distribution in the staff of I.C.A.O., more particularly at higher levels, will make the organization more truly international and assist it in achieving its main purpose:- proper development of Civil Aviation throughout the world." (157)

Therefore, the Government of Pakistan suggested that :

"in the future recruitment of the Staff of the I.C.A.O. Secretariat, priority be given to candidates from the Contracting states which either have no nationals on its staff or have a disproportionately small number of staff in the Organization." (158)

The question of geographical distribution in the Secretariat was added to the agenda of the Assembly on the proposal of Pakistan and gave rise to considerable discussion, (159)

(156) Ibid.

(157) Ibid.

(158) Ibid.

(159) See Secretary General's comment on this subject presented under the provision of the second sentence of Rule 10 b) of the Standing Rules of Procedure of the Assembly :
A14 - WP/76 P/6, 23/7/62.

the outcome of which was a resolution (A14-6), stating that the principle of equitable geographical distribution should be given due weight with all other relevant factors when recruiting staff or renewing contracts with existing staff ; directing the Council to pursue (except for General Service and Language staff) a recruitment policy that would provide a greater proportion of short-term contracts; and stipulating that, pending completion of the Council's study on the structure of the Secretariat and related questions, no new contracts of employment of more than three years' duration should be given. (160)

Thereafter the Council was concerned to elaborate principles to improve geographical distribution in the Secretariat.

In its decision of June 25, 1963 the Council adopted the following principles : (161)

"In recruiting personnel for Professional and higher category posts, preference among equally qualified candidates must be given first to applicants from States not represented in the Secretariat and second to applicants from States not adequately represented.

(160) For the complete text of the resolution see I.C.A.O. Doc.8770 (op.cit.) at pp.118-119.

(161) See I.C.A.O. Doc.8348 - C/945 ; 6C(2-30) and 8C(33-83). The first figure denotes the number of the meeting, the letter "C" after it a closed meeting, and the figures in parentheses the paragraphs of the minutes in which the discussion leading to the decision is recorded.

"There must be the greatest possible relation of nationalities compatible with maintaining the efficiency of the Organization. To this end, a percentage of all contracts will be on a fixed-term basis without career prospects, the objective being 25%, distributed among the different levels and bureaux.

"As an interim measure, with the object of reaching the 25% as soon as possible, all new contracts are to be on a fixed-term basis for not more than three years and without career prospects, except where the interests of the Organization, fully justify adopting another course.

"In determining whether a nationality is "adequately represented", the Secretary General will be guided by the importance in civil aviation and the state of development of the country in question, as measured by its current assessment for the I.C.A.O. budget, and by the level of the posts occupied at the time by the nationals of that country." (162)

The foregoing principles do not apply to Language staff, though the decision expressed that the recruitment for that section is not to be limited to countries whose official language is one of the working languages of I.C.A.O.

In the General Service Category the personnel shall continue to be recruited locally, but when possible, there is to be local recruitment of nationals of States other than the one in which the Headquarters or the particular regional office concerned is located.

On December 31, 1968, fifty nationalities were represented in the internationally recruited staff out from a total of 116 Member states. The proportion of 25% of

(162) See I.C.A.O. Doc.8402 A15-P/2, April 1964 at p.108.

Professional Category posts to be filled on a fixed-term basis without career prospects had been reached by late 1967. (163)

B. Method of appointment of Directors on a non-career basis

The I.C.A.O. Council established on April 11, 1962 an ad hoc group on Secretariat which gave careful consideration to the conditions of employment of directors. From the beginning the group was of the opinion

"that the interests of I.C.A.O. will best be served by a relatively frequent rotation of individuals at the head of Bureaux, thus facilitating a more equitable, geographical distribution, and by a detachment of those individuals from those provisions of the Service Code which are aimed at the welfare of the staff." (164)

The ad hoc group recommended the application in the future of a policy fixed-term appointments for Directors, in the belief that such a policy would give up-to-date expertise in the direction of the various bureaux and result in a frequent rotation of highly qualified persons in the Director posts, contributing therefore to a more equitable geographical distribution in the Secretariat.

(163) See Annual Report of the Council of the Assembly for 1968, Doc.8792 A17 - P/1, April 1969, at p.143. See Appendix J : National distribution of professional category staff as at December 31, 1968.

