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## **The international civil service: redefining its independence**

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## **CHAPTER V – PRACTICES OF STAFF MEMBERS THAT ERODE THEIR INDEPENDENCE AND THE INDEPENDENCE OF INTERNATIONAL SECRETARIATS**

Chapter 2 identified three actors who play an important role in preserving the independence of international secretariats and international civil servants. These three actors are: member states; IGOs; and international civil servants. Chapter 3 explored practices of member states that erode the independence of international secretariats while Chapter 4 examined practices of international organisations. This chapter will focus on practices of international civil servants.

This chapter consists of two sections. The first section will examine the question of “to whom do international civil servants owe the obligation to do something or to abstain from doing something?” The second section of the chapter explores the contents of international civil servants’ obligations.

### **SECTION 1 – TO WHOM DO INTERNATIONAL CIVIL SERVANTS OWE OBLIGATIONS?**

What is the relevance of knowing to whom international civil servants owe an obligation to do something or to abstain from doing something? Chapters 3 and 4 answered the questions of: (a) who has an obligation to do something or to abstain from doing something? and (b) what does this obligation consist in? However, neither chapter explained to whom states and international organisations owe the duty to do or to abstain from doing certain things.

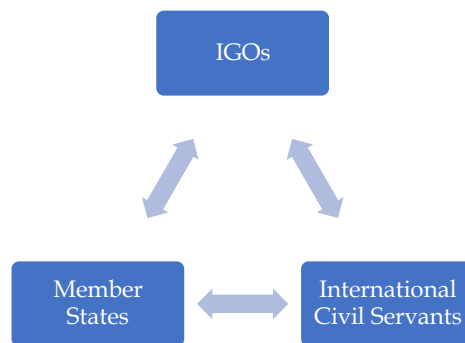
The reason for covering this question in Chapter 5 is simple. The nexus between obligations of member states and the independence of international secretariats and international civil servants can be understood much easier. For instance, it is relatively easy to grasp how the obligation of member states to recognise the jurisdictional immunity of an IGO can preserve the independence of its international secretariat. It is also easy to draw a link between the obligation of member states to respect the functional immunities of international civil servants and their independence.

The link between obligations of IGOs and the independence of their secretariats and staff members is also often clear. For example, it is obvious that an IGO’s failure to establish internal dispute resolution mechanisms can jeopardise its jurisdictional immunity and independence from states by exposing the IGO to the jurisdiction of national courts and tribunals. It is equally easy to understand that the obligation of IGOs to assert the privileges and immunities of international civil servants fosters their independence.

However, it is not always easy to discern a connection between the obligations of international civil servants and their independence or the independence of

international secretariats. Therefore, to appreciate fully how the obligations of international civil servants may have an impact on their independence and the independence of international secretariats, we first need to identify the party to whom the obligation is owed.

At first glance, the relationship between member states, IGOs, and international civil servants is triangular in that each actor owes some obligations towards the two others as illustrated by the diagram below.



Indeed, a literal reading of Article 100 of the United Nations Charter seems to provide support to this interpretation:

*Article 100*

*1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.*

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

Another element that may give the impression that international civil servants have certain obligations towards member states (and vice versa) is the nature of some obligations imposed on them. For instance, the obligation of international civil servants to comply with local laws of member states is at first glance owed to member states. One may reasonably view this as an obligation to be law-abiding citizens or residents and that this obligation is owed to the country where the staff members are performing their official functions. However, national legislations rarely – if ever – impose a general obligation on citizens and other residents to be law-abiding subjects. National laws normally prohibit certain acts and expect all residents present on the territory of that state, irrespective of their employment status, to comply. They do not

draw a distinction between conduct expected of the general population and that expected of international civil servants. From a state's viewpoint, there is no need to impose a separate set of rules on international civil servants simply because prescriptive laws apply to all unless an explicit exception is carved out for certain categories of individuals.

The obligation to comply with local laws is often contained in staff rules and regulations promulgated by international organisations to regulate the conduct of their staff members. The purpose of this obligation is to avert undesired tensions between the IGO and its Host Nation, including the local community.<sup>1</sup> The IGOs have an interest in avoiding situations where they must choose between asserting or waiving the staff member's privileges and immunities thereby putting the organisation in a delicate position vis-à-vis the host country. This obligation is an amplification of the rule which provides that the privileges and immunities of the organisation afford no excuse to staff members for the non-performance of their private obligations.<sup>2</sup> It plays a key role in preserving the independence of international secretariats from the Host Nation. However, the link between this duty of international civil servants and the independence of international secretariats is not apparent.

The prohibition to engage in political activities is another example of an obligation that international civil servants seem to owe to member states. However, a closer look reveals that this obligation is not owed to states but to international organisations. Indeed, national laws do not normally prohibit international civil servants to engage in political activities. This type of prohibitions can be often found in staff rules and regulations of international organisations. The reason for this prohibition is twofold. First, the organisation has an interest in ensuring that its member states do not doubt the neutrality and impartiality of its staff. Second, the organisation has an interest in ensuring that political activities of its staff do not irritate governments of member states and expose the organisation and its staff to political interference and harassment by national authorities.

Hence, a careful examination of obligations of international civil servants leads to the conclusion that the relationship between the three actors (i.e., member states, IGOs, and international civil servants) is not triangular and is not necessarily direct. There can be no doubt that member states have direct obligations towards IGOs and IGOs have direct obligations towards member states. It is equally indisputable that international civil servants have obligations towards their IGOs and the IGOs have

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<sup>1</sup> Report on Standards of Conduct of the International Civil Service (1954) of the International Civil Service Advisory Board, UN Doc (Coord/Civil Service/5) paras. 53-54.

<sup>2</sup> *Ibid.* at 55.

obligations towards their personnel. However, it is highly questionable that member states have direct obligations towards international civil servants and international civil servants have direct obligations towards member states to preserve the independence of the international civil service. The relationship between these three actors appears to be linear as opposed to triangular; IGOs act as intermediaries between member states and international civil servants. This relationship is illustrated by the diagram below.



This second configuration, namely the absence of direct obligations between member states and international civil servants, is itself an important component of independence. IGOs act as a buffer between member states and international civil servants. Any other arrangement could expose officials of IGOs to political pressures from governments of member states. Indeed, if, on the one hand, we assume that the relationship between a member state and international civil servants is governed by the administrative law of the concerned state, then any legal obligation would be enforceable before national courts. Under the administrative law of most democracies, legal obligations that individuals have towards a state and vice versa normally entail a corresponding right to demand compliance and the ability to enforce it. This would pose a significant risk to the independence of international officials since member states would have the power to exert pressure on international civil servants by threatening legal action for breaching their legal obligations. Correspondingly, international civil servants would be hard-pressed not to comply with the wishes of member states if they knew that governments of member states could enforce legal obligations directly against them through national courts.<sup>3</sup>

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<sup>3</sup> *In re Leff*, [1955] Judgement No. 18 (ILOAT): “That it will suffice to realise that if any one of the seventy-two States and Governments involved in the defendant Organisation brought against an official, one of its citizens, an accusation of disloyalty and claimed to subject him to an enquiry in similar or analogous conditions, the attitude adopted by the Director-General would constitute a precedent obliging him to lend his assistance to such enquiry and, moreover, to invoke the same disciplinary or statutory consequences, the same withdrawal of confidence, on the basis of any opposition by the person concerned to the action of his national Government; “That if this were to be the case there would result for all international officials, in matters touching on conscience, a state of uncertainty and insecurity prejudicial to the performance of their duties and liable

If, on the other hand, we assume that the relationship between a member state and international civil servants is governed by public international law, then there can be no direct rights and obligations between these two actors because unlike states, individuals are neither primary nor secondary subjects of public international law. They constitute only the subject-matter of intended legal regulation as such.<sup>4</sup> Individuals occasionally appear as legal persons on the international plane only in specific contexts.<sup>5</sup> Specifically, they are sometimes recognised as participants and subjects of international law in the fields of human rights law and investment protection.

Consequently, member states owe the duty to respect the functional immunities and fiscal privileges of international civil servants not to international civil servants (individuals) but to international organisations and to other member states. This obligation is normally contained either in a multilateral treaty between member states or in the Seat Agreement (or Host Country Agreement) between the IGO and the host country. International civil servants are not party to such agreements and normally do not have standing before national courts to enforce a state's obligation to respect their privileges and immunities. It is the responsibility of the IGO employing the international civil servants to assert the privileges and immunities covering them and to demand from the concerned state compliance with its obligations.

It is also for this reason that conventions granting privileges and immunities to international civil servants often specify that the privileges and immunities enjoyed by international officials are conferred in the interests of the organisation and not for the personal benefit of the individuals themselves.<sup>6</sup> International organisations not only have the authority to assert the privileges and immunities of their staff, but they can also waive them, particularly when the immunities can impede the course of justice.<sup>7</sup> Since officials of intergovernmental organisations rely on their employer to

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to provoke disturbances in the international administration such as cannot be imagined to have been in the intention of those who drew up the Constitution of the defendant Organisation; [...]"

<sup>4</sup> Malcolm N Shaw, *International Law*, 8<sup>th</sup> ed (Cambridge: Cambridge University Press, 2017) at 204.

<sup>5</sup> Ian Brownlie, *Principles of Public International Law*, 7<sup>th</sup> ed (Oxford: Oxford University Press, 2008) at 65.

<sup>6</sup> See for instance Sec. 20 of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15; Art. XXII of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa, 20 September 1951, 200 U.N.T.S. 3; Article 16 of the Supplementary Protocol No. 1 to the Convention for European Economic Co-operation on the Legal Capacity, Privileges and Immunities of the Organisation (OECD); Art. 17 of the Protocol (No. 7) on the Privileges and Immunities of the European Union O.J. C 326 (2012) 266-272.

<sup>7</sup> See for instance Section 14 of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15; Art. V of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa, 20 September 1951, 200 U.N.T.S. 3; Art. 17 of the Protocol (No. 7) on the Privileges and Immunities of the European Union O.J. C 326 (2012) 266-272.

assert their privileges and immunities, they are obligated to report to their employer incidents involving the violation of these privileges and immunities.<sup>8</sup>

Now that we have identified to whom international civil servants owe the obligation to safeguard their independence, it is time to examine the nature of their obligations.

## **SECTION 2 – WHAT OBLIGATIONS DO INTERNATIONAL CIVIL SERVANTS HAVE VIS-À-VIS THEIR IGOs?**

In February 1946, the General Assembly called for the establishment by the Secretary-General of the UN of an International Civil Service Commission “to advise on the methods of recruitment for the Secretariat and on the means by which common standards of recruitment in the Secretariat and the specialised agencies may be ensured.”<sup>9</sup> In 1948, the Administrative Committee on Coordination (present-day Chief Executives Board for Coordination or the ‘CEB’), consisting of executive heads of UN System entities, established the International Civil Service Advisory Board (ICSAB) with terms of reference related mainly to questions of recruitment and personnel administration. The ICSAB was composed of nine experts<sup>10</sup> who “were ‘who’s who’ of eminences from national public administrations.”<sup>11</sup> In 1954, shortly after the commencement of the communist purge led by Senator McCarthy, the ICSAB issued Standards of Conduct expected of international civil servants.<sup>12</sup> This was a report issued by an internal body and was not endorsed by an intergovernmental body; it was not a binding legal instrument. Nevertheless, the report left its mark on international civil service law, becoming the first code of conduct for international public servants. It contained several broad principles that all staff members had to

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<sup>8</sup> See UN Administrative Instruction on “Reporting of Arrest or Detention of Staff Members, Other Agents of the United Nations and Members of their Families”, UN Doc. ST/AI/299 (10 December 1982); Rule 2.03.2(b)(iii) of OSCE Staff Regulations and Rules, DOC.SEC/3/03 (2018); Article 23 para. 2 of Staff Regulations of Officials of the European Union.

<sup>9</sup> *Organization of the Secretariat*, GA Res 13 (I), UN Doc A/RES/13(I) (1946) 14 at para. 6.

<sup>10</sup> For the exact composition of the ICSAB, see Fourth Report of the Administrative Committee on Co-ordination to the Economic and Social Council, UN Doc. E/1076, at 11, para. 32.

<sup>11</sup> John Mathiason, *Invisible Governance: International Secretariats in Global Politics* (Bloomfield, CT: Kumarian Press, 2007) at 47.