(164) See C-WP/3688, 26/11/62, para.10.

In the group's second report⁽¹⁶⁵⁾, which the Council accepted, the basic principles - that in the future Directors should be appointed on a fixed-term basis for periods of between three and five years and should be employed under a special contract generally outside the provisions of the I.C.A.O. Service Code - were maintained. In exceptional cases there might be reappointment, but an incumbent would not be given preferential treatment if he applied for reappointment and if he was reappointed, the total number of years he might serve was not to exceed eight.

The Council thereupon adopted the rules for the appointment of Directors on a non-career basis.⁽¹⁶⁶⁾

(165) See C - WP/3811, 3/6/63.

(166) I.C.A.O. Doc.8343-3 (closed) C/945-3, 2/7/63 at p.42.

CONCLUSION

Experience has shown that international organizations are the ideal device for ensuring effective co-operation between States in every field, regardless whether they have common or divergent interests, and the international civil service is the instrument designed to carry on the common objectives.

In I.C.A.O., as in any other specialized agency, day to day problems are sorted out thanks to the staff members who work in an atmosphere of impartiality, for objectives which transcend national policy.

The work of the Organization is open to criticism, but what the critic should not forget is that whatever the effort and hard work done by the staff, they are always restricted by the willingness of the States members. The I.C.A.O. staff members, the Secretariat as a whole, cannot take the Organization much further than the Contracting States are willing to go.

It is submitted that the advantages that Contracting States in particular, and civil aviation in general, may gain from the full development of the capacity and responsibility of I.C.A.O. international civil servants are unmeasurable.

The Organization foresaw the potentiality of having its personnel built upon the concept of the international civil servant and therefore gave due regard to drawing up the foundations which were to govern the legal relations between the Organization and the staff members.

In the Service Code are found the rules to delimit the duties and responsibilities of the staff and by virtue of article 58 of the Chicago Convention, I.C.A.O. is in the position to give the lead on personnel policy equipped with a permanent governing body which can view and review staff regulations to adjust them to exigencies of the times and the requirements of the Organization. (167)

As was described in the last chapter I.C.A.O. has devised a new personnel policy and built up a method for appointment of directors. These may revitalize the Secretariat though it is too premature to appreciate the magnitude of the changes, and therefore its advantages or disadvantages.

The adoption of the non-career Directors policy set I.C.A.O. apart from other members of the United Nations family. It is a test of which time will be the best judge.

(167) It must be remembered that Staff Regulations not only set out the obligations of the staff, but also limit the Organization's powers and prevent interference by member-states.

Bringing new blood to the Organization might have its advantages, but it should not be forgotten that continuity and experience are also valuable assets.

The geographical distribution question was discussed at length in this paper and the submission is that States should mature quickly. The stress should be put in the integrity and responsibility of the official and not in his nationality. Once a member of the I.C.A.O. staff it does not matter from which country the official comes. If the concept of a truly international civil service is well understood and duly observed, the official belongs to the Organization and he is devoted only to it.

Hammaraskjold⁽¹⁶⁸⁾ said :

"The International Secretariat is not what it is meant to be until the day when it can be recruited on a wide geographical basis without the risk that then some will be under - or consider themselves to be under - two masters in respect of their official functions."

I.C.A.O. was formed before the conquest of space began and it is obvious that, in addition to its present important work, the new field presents new challenges to the Organization's activity. The Organization is already

(168) Hammaraskjold D., Oxford address, op.cit., at p.19.

concerned with studies about the venture into space but today when men are landing on the Moon, the necessity of a fuller work programme for space activities is urgent. If an International Space Agency is not set up soon, I.C.A.O. should be the international organization better equipped to deal with the problem. And then the importance of its international civil servants will be emphasized once again.

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ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

100.

1-B

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

WHEN REPLYING, PLEASE QUOTE
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA.

APPENDIX "A"

Dear

1. You are hereby offered the following term appointment in the General Service Category of the staff of the International Civil Aviation Organization:

- a) Level :
- b) Effective date of appointment :
- c) Salary (Canadian Funds)

Minimum this level	:	\$	per annum (Step)
Maximum this level	:	\$	per annum (Step)
- d) Initial salary rate : \$ per annum (Step)

The salary stated will be subject to deductions under the ICAO Staff Assessment Plan (ICAO Service Code, Part VI).