<sup>12</sup> See paragraph 52 of the Tenth Report of the Administrative Committee on Co-ordination to the Economic and Social Council, UN Doc. E/2161 and Corr.1: “Acting upon a proposal by the Director-General of ILO, [the Administrative Committee on Coordination] further agreed to request the ICSAB to study the question of standards of professional conduct in the international civil service. Without wishing to limit the scope of the Board’s review, the Committee suggested that the review should include matters of conduct which had a bearing on the personal integrity, loyalty and professional reputation of officials, and the maintenance by them of high standards of courtesy, objectivity and disinterestedness.”

comply with.<sup>13</sup> These standards of conduct were ultimately transposed into prescriptive rules and incorporated into Staff Regulations and Rules of the UN as basic obligations applicable to all UN staff. They were also occasionally relied on by the UN and ILO administrative tribunals to adjudicate employment disputes. Although these standards of conduct were designed for the United Nations System, other international organisations drew inspiration from them and imposed similar duties and obligations on their members of personnel. The essence of these standards is that in addition to carrying out tasks assigned to them, international civil servants have “a duty to show such dignity of behaviour as not to harm the good name that the organisation must enjoy if it is to do its job properly.”<sup>14</sup>

It would be impossible to list all the kinds of behaviour which are incompatible with the status of an international civil servant just like it would be futile to attempt to list the kinds of permissible conduct.<sup>15</sup> This is why it is important to identify and adopt standards of conduct. For this reason, the ICSAB observed in its 1954 Report that the wide range of obligations owed by international civil servants to their employer fall into four broad categories. These are: (a) obligations relating to integrity; (b) obligations relating to loyalty; (c) obligations relating to independence; (d) obligations relating to impartiality and neutrality.<sup>16</sup> The ILOAT confirmed this view in Judgement 1061.<sup>17</sup> In deciding whether these four principles are still relevant, and if so, whether they have become universal, this research assesses their prevalence in legal texts of 35 randomly selected international organisations. Essentially, to test the hypothesis that integrity, loyalty, independence, and impartiality are universally recognised principles applicable to all international civil servants, this work compiles and reviews constitutive documents, staff regulations, codes of conduct, and other statutory documents of these 35 international organisations. As it appears from the table below, all four principles are expressly recognised as such in almost all institutions, thereby supporting the hypothesis that these four principles can be regarded as universal.

	ORGANISATION	INTEGRITY	LOYALTY	INDEPENDENCE	IMPARTIALITY
1.	United Nations (UN) <sup>18</sup>	Yes	yes	yes	yes

<sup>13</sup> Alexandre Tavadian, *United Nations Law, Politics, and Practice* (Toronto: Irwin Law, 2021) at 471-472 (footnote 152).

<sup>14</sup> *In re Souilah*, [1997] Judgement No. 1584 (ILOAT) at para. 9.

<sup>15</sup> Aghnides H E Thanassis, “Standards of Conduct of the International Civil Servant” (1953) 19:1 *Int Rev Adm Sci* 179 at 180.

<sup>16</sup> Report on Standards of Conduct of the International Civil Service, *supra* note 1 at paras. 4-8.

<sup>17</sup> *In re Dodi*, [1991] Judgement No. 1061 (ILOAT) at para. 5: “Integrity, loyalty to the international civil service, independence and impartiality are the standards required of an international civil servant”.

<sup>18</sup> Charter of the United Nations and Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2.

2.	North Atlantic Treaty Organization (NATO) <sup>19</sup>	Yes	yes	yes	yes
3.	European Union (EU) <sup>20</sup>	yes	yes	yes	yes
4.	Organisation for Economic Co-operation and Development (OECD) <sup>21</sup>	yes	yes	yes	yes
5.	Organization for Security and Cooperation in Europe (OSCE) <sup>22</sup>	yes	yes	yes	yes
6.	African Union (AU) <sup>23</sup>	yes	yes	yes	yes
7.	Arctic Council <sup>24</sup>	yes	yes	yes	yes
8.	Association of Caribbean States <sup>25</sup>	yes	yes	yes	no
9.	Organization of the Black Sea Economic Cooperation <sup>26</sup>	yes	yes	yes	yes
10.	Central Commission for the Navigation of the Rhine <sup>27</sup>	no	yes	yes	yes
11.	Commission for the Conservation of Antarctic Marine Living Resources <sup>28</sup>	yes	yes	yes	no
12.	Commission for the Conservation of Southern Bluefin Tuna <sup>29</sup>	yes	yes	yes	no
13.	Conseil de l'Entente <sup>30</sup>	yes	yes	yes	yes
14.	Council of Europe <sup>31</sup>	yes	yes	yes	yes

<sup>19</sup> NATO Civilian Personnel Regulations and NATO Code of Conduct.

<sup>20</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, Articles 11, 12, 17(a).

<sup>21</sup> OECD Staff Regulations, Rules, and Instructions of January 2023, Regulations 2 and 3.

<sup>22</sup> OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (updated on 6 July 2018), Regulation 2.01(a) and Rule 3.07.1(b).

<sup>23</sup> African Union Staff Regulations and Rules, Assembly/AU/4(XV), (2010), Regulations 2.1(b), 3.3(b) and (h), Rule 4.1(b).

<sup>24</sup> Staff Rules of the Arctic Council Secretariat, Articles 2.2 and 2.4.

<sup>25</sup> Revised Staff Manual of the Secretariat of Caribbean States, Eighteenth Ordinary Meeting of the Council of Ministers, Agreement No. 6/13 (2013), Articles 1.1, 1.3, 1.5.

<sup>26</sup> Regulations for the Staff of the Permanent International Secretariat of the Organization of the Black Sea Economic Cooperation, Approved by the First Council of Ministers (Thessaloniki, 27 October 1999), Rule III, paragraphs 1, 3, and 6.

<sup>27</sup> Règlement du personnel du Secrétariat de la Commission Centrale (arrêté par la résolution CCR 1979-II-45 bis, modifié par les résolutions CCR 2012-I-23, CCR 2012-I-24, CCR 2014-II-26, CCR 2016-II-24, CCR 2018-I-21 et CCR 2021-II-27), Art. 3, 4, and 11.

<sup>28</sup> Staff Regulations, as adopted at CCAMLR-XXXI (2012), amended at CCAMLR-XXXVII (2018) and amended at CCAMLR-38 (2019), Regulations 1.2.3(a) and (d), 1.9.2.

<sup>29</sup> Staff Regulations adopted at the Reconvened First Annual Meeting on 11 September 1995 and amended at the Third Annual Meeting on 24 – 28 September 1996, Regulations 2.3, 2.5, and 6.2.

<sup>30</sup> Règlement portant statut du personnel du Secrétariat Exécutif du Conseil de l'Entente (5 September 2012), Art. 7 and 10.

<sup>31</sup> Staff Regulations and Staff Rules of 1 January 2023 of the Council of Europe, consolidated version of the Staff Regulations as they appear in Resolution CM/Res(2021)6-consolidated adopted by the Committee of Ministers on 22 September 2021 at the 1412th meeting of the Ministers' Deputies, and amended by Decision CM/Del/Dec(2022)1434/11.2, on 11 May 2022, at the 1434th meeting of the Ministers' Deputies and by Resolution CM/Res(2022)66, on 14 December 2022 at the 1452nd meeting of the Ministers' Deputies, and the Staff Rules, as adopted by the Secretary-General on 30 December 2022. This version is in force as from 1 January 2023. See also Code of Conduct of 1 January 2023.

15.	European Bank for Reconstruction and Development (EBRD) <sup>32</sup>	yes	no	yes	yes
16.	INTERPOL <sup>33</sup>	yes	yes	yes	yes
17.	Organization of American States (OAS) <sup>34</sup>	yes	yes	yes	yes
18.	European Patent Office (EPO) <sup>35</sup>	yes	yes	yes	yes
19.	International Tropical Timber Organization <sup>36</sup>	yes	no	yes	yes
20.	World Trade Organization (WTO) <sup>37</sup>	yes	yes	yes	yes
21.	International Criminal Court (ICC) <sup>38</sup>	yes	yes	yes	yes
22.	International Renewable Energy Agency (IRENA) <sup>39</sup>	yes	yes	yes	yes
23.	World Agroforestry <sup>40</sup>	yes	yes	yes	yes
24.	Islamic Organization for Food Security <sup>41</sup>	yes	yes	yes	yes
25.	Pacific Community <sup>42</sup>	yes	yes	yes	no
26.	Hague Conference on Private International Law (HCCH) <sup>43</sup>	yes	yes	yes	yes
27.	Organization for the Prohibition of Chemical Weapons (OPCW) <sup>44</sup>	yes	yes	yes	yes
28.	International Organization International Thermonuclear Experimental Reactor (ITER) <sup>45</sup>	yes	yes	yes	yes
29.	Pan-American Health Organization (PAHO) <sup>46</sup>	yes	yes	yes	yes
30.	International Agency for Research on Cancer (IARC) <sup>47</sup>	yes	yes	yes	yes

<sup>32</sup> EBRD Staff Regulations, Sections 3(a), 4(a) and Code of Conduct for EBRD personnel.

<sup>33</sup> INTERPOL Staff Manual, II.C/SREG/GA/1987(2006)] [II.C/SRUL/EC/1988(2021), Regulation 1.3(3) and Rule 1.2.2.

<sup>34</sup> Staff Rules of the General Secretariat of the Organization of American States, Rules 101.6, 101.7, and 104.6.

<sup>35</sup> EPO Service Regulations for permanent and other employees (January 2023), Art. 14(a).

<sup>36</sup> ITTO Staff Regulations and Rules (third edition revised in November 2018) adopted by the International Tropical Timber Council through Decision 3(LII), Regulation 1.5 and Code of Ethics for ITTO Personnel, CFA(XXXVII)/8.

<sup>37</sup> WTO Staff Regulations and Rules WT/L/282 (21 October 1998), Regulations 1.1, 1.4, 1.5, and 1.12.

<sup>38</sup> ICC Staff Regulations, ICC-ASP/2/10 (September 2003), Regulation 1.2(e) and (f).

<sup>39</sup> Staff Rules for the International Renewable Energy Agency, A/2/11 (January 2012), Rules 102.1(a), 102(3)(c) and IRENA Code of Conduct, para. 7.

<sup>40</sup> Human Resources Policy Manual (revised in April 2018), Art. 1.13.2, and 1.9.

<sup>41</sup> Personnel Regulations of the Islamic Organization for Food Security, OIC/GA-IOFS/2016/PER.REG, Art. 3, 7, and 20.

<sup>42</sup> Staff Regulations of the Secretariat of the Pacific Community (2001), Regulations 3(a), 15(b)

<sup>43</sup> HCCH Staff Rules applicable to officials and personnel of the organisation (1 July 2021), Art. 3 and 4.

<sup>44</sup> Staff Regulations and Interim Staff Rules, OPCW Director-General's Bulletin OPCW-S/DGB/26, dated 12 December 2017 and as amended by OPCW-S/DGB/28, dated 21 December 2018. Regulation 1.5, Rules 1.1.01 and 1.2.01.

<sup>45</sup> ITER Organization Code of Conduct, version 2.2 (December 2018).

<sup>46</sup> PAHO Staff Rules and Staff Regulations (July 2015), Art. 1.3, 1.5, 1.10, and 4.2.

<sup>47</sup> Ethical Principles and Conduct of IARC staff (May 2017).

31.	Nordic Development Fund (NDF) <sup>48</sup>	yes	yes	yes	yes
32.	South Pacific Regional Fisheries Management Organization (SPRFMO) <sup>49</sup>	yes	yes	yes	yes
33.	Inter-American Institute for Cooperation on Agriculture (IICA) <sup>50</sup>	yes	yes	yes	yes
34.	Eurocontrol <sup>51</sup>	yes	yes	yes	yes
35.	European Stability Mechanism (ESM) <sup>52</sup>	yes	yes	yes	yes

Although integrity, loyalty, independence, impartiality appear to be universally recognised, they are nevertheless principles. Principles are standards that must be observed primarily because it is a requirement of justice or fairness or some other dimension of morality.<sup>53</sup> Principles are not rules; they underlie, explain, or provide reasons for rules. Where rules answer the question *what*, principles answer the question *why*.<sup>54</sup> Principles act as a guide in the process of interpreting rules. International organisations operationalise these principles by promulgating staff rules and regulations that contain detailed legal norms that either impose conduct that is desirable or prohibit conduct that is undesirable. International organisations tend to have different approaches to implementing the principles. Some IGOs promulgate a few catch-all rules such as “staff members shall conduct themselves in a manner befitting their status”. This wording is so broad, that it can encompass almost any type of wrongful conduct. Other international organisations issue more targeted and specific rules. The Staff Regulations and Rules of the United Nations provide a good illustration of relatively complete rules relating to desirable and prohibited conduct. Many of these rules can also be found in staff rules and regulations of other IGOs.

For instance, staff members have a duty to uphold and respect such principles as faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. They must exhibit respect for all cultures and not harass, threaten, intimidate, or discriminate against any individual or group

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<sup>48</sup> Code of Conduct for the Staff of the Nordic Development Fund, approved by the Board of Directors on 21 November 2017.

<sup>49</sup> Staff Regulations of the Commission, amended in February 2020, Regulations 2.2, 3.8-3.10, 3.18, and 3.20.

<sup>50</sup> Code of Ethics of IICA (2016), paras. A.1, B.2, C and C.1.

<sup>51</sup> Staff Regulations governing officials of the EUROCONTROL Agency, edition of March 2021, Articles 16, 17, and 17(a).

<sup>52</sup> Code of Conduct of the European Stability Mechanism (4 February 2021), Articles 4.1, 4.2, 4.3, and 4.4.

<sup>53</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977) 25.