- 2. This offer is conditional and will become firm only upon receipt of a medical certificate and upon advice to you that it has been found satisfactory.
- 3. Your first assignment under this appointment will be
- 4. This appointment is offered for a period of
- 5. This appointment is subject to the provisions of the ICAO Service Code in force and as amended from time to time.
- 6. You are invited to note particularly the provisions in the ICAO Service Code concerning probation (Part III, Article IV), periods of notice (Part III, Article V) and renewal of appointment (Part III, Article IV, paragraph 8.1).
- 7. A deduction of seven per cent of your pensionable remuneration will be made as your contribution towards the United Nations Joint Staff Pension Fund.
- 8. Would you kindly return the attached copy of this letter to indicate your acceptance, after signing the statement overleaf.

Yours very truly,

B. T. Twigt,
Secretary General.

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALEORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

101.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

1-F

WHEN REPLYING, PLEASE QUOTE:
 RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
 INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

APPENDIX "B"

Dear

1. You are hereby offered the following appointment in the Professional Category of the staff of the International Civil Aviation Organization:

- a) Level :
- b) Effective date of appointment :
- c) Salary (U.S. dollars)
 - Minimum this level : \$ per annum (Step)
 - Maximum this level : \$ per annum (Step)
- d) Initial salary rate : \$ per annum (Step)

The salary stated will be subject to deductions under the ICAO Staff Assessment Plan (ICAO Service Code, Part VI).

2. This offer is conditional and will become firm only upon receipt of a medical certificate and upon advice to you that such certificate has been accepted as satisfactory.

3. Your first assignment under this appointment will be

4. Except for the conditions of service expressly provided for herein, this appointment is subject to the provisions in the ICAO Service Code in force and as amended from time to time.

5. You are invited to note particularly the provisions in the ICAO Service Code concerning periods of notice (Part III, Article V), payment of an indemnity on termination (Part III, Article V, Paragraphs 10.3 and 11) and transfer of staff (Part III, Article IV, Paragraph 7).

6. This appointment is for a period of from the date you report for duty, which will include a probationary period of one year during which, if the Secretary General is not satisfied with your services, the appointment may be terminated by one month's notice or salary in lieu thereof. The appointment carries no expectancy of renewal upon expiry, and will terminate on its expiry date without further notice.

7. You will not be entitled to home leave travel expenses for yourself and your recognized dependents during the term of this appointment.

8. A deduction of seven per cent of your pensionable remuneration will be made as your contribution towards the United Nations Joint Staff Pension Fund.

1. I hereby accept the offer of appointment dated
..... contained overleaf.

2. I solemnly undertake to exercise in all loyalty, discretion and conscience, the functions entrusted to me as a member of the staff of the International Civil Aviation Organization; to discharge these functions to the best of my ability and to regulate my official conduct with the interest of the Organization alone in view; to abide by the rules laid down by the Organization; during the term of my service in the Organization, or following the termination of my service, not to disclose any information of a confidential nature; and not to seek or accept from any government or other authority external to ICAO any instructions in regard to the discharge of my official responsibilities.

(Signed)

(Date)

9. On the basis of the information supplied by you, your "home" for the purpose of repatriation as provided in the ICAO Service Code under Part IV, Article II, will be unless otherwise determined by me.

10. Would you kindly return the attached copy of this letter to indicate your acceptance, after signing the statement overleaf.

Yours very truly,

B.T. Twigt,
Secretary General.

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALEORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

103.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

1-E

WHEN REPLYING, PLEASE QUOTE:
 RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
 INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

APPENDIX "C"

Dear

1. You are hereby offered the following term appointment in the Professional Category of the staff of the International Civil Aviation Organization:

- a) Level :
- b) Effective date of appointment :
- c) Salary (U.S. dollars)
- | | | | | |
|--------------------|---|----|-----------------|---|
| Minimum this level | : | \$ | per annum (Step |) |
| Maximum this level | : | \$ | per annum (Step |) |
- d) Initial salary rate : \$ per annum (Step)

The salary stated will be subject to deductions under the ICAO Staff Assessment Plan (ICAO Service Code, Part VI).

2. This offer is conditional and will become firm only upon receipt of a medical certificate and upon advice to you that such certificate has been accepted as satisfactory.

3. Your first assignment under this appointment will be

4. This appointment is offered for a period of from the date you report for duty.

5. This appointment is subject to the provisions of the ICAO Service Code in force and as amended from time to time.

6. You are invited to note particularly the provisions in the ICAO Service Code concerning probation (Part III, Article IV, paragraph 5), periods of notice (Part III, Article V) and renewal of appointment (Part III, Article IV, paragraph 5.1).

7. A deduction of seven per cent of your pensionable remuneration will be made as your contribution towards the United Nations Joint Staff Pension Fund.

8. On the basis of the information supplied by you, your "home" for the purpose of home leave and repatriation, as provided in the ICAO Service Code under Part IV, Articles III and II, will be unless otherwise determined by me.

9. Would you kindly return the attached copy of this letter to indicate your acceptance, after signing the statement overleaf.

Yours very truly,

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

104.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

4-C

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

APPENDIX "D"

Dear

1. You are hereby offered a new appointment in the Professional Category of the staff of the International Civil Aviation Organization. This appointment will supersede the appointment contained in

2. Appointment offered at this time is as follows:

- a) Level :
- b) Effective date of appointment :
- c) Duration of appointment : Permanent
- d) Salary (U.S. dollars)

Minimum this level	:	\$	per annum (Step)
Maximum this level	:	\$	per annum (Step)
- e) Initial salary rate : \$ per annum (Step)

The salary stated will be subject to deductions under the ICAO Staff Assessment Plan (ICAO Service Code, -Part VI).

3. Your next increment date under this appointment will be

4. Your first assignment under this appointment will be

5. This appointment is subject to the provisions of the ICAO Service Code in force and as amended from time to time.

6. A deduction of 7% of your pensionable remuneration will be made as your contribution towards the United Nations Joint Staff Pension Fund.

7. On the basis of the information supplied by you, your "home" for the purposes of home leave and repatriation, as provided in the ICAO Service Code under Part IV, Articles III and II, will be unless otherwise determined by me.

8. Would you kindly return the attached copy of this letter, to indicate your acceptance, after signing the statement overleaf.

Yours very truly,

APPENDIX "E"CONTRACT

between

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

and

(Name of Officer)

The International Civil Aviation Organization (hereinafter referred to as "the Organization") and

Mr. _____ (hereinafter referred to as "the Officer"),
having regard to the Agreement concluded on _____
between the Government of _____ (hereinafter referred to as "the Government") and the Organizations Members of the UN Development Programme concerning the provision to the Government of officers to perform functions of an operational, executive and administrative character, as civil servants or other comparable employees of the Government,

Desiring to specify the conditions under which the Officer, as employee, agrees to place his services at the disposal of the Government as his employer,

Desiring furthermore to define the mutual relationship that shall exist in this connection between the Organization and the Officer,
have entered into the present Contract:

Article IFunctions of the Officer

1. The Officer undertakes to perform for or on behalf of the Government the following functions:

2. As part of his official functions and to the maximum extent approved by the Government, the Officer shall promote and assist in the training of new talent with a view to increasing the supply of competent officials available to the Government.

3. The functions referred to under paragraph 1 of this Article may be changed from time to time by mutual agreement between the Government and the Officer, subject to the approval of the Organization.

Article II

Obligations of the Organization

1. The Organization shall provide the Officer with a stipend equivalent to US\$ _____ per annum. The stipend shall be paid monthly in the following currencies: _____

2. The Organization shall provide the Officer with allowances, grants and benefits as established in the annexes to this Contract.

3. The Organization shall reimburse any income taxes which may be levied by the country of the Officer's nationality or normal residence on the salary and related emoluments received from the Government, and on the stipend and any of the allowances or emoluments paid by the Organization. The reimbursement shall be computed without regard to any income except that mentioned in the preceding sentence.