<sup>54</sup> Gerald Fitzmaurice, “The General Principles of International Law considered from the Standpoint of the Rule of Law” (1957) 92 *Recueil des Cours de l’Académie de Droit International* 7.

of individuals or otherwise abuse the power and authority vested in them.<sup>55</sup> Sexual exploitation and abuse are particularly serious forms of misconduct.<sup>56</sup>

Most international organisations require their staff to exhibit the highest standards of efficiency, competence, diligence, and integrity.<sup>57</sup> They must conduct themselves at all times in a manner befitting their status as international civil servants and cannot engage in any activity that is incompatible with the proper discharge of their duties. In particular, they must avoid any action and any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.<sup>58</sup> Complying with local laws and honouring private obligations are a fundamental duty of all international civil servants.<sup>59</sup> It is prohibited for staff of IGOs to use their office or knowledge gained from their official functions for private gain or for the private gain of any third party, including family, friends and those they favour.<sup>60</sup> Intentionally misrepresenting their functions, official title or the nature of their duties is also a serious breach of their obligations.<sup>61</sup> Similarly, altering, destroying, falsifying, or rendering useless official documents is sanctionable conduct as well.<sup>62</sup>

International civil servants are not permitted to either seek or accept instructions from any government or from any other source external to the organisation in the performance of their duties.<sup>63</sup> The opposite is also true – they should not seek to influence member states or organs of the international organisations, particularly to

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<sup>55</sup> Regulation 1.2(a) and Rules 1.2(f) & (g) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Article 12.1.4 of NATO Civilian Personnel Regulations; Rule 101.8 of Staff Rules of OAS General Secretariat.

<sup>56</sup> Regulation 10.1(b) and Rule 1.2(e) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2.

<sup>57</sup> Regulation 1.2(b) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Article 27 of Staff Regulations of Officials of the European Union; Rule 104.6 of Staff Rules of the OAS General Secretariat; Regulation 2.1(3) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>58</sup> Regulation 1.2(f) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Regulation 2.01(a) of OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (2018); Article 12 of Staff Regulations of Officials of the European Union; Article 13.2 of NATO Civilian Personnel Regulations; Regulations 1.3(1) and (3) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>59</sup> See Rule 1.2(b) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Regulation 2.03(c) of OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (2018); Rule 101.9(b) of Staff Rules of OAS General Secretariat.

<sup>60</sup> Regulation 1.2(g) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Regulation 2.01(c) of OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (2018); Regulation 1.3(6) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>61</sup> Rule 1.2(h) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2.

<sup>62</sup> Rule 1.2(i) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2.

<sup>63</sup> Regulation 1.2(d) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Regulation 2.01(b) of OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (2018); Article 11 para. 1 of Staff Regulations of Officials of the European Union; Regulation 1.2(2) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

secure support for improving their personal situation or for blocking or reversing unfavourable decisions regarding their employment status.<sup>64</sup> Whilst staff members may exercise the right to vote, their participation in any political activity must be consistent with, and should not reflect adversely on, the independence and impartiality required by their status as international civil servants.<sup>65</sup> Staff of international secretariats are also expected to exercise the utmost discretion with regard to all matters of official business. They are not supposed to communicate to any external party any information known to them by reason of their official position that they know has not been made public.<sup>66</sup>

Staff members are not supposed to accept honours, decorations, favours, gifts or remuneration from a non-governmental source without first obtaining the approval of the organisation.<sup>67</sup> They are not authorised to offer or promise such gifts, favours, and remuneration to others with a view to causing them to perform, fail to perform, or delay the performance of official duties.<sup>68</sup> They are required to disclose conflicts of interest as soon as they become aware that their personal interests interfere with the performance of their official duties and responsibilities or may reflect poorly on their loyalty, integrity, independence and impartiality.<sup>69</sup> Outside occupations or employment are also frowned upon particularly if they conflict with the staff member's official functions or status of an international civil servant.<sup>70</sup>

The remainder of this chapter will attempt to define the principles of integrity, loyalty, independence, impartiality and neutrality in separate sections. Under each

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<sup>64</sup> Rule 1.2(j) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2.

<sup>65</sup> Regulation 1.2(h) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Rule 101.6 of Staff Rules of the OAS General Secretariat; Regulation 1.3(2) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>66</sup> Regulation 1.2(i) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Regulation 2.02 of OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (2018); Article 17.1 of Staff Regulations of Officials of the European Union; Articles 12.1.5(a) and (b) of NATO Civilian Personnel Regulations; Regulation 1.4(1) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>67</sup> Regulation 1.2(j) and Rule 1.2(m) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Rule 2.01.1 of OSCE Staff Regulations and Staff Rules, DOC.SEC/3/03 (2018); Article 11 para. 2 of Staff Regulations of Officials of the European Union; Articles 12.2.3 and 12.2.4 of NATO Civilian Personnel Regulations; Regulation 1.3(5) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>68</sup> Rule 1.2(k) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2

<sup>69</sup> Regulation 1.2(m) and Rule 1.2(q) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Article 11(a) of Staff Regulations of Officials of the European Union; Regulation 1.3(3) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

<sup>70</sup> Regulations 1.2(o) and (p) and Rules 1.2(s) and (t) of Staff Regulations and Rules of the United Nations, UN Doc. ST/SGB/2018/1/Rev.2; Article 12(b) of Staff Regulations of Officials of the European Union; Article 12.2.1(b) of NATO Civilian Personnel Regulations; Rule 101.4 of the Staff Rules of OAS General Secretariat; Regulation 1.3(4) of Interpol Staff Manual, II.C/SRUL/EC/1988(2021).

principle, it will identify types of conduct that interferes with the independence of international civil servants.

Staff rules and regulations governing the conduct of international civil servants do not usually specify which one of the four principles listed above certain obligations and prohibitions aim to uphold. In fact, the same wrongful conduct can transgress several principles at once. For instance, a staff member who steals the organisation's property not only breaches his obligation of loyalty but also fails to meet the required standards of integrity. Similarly, a staff member who without authorization discloses sensitive information to the government of his country not only exhibits disloyalty and dishonesty but also fails to act independently and impartially.