4. The Officer is excluded from participating in the United Nations Joint Staff Pension Fund.

5. (a) The Organization shall make arrangements under which compensation shall be granted should the Officer suffer death, injury or illness, determined by the Organization to have been attributable to the performance of official duties for or on behalf of the Government under this Contract. In paying indemnities hereunder, the Organization shall take into account compensation payments by the Government, by the Government of the Officer's nationality or normal residence, benefits from the United Nations Staff Pension Fund and, where applicable, payments to the Officer or his beneficiaries under the Organization's insurance policies.

(b) In the event of death of the Officer or of his recognized dependents, the Organization shall pay the expenses of transportation of the body from the place of death to a place to which it is entitled to return transportation. These expenses will include reasonable costs for preparation of the body.

6. The benefits mentioned in this Article shall be provided by the Organization under terms, conditions and definitions generally the same as those applicable to its staff members in the category of project personnel.

Article III

Obligations of the Officer

1. The Officer shall be responsible to the Government. In the performance of his duties, he shall neither seek nor accept instructions from any other Government or from any other authority external to the Government.
2. The Officer shall conduct himself at all times with the fullest regard for the aims of the Organization and in a manner befitting his status under his Contract. He shall not engage in any activity that is incompatible with the purposes of the Organization or the proper discharge of his duties with the Government. He shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on his status, or on the integrity, independence and impartiality which are required by that status. While he is not expected to give up his national sentiments or his political and religious convictions, he shall at all times bear in mind the reserve and tact incumbent upon him by reason of his status.
3. The Officer shall exercise the utmost discretion in regard to all matters of official business. He shall not communicate to any person any information known to him by reason of his official position with the Government which has not been made public, except in the course of his duties or by authorization of the Government. Nor shall he at any time use such information to private advantage. These obligations do not cease upon completion of service under this Contract.

Article IV

Duration and Termination of Contract

1. Subject to the provisions of paragraph 3 of this Article, this Contract is concluded for a period of _____. The services of the Officer shall commence on _____.

This Contract expires without further notice at the end of the period stated in this paragraph.

2. This Contract does not carry any expectancy of renewal or of conversion to any type of appointment in the Secrétariat of the Organization.
3. This Contract may be terminated by either party upon one month of written notice. Should the Organization so terminate the Contract, it shall pay to the Officer an indemnity equal to _____ for each month of uncompleted service under this Contract.

However, no indemnity shall be due if the termination of the Contract is based on the misconduct of the Officer or on the non-observance by the Officer of the obligations incumbent upon him under Article III of this Contract.

Article V

Settlement of Disputes

The Organization shall establish appropriate machinery to hear and to decide disputes between itself and the Officer in which the latter asserts non-observance of the terms of this Contract.

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Article VI

Waiver of Immunities

Any privileges and immunities to which the Officer may be entitled under the Agreement of _____ referred to in the preamble of this Contract may be waived by the Organization where, in its opinion, the immunity would impede the course of justice, and can be waived without prejudice to the interests of the Organization or to the effective performance by the Officer of his functions.

Article VII

General Provisions

1. This Contract shall enter into force upon signature.
2. This Contract may be modified by agreement between the Organization and the Officer, and specifically in the light of such modifications as may from time to time be made in the Agreement referred to above between the Organization and the Government.
3. While the Officer does not have the status of an official or a staff member of the Organization, any relevant matter for which no provision is made in this Contract shall be settled according to the administrative practices of the Organization.

In witness whereof the undersigned have affixed their signature.

(The Officer)

The Secretary General
of
The International Civil Aviation Organization

(Date)

(Date)

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

107.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

APPENDIX "F"

Dear Mr.

1. You are hereby offered the appointment described below with the International Civil Aviation Organization's Technical Assistance Programme in subject to the conditions of service set out in the attached ICAO Field Service Staff Rules and as amended from time to time.

Title of Appointment:

Duties:

Base Salary: \$ gross per annum, subject to deductions under the ICAO Staff Assessment Plan making a net salary of \$ per annum payable monthly in arrears.

Level:

Step:

Duty Station:

The Organization reserves the right to transfer you to any other duty station in or to any other Mission in another territory, or to the Headquarters of this Organization, according to the requirements of the Technical Assistance Programme.

Effective Date of
Appointment:

Date of departure for duty station (to be confirmed).

Duration of
Appointment:

A period of from the effective date, subject to the right of either party to terminate this agreement in accordance with the provisions of the ICAO Field Service Staff Rules including Rule 9.6.

2. This appointment is conditional upon the receipt by the Organization of a satisfactory medical certificate as to your present state of health.

3. You are required at all times to abide by and to carry out any instructions issued to you by the
In the event of your committing any breach of the terms and conditions of this agreement amounting to a repudiation of it, you will be liable to refund to us the amount of any salary advance made and any costs incurred by this Organization in returning you and your dependents, if any, to your home country.

4. You will not be entitled to receive from the International Civil Aviation Organization any payments, subsidies, expenses or emoluments other than those specified in the preceding paragraphs in this letter or those applicable in the ICAO Field Service Staff Rules.

5. On the basis of the information supplied by you, your home for the purposes of repatriation, travel to visit dependents and home leave will be
unless otherwise determined by me.

6. You are requested to indicate your acceptance of this appointment by signing below and returning a copy of this letter to the Headquarters of this Organization together with a signed copy of the attached declaration.

Yours very truly,

B.T. Twigt
Secretary General

I hereby accept the offer of appointment dated
contained overleaf.

(signature)

(date).

APPENDIX "G"DECLARATION

"I solemnly undertake to exercise in all loyalty, discretion and conscience, the functions entrusted to me as a member of the Field Service Staff of the International Civil Aviation Organization; to discharge these functions to the best of my ability and to regulate my official conduct with the service of the Organization, and the fulfilment of my mission, only in view; to abide by the rules laid down by the Organization; during the term of my service in the Organization, or following the termination of my service, not to disclose any information of a confidential nature; and not to seek or accept from any authority external to the Organization any instructions in regard to the discharge of any official responsibilities; it being understood that this in no way precludes close collaboration with the authorities concerned with my mission according to terms which have been agreed by the Organization."

(signature)

(date) 1

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

109.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

APPENDIX "H"

Dear Mr.

1. You are hereby offered the appointment described below with the for which the International Civil Aviation Organization has been appointed by the Special Fund to act as the executing agency subject to the conditions of service set out in the attached ICAO Field Service Staff Rules and as amended from time to time.

Title of Appointment:

Duties:

Base Salary: \$ gross per annum, subject to deductions under the ICAO Staff Assessment Plan making a net salary of \$ per annum payable monthly in arrears.

Level:

Step:

Duty Station:

The Organization reserves the right to transfer you to any other duty station in or to any other Mission in another territory, or to the Headquarters of this Organization, according to the requirements of the Technical Assistance Programme.

Effective Date of
Appointment:

Date of departure for duty station (to be confirmed).

Duration of
Appointment:

A period of from the effective date, subject to the right of either party to terminate this agreement in accordance with the provisions of the ICAO Field Service Staff Rules including Rule 9.6.

2. This appointment is conditional upon the receipt by the Organization of a satisfactory medical certificate as to your present state of health.

3. You are required at all times to abide by and to carry out any instructions issued to you by the
In the event of your committing any breach of the terms and conditions of this agreement amounting to a repudiation of it, you will be liable to refund to us the amount of any salary advance made and any costs incurred by this Organization in returning you and your dependents, if any, to your home country.

4. You will not be entitled to receive from the International Civil Aviation Organization any payments, subsidies, expenses or emoluments other than those specified in the preceding paragraphs in this letter or those applicable in the ICAO Field Service Staff Rules.

5. On the basis of the information supplied by you, your home for the purposes of repatriation, travel to visit dependents and home leave will be
unless otherwise determined by me.

6. You are requested to indicate your acceptance of this appointment by signing below and returning a copy of this letter to the Headquarters of this Organization together with a signed copy of the attached declaration.

Yours very truly,

B. T. Twigt
Secretary General

I hereby accept the offer of appointment dated
contained overleaf.

(signature).

(date)

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

110.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDIQUESE EN LA RESPUESTA ESTA REFERENCIA:

APPENDIX "I"

Dear Mr.

1. You are hereby offered an extension of your appointment from with the International Civil Aviation Organization's Technical Assistance Mission in subject to the conditions of service set out in the ICAO Field Service Staff Rules and as amended from time to time. All other terms and conditions as set forth in your letter of appointment dated remain unchanged.