## 2.1 – OBLIGATIONS RELATING TO INTEGRITY

The UN Charter makes integrity a fundamental, if not paramount, standard of conduct expected of UN staff.<sup>71</sup> This requirement is universal in that most international organisations impose this obligation on all members of their personnel.<sup>72</sup> Neither the UN Charter nor other legal instruments referring to this obligation provide an exhaustive definition of the word 'integrity'. Black's Law Dictionary defines the term 'integrity' as used in legal texts prescribing the qualifications of public officers as: "soundness or moral principle and character, as shown by one person dealing with others [...]".<sup>73</sup> According to the UN Staff Regulations, "the concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status".<sup>74</sup> The International Civil Service Advisory Board noted in 1954 that while perhaps not subject to exhaustive and precise definition, integrity must be judged on the basis of the total behaviour of the person concerned:

*Such elementary personal or private qualities as honesty, truthfulness, fidelity, probity and freedom from corrupting influences, are clearly included. For the international official, however, the Charter also requires integrity as a public official, and especially as an international public official. Perhaps the clearest expression of this is the fact that he has dedicated himself to regulate his conduct with the interests of the international organization only in view. It follows that he must*

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<sup>71</sup> Article 101.3 of the Charter provides that "the paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity."

<sup>72</sup> Alain Plantey & François Lorient, *Fonction Publique Internationales*, 2d ed (Paris: CNRS Éditions, 2005) at 88, at para 275.

<sup>73</sup> Bryan A Garner, ed, *Black's Law Dictionary*, deluxe ninth ed (St Paul, MN: West, 2009).

<sup>74</sup> Regulation 1.2(b) of Staff Regulations and Rules of the United Nations (2018), UN Doc. ST/SGB/2018/1/Rev.2.

*subordinate his private interests and avoid placing himself in a position where those interests would conflict with the interests of the organization he serves.*<sup>75</sup>

Integrity is a broad concept applying to a wide range of situations and scenarios.<sup>76</sup> It comprises a degree of selflessness or to use the French term ‘*désinérèssement*’.<sup>77</sup> Most frequent instances where international civil servants fail to uphold the highest standards of integrity include:

- Failure to respect the dignity of others (including abuse of authority, harassment, sexual harassment, discrimination, as well as sexual exploitation and abuse);<sup>78</sup>
- Offences motivated by financial gains (including theft, fraud, corruption, embezzlement, misappropriation, falsification of claims, and acceptance of gifts and favours);<sup>79</sup>
- Conflicts of interest (including unauthorised outside activities or publications, personal relationships, personal financial and business interests);<sup>80</sup>
- Failure to honour private obligations (including commission of criminal offenses and failure to pay alimonies, child support, private loans, and rent).<sup>81</sup>

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<sup>75</sup> Report on Standards of Conduct of the International Civil Service, *supra* note 1 at para. 4.

<sup>76</sup> Gerhard Ullrich, *The Law of the International Civil Service: Institutional Law and Practice in International Organisations* (Berlin: Duncker & Humblot, 2018) at 411.

<sup>77</sup> Plantey & Lorient, *supra* note 72 at 231.

<sup>78</sup> See for instance *Clark & Gelbert v. Secretary-General of the United Nations*, UNDT/2013/091 (UN Dispute Tribunal); *Delaunay v. Registrar of the International Court of Justice*, 2019-UNAT-939 (UN Appeals Tribunal); *Adriantseheno v. Secretary-General of the United Nations*, 2021-UNAT-1146/Corr.1 (UN Appeals Tribunal); *Khan v. Secretary-General of the United Nations*, 2014-UNAT-486 (UN Appeals Tribunal); *Conteh v. Secretary-General of the United Nations*, 2021-UNAT 1171 (UN Appeals Tribunal); *J.M. v. NATO Communications and Information Agency*, NATO AT Judgment No. 2019-06 (8 April 2019); *H. v. ITU*, [2022] Judgment No. 4578 (ILOAT); *M. v. Global Fund*, [2022] Judgment No. 4579 (ILOAT).

<sup>79</sup> See Information Circulars of the United Nations Secretariat, “Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour” UN Docs. ST/IC/2017/33, ST/IC/2016/26, ST/IC/2015/22, ST/IC/2014/26, ST/IC/2013/29, ST/IC/2012/19. See also *In re Umar*, [2001] Judgment No. 2038 (ILOAT); *Fichtner v. Commission of the European Communities*, European Court Reports 2003 I-A-00007, Case T-75/00, ECLI:EU:T:2003:9; *Mariki v. Secretary-General of the United Nations*, UNDT/2014/138 (UN Dispute Tribunal); *Fernandez v. Inter-American Development Bank*, IDBAT Judgment No. 74 (29 July 2011); *J. v. Asian Development Bank*, ADBAT Judgment No. 116 (2 October 2018); *M. v. Asian Development Bank*, ADBAT Judgment No. 119 (2 October 2018).

<sup>80</sup> See *Vedel v. Secretary-General of the United Nations*, UNDT/2019/110 (UN Dispute Tribunal); *Kamara-Joyner v. Secretary-General of the United Nations*, UNDT/2022/089 (UN Dispute Tribunal) currently under appeal; *Akello v. Secretary-General of the United Nations*, 2013-UNAT-336 (UN Appeals Tribunal).

<sup>81</sup> See Information Circulars of the United Nations Secretariat, “Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour” UN Docs. ST/IC/2017/33, ST/IC/2016/26, ST/IC/2015/22, ST/IC/2014/26, ST/IC/2013/29, ST/IC/2012/19. See also *Benamar v. Secretary-General of the United Nations*, 2017-UNAT-797 (UN Appeals Tribunal); *Kubwimana v. Secretary-General of*

International organisations have collectively imposed thousands of disciplinary measures on their members of personnel. Hundreds of judgements issued by various international administrative tribunals deal with reviews of disciplinary proceedings and sanctions.<sup>82</sup> Although international civil servants are expected to meet standards of conduct much more exacting than ordinary legal standards,<sup>83</sup> it does not shock the conscience of the public to see that, as all humans, international officials often make mistakes some of which are sufficiently serious to lead to disciplinary measures. Consequently, most cases where international civil servants are disciplined do not attract much attention or go entirely unnoticed. It would therefore seem accurate to postulate that not all breaches of integrity necessarily affect the independence of international secretariats and that of international civil servants.

Nevertheless, instances where violations of standards by international officials make the headlines almost invariably have a destructive effect on the reputation and trustworthiness of international secretariats and international civil servants.<sup>84</sup> A review of academic journals and news articles published by notable media outlets reveal that three types of conduct attract most attention and erode the reputation and credibility of international secretariats and international civil servants in the eyes of states and the public. These three categories of conduct are: (a) reprehensible or unethical acts by very senior or executive officials of IGOs; (b) major fraud and corruption by international civil servants; and (c) sexual exploitation and abuse by international civil servants.

### **2.1.1 -Unethical Conduct by Executive Officials of IGOs**

The first notorious case of unethical conduct by the executive head of an international organisation was Joseph Avenol's attempt to evade his private obligations towards his former spouse when he unsuccessfully invoked the privileges and immunities enjoyed by the Secretary-General of the League of Nations in legal proceedings instituted by his ex-wife for family support.<sup>85</sup> Avenol was the second Secretary-General of the League of Nations. As a consequence of his divorce proceedings, a French court ordered him to pay his ex-wife 12,500 francs per month

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*the United Nations*, Order No. 088 (NBI/2015) (UN Dispute Tribunal); *Kozul-Wright v. Secretary-General of the United Nations*, 2018-UNAT-843 (UN Appeals Tribunal).

<sup>82</sup> For instance, according to the Report of the Secretary-General on the Administration of Justice of the United Nations (UN Doc. A/76/99 at 9 and A/77/156 at 10), in 2020 and 2021, the UN Dispute Tribunal alone adjudicated disciplinary matters in 9% and 17% of cases (or 19 cases in 2021 and 36 cases in 2020).

<sup>83</sup> UNGAOR, 8<sup>th</sup> sess., agenda item 51, Report of the Secretary-General of the UN on Personnel Policy, UN Doc. A/2533 (2 November 1953) at para. 72.

<sup>84</sup> On how reputational pressures affect IGOs, see Kristina Daugirdas, "Reputation as a Disciplinarian of International Organizations" (2019) 113:2 *Am J Int Law* 221; Ian Johnstone, "Do International Organizations Have Reputations Editorial" (2010) 7:2 *Int'l Org L Rev* 235-240.

<sup>85</sup> Niels Blokker, "International Organizations: The Untouchables" (2014) 10:2 *Int'l Org L Rev* 259 at 263.

as spousal support.<sup>86</sup> He appealed against this order, asserting that as Secretary-General of the League, he enjoyed diplomatic privileges and immunities under Article 7 of the Covenant of the League and had jurisdictional immunity before the courts of all member states of the League, including those of France. The French court rejected this argument for being a “flagrant contradiction to the sacred and profound sentiment of justice”.<sup>87</sup>

Another Secretary-General whose conduct “has done immense damage [...] to the United Nations”<sup>88</sup> was Kurt Waldheim. In March 1986, after Waldheim had completed his second five-year term as Secretary-General of the UN and while he was campaigning for the presidency of Austria, reports emerged that while serving as an officer in the German armed forces in World War II in the Balkans, he had participated in ethnic cleansing.<sup>89</sup> It became clear that Waldheim had “lied for nearly forty years about his war record”.<sup>90</sup> In April 2001, the CIA released declassified material on Kurt Waldheim, confirming that the British and American intelligence services knew as early as 1945 that Waldheim was a junior officer in a Nazi intelligence unit in the Balkans, which was renowned for its brutalities. However, the document had been forgotten or misplaced when Waldheim was recommended for the position of the UN Secretary-General. Waldheim’s attempt to conceal his past dented the prestige and credibility of the Secretary-General’s office.

In recent years, several heads of major international organisations have resigned because of questions about their ethical conduct. For instance, in November 2018, the Secretary-General of the United Nations asked the Executive Director of the UN Environment Programme, Erik Solheim from Norway, to resign after an audit revealed that he had spent almost 500 000 US dollars on air travel and hotels within 22 months. Many of the trips were personal as opposed to justified by his functions. His unethical conduct attracted severe criticism and led some nations to withhold their funding of very important projects.<sup>91</sup>

In November 2019, the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Pierre Krähenbühl from Switzerland, was urged to resign from his post following the findings of an

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<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> Brian Urquhart, *A Life in Peace and War* (New York: Harper and Row Publishers, 1987) at 227.

<sup>89</sup> Boutros Boutros-Ghali, *Unvanquished* (London: I.B.Tauris, 1999) at 222.

<sup>90</sup> Urquhart, *supra* note 88 at 227.

<sup>91</sup> Damian Carrington, “UN environment chief resigns after frequent flying revelations” *The Guardian* (20 November 2018).

internal investigation that he and his ‘inner circle’ abused their authority for personal gain and retaliated against anyone who dared raising objections.<sup>92</sup>

In May 2022, the Executive Director – Grete Faremo from Norway – and the Assistant Executive Director of the UN Office for Project Services (UNOPS) resigned after a New York Times report revealed questionable investments of funds which exposed the organisation to a loss of 20 million dollars.<sup>93</sup> Faremo and her leadership team awarded contracts to an acquaintance without any competitive solicitation process, including a three-million contract for a pop-song and a videogame that were allegedly designed to help protect oceans. A subsequent article of New York Times remarked that the incident has damaged the credibility of the United Nations and weakened the trust of donor countries at a time when the organisation is seeking major funding infusions for an array of global crises.<sup>94</sup> The United States, which sits on the agency’s executive board, has suspended its funding to UNOPS, until such time as appropriate law enforcement action is taken against all wrongdoers. Finland followed suit by suspending all its funding to UNOPS and by reviewing its donations to other UN agencies.<sup>95</sup> The Governing Body of UNOPS commissioned KPMG to conduct an audit of UNOPS’s oversight mechanisms.

Obviously, the UN is not the only organisation whose senior officials breach basic ethical standards. The European Commission has also had its share of unscrupulous conduct by senior officials. One notorious case is that of Edith Cresson whose dishonourable behaviour was found not to be criminal in nature but nevertheless undermined the reputation of the European Commission. Cresson, a former prime minister of France, was appointed as the European Commissioner for Research, Science and Technology – a position that she held between 1995 and 1999. During her term of office at the Commission, she wished to appoint one of her close acquaintances as a ‘personal adviser’. Cresson was informed that because her acquaintance was 66 years old, he could not be appointed as a member of a Commissioner’s Cabinet. To circumvent this rule, Cresson engaged him as a visiting scientist, even though he was a dental surgeon and had no scientific expertise to offer. During the same period, she also improperly awarded contracts to another close acquaintance. Following a complaint by a Member of Parliament, Belgian authorities launched criminal

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<sup>92</sup> UNRWA boss resigns amid probe into misconduct claims, *Aljazeera* (6 November 2019) available online at: <https://www.aljazeera.com/news/2019/11/6/unrwa-boss-resigns-amid-probe-into-misconduct-claims>

<sup>93</sup> David A. Fahrenthold and Farnaz Fassihi, “A Pot of U.N. Money. Risk-Taking Officials. A Sea of Questions.” *New York Times* (7 May 2022).

<sup>94</sup> Farnaz Fassihi, “Reforms Are Imposed on U.N. Agency That Made Questionable Investments” *New York Times* (10 June 2022).