2. You are requested to indicate your acceptance of this appointment by signing the attached copy of this letter which should be returned to the Headquarters of this Organization.

Yours very truly,

B. T. Twigt
Secretary General

(signature)

(date)

APPENDIX "J"APPENDIX 7NATIONAL DISTRIBUTION OF PROFESSIONAL CATEGORY STAFF
AS AT 31 DECEMBER 1968

COUNTRY	LEVEL								TOTAL	Language Staff	Non-language Staff
	SG	DIR	PO	P-5	P-4	P-3	P-2	P-1			
Afghanistan	-	-	-	-	-	-	-	-	-	-	-
Algeria	-	-	-	-	-	-	-	-	-	-	-
Argentina	-	-	-	-	1	2	-	-	3	2	1
Australia	-	-	-	3	3	1	-	-	7	-	7
Austria	-	-	-	-	-	-	1	-	1	-	1
Barbados	-	-	-	-	-	-	-	-	-	-	-
Belgium	-	-	-	1	3	1	-	-	5	1	4
Bolivia	-	-	-	1	-	-	-	-	1	-	1
Brazil	-	1	-	-	1	-	-	-	2	-	2
Bulgaria	-	-	-	-	-	-	-	-	-	-	-
Burma	-	-	-	-	-	-	-	-	-	-	-
Burundi	-	-	-	-	-	-	-	-	-	-	-
Cambodia	-	-	-	-	-	-	-	-	-	-	-
Cameroon	-	-	-	-	-	-	-	-	-	-	-
Canada	-	-	-	4	5	9	8	3	29	6	23
Central African Republic	-	-	-	-	-	-	-	-	-	-	-
Ceylon	-	-	-	-	1	1	-	-	2	-	2
Chad	-	-	-	-	-	-	-	-	-	-	-
Chile	-	-	-	1	1	-	-	-	2	-	2
China	-	-	-	-	1	-	-	-	1	-	1
Colombia	-	-	-	-	-	1	-	-	1	-	1
Congo (Brazzaville)	-	-	-	-	-	-	-	-	-	-	-
Congo, Democratic Republic of	-	-	-	-	-	-	-	-	-	-	-
Costa Rica	-	-	-	-	-	1	1	-	2	-	-
Cuba	-	-	-	-	1	-	1	-	2	-	2
Cyprus	-	-	-	-	-	-	-	-	-	-	-
Czechoslovakia	-	-	-	-	2	-	-	-	2	-	-

[illegible]

COUNTRY	LEVEL								TOTAL	Language Staff	Non-language Staff
	SG	DIR	PO	P-5	P-4	P-3	P-2	P-1			
Singapore	-	-	-	-	-	-	-	-	-	-	-
Somalia	-	-	-	-	-	-	-	-	-	-	-
South Africa	-	-	-	-	-	-	-	-	-	-	-
Spain	-	-	-	-	4	3	1	-	8	5	3
State of Israel	-	-	-	-	-	-	-	-	-	-	-
Sudan	-	-	-	-	-	-	-	-	-	-	-
Sweden	-	-	-	1	-	1	-	-	2	-	2
Switzerland	-	-	-	-	1	-	-	-	1	-	1
Syria	-	-	-	-	-	-	1	-	1	-	1
Tanzania, United Republic of	-	-	-	-	-	-	-	-	-	-	-
Thailand	-	-	-	-	-	-	-	-	-	-	-
Togo	-	-	-	-	-	-	-	-	-	-	-
Trinidad and Tobago	-	-	-	-	-	-	-	-	1	-	1
Tunisia	-	-	-	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-	1	-	1
Uganda	-	-	-	-	-	-	-	-	-	-	-
United Arab Republic	-	-	-	-	-	-	1	-	3	-	3
United Kingdom	-	-	-	2	-	5	3	1	23	7	16
United States	-	1	-	2	-	2	1	-	11	1	10
Upper Volta	-	-	-	-	-	-	-	-	-	-	-
Uruguay	-	-	-	-	-	-	-	-	-	-	-
Yemen	-	-	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	1	-	-	1	-	1
Zambia	-	-	-	-	-	-	-	-	-	-	-
TOTALS	-	4	3	28	65	60	22	4	187	39	148