<sup>95</sup> Press Release by Finland’s Ministry of Foreign Affairs, “Investigation of possible misconduct at the United Nations Office for Project Services (UNOPS)” (14 April 2022).

proceedings against Cresson. In 2004, the Court in Brussels decided that no further action should be taken in the case, taking the view that this was not a criminal offense. The Commission, on the other hand, pressured by EU member states, pursued disciplinary proceedings against Cresson and sought to withhold her pension benefits, leading to a dispute before the European Court of Justice.<sup>96</sup> This incident exposed the Commission to various forms of scrutiny by EU member states, including investigations and audits.

Most recently, the former President of the European Court of Auditors, Klaus-Heiner Lehne from Germany, was accused of receiving benefits to which he was not entitled. In November 2021, a French news outlet released the conclusions of its investigation into allegations of financial misappropriations by Lehne.<sup>97</sup> It was alleged that Lehne had received more than 325,000 euros in accommodation allowances in Luxembourg whereas he spent most of his time in Germany and had a 'shell address' in Luxembourg for the sole purposes of receiving the allowances.<sup>98</sup> The breach of trust by the President of an institution that symbolises responsible spending of EU money led to a series of probes by EU parliament and member states.<sup>99</sup>

Unethical conduct by senior officials of IGOs invariably leaves the impression that their senior management is unable to lead the organisation. Hence, delegates of member states often stop short of assuming a management role but go so far as to demand justifications for day-to-day management decisions such as relatively small expenditures and investments. In addition, unethical conduct by senior leadership almost inevitably leads to invasive probes, audits, and investigations by governments of member states or third parties, including consultancy and audit firms. IGOs whose leadership made questionable decisions or acted unethically are not in a strong position to object or push back on undesired interferences from member states. They are compelled to endure and passively observe the 'raid' by member states. This leads to the weakening of IGOs and the erosion of their immunities. This, in turn, results in a gradual loss of IGOs' independence and autonomy.

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<sup>96</sup> *Commission of the European Communities v. Édith Cresson*, Case No. C-432/04, ECLI:EU:C:2006:455 (judgement of the Court of Justice of the European Union of 11 July 2006) at paras. 28-29.

<sup>97</sup> Jean Quatremer, "Fraudes à la tête de la Cour des comptes européenne", *Libération* (26 November 2021) available online at [https://www.liberation.fr/international/fraude-au-sommet-de-la-cour-des-comptes-europeenne-20211126\\_UGCXGTDBNNHUDNOEVCEWG2AONQ/](https://www.liberation.fr/international/fraude-au-sommet-de-la-cour-des-comptes-europeenne-20211126_UGCXGTDBNNHUDNOEVCEWG2AONQ/)

<sup>98</sup> John Monaghan, "MEPs to probe EU auditors' expenses after media allegations", *Luxembourg Times* (1 December 2021) available online: <https://www.luxtimes.lu/en/european-union/meps-to-probe-eu-auditors-expenses-after-media-allegations-61a765d5de135b92363b5bfe>

<sup>99</sup> Jeremy Zabatta, "Luxembourg EU Court of Auditors member under scrutiny", *Delano* (9 February 2022) available online: <https://delano.lu/article/lux-embourg-eu-court-of-audito>

## 2.1.2 – Large-Scale Fraud and Corruption

A second type of erosive conduct that often makes the headlines is fraudulent and corrupt practices on a large scale by international civil servants. The Oil-for-Food fiasco is arguably the worst financial scandal in the history of the United Nations. It tarnished the reputation of the UN for decades.

The Security Council established the Oil-for-Food program in response to complaints that the population of Iraq was disproportionately affected by the international economic sanctions aimed at the demilitarization of Saddam Hussein's regime. The program allowed the sale of Iraqi oil in exchange for necessities such as food and medicine. It was designed to offer humanitarian assistance to the Iraqi population without allowing Saddam Hussein's regime to boost its military power. In 2004, official documents of the Iraqi Oil Ministry were leaked to the media exposing bribery and kickbacks by hundreds of high-ranking officials, including UN personnel and former Secretary-General Kofi Annan's son – Kojo Annan – from the Iraqi government.<sup>100</sup> Essentially, individuals and organisations were awarded contracts to sell Iraqi oil on the international market. The seller kept a small transaction fee of \$0.50 per barrel of oil sold. To secure a contract, some sellers agreed in advance to refund a part of the commission to the Hussein administration as a kickback. Similarly, contracts for buying humanitarian goods through the program were offered to those companies that agreed in advance to return a percentage of their profits to the Hussein regime as a bribe. When the scandal erupted, UN Secretary-General Kofi Annan set up a seventy-five-member independent inquiry committee, presided over by Paul Volker, the former chief of the US Federal Reserve.<sup>101</sup> Following the release of the committee's final report, two UN staff members were prosecuted, fined, and convicted for corruption. An investigative body of the United States Senate concluded that the Oil-for-Food program had allowed the Hussein administration to sell over US\$13 billion worth of oil in violation of the embargo. Billions more were collected by the Iraqi regime through illegal commissions, bribes, and kickbacks through the program. The Oil-for-Food program had seriously damaged the image of the United Nations for decades.<sup>102</sup>

In 2007, the UN came into the limelight again when Washington Post reported that a UN taskforce had uncovered a “pervasive pattern of corruption and mismanagement involving contracts for fuel, food, construction and other services for

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<sup>100</sup> Ewen MacAskill, “Oil-for-Food Report Condemns Corrupt UN”, *The Guardian* (7 September 2005): <https://www.theguardian.com/world/2005/sep/07/iraq.ewenmacaskill>

<sup>101</sup> Gonzalo Villalta Puig, “Unethical Conduct in the Performance of International Government Contracts: AWB Ltd. and the United Nations Oil-for-Food Programme” (2007) 37:1 *Public Contract Law J* 59–66 at 60.

<sup>102</sup> This paragraph is largely based on pages 67-68 of my book, *supra* note 13 at 67–68.

peacekeeping operations.”<sup>103</sup> Ten procurement officials of the UN had been charged with misconduct for allegedly soliciting bribes and rigging bids for peacekeeping forces in Congo and Haiti. The amount of embezzlement exceeded 610 million US dollars, prompting the US government to press for a probe into the UN activities in peace operations.<sup>104</sup>

In 2017, credible reports of systemic corruption by UNHCR staff members were made in Kenya and Uganda. Asylum seekers, refugees, and internally displaced persons were allegedly paying 2500 US dollars per person to get resettled to Western countries. The corruption scheme consisted in UNHCR staff members taking bribes from individuals who were not facing an imminent risk of persecution, issuing to them fake ID documents by giving them the identity of real refugees or persons in need of protection, and resettling them in other countries. As a result, persons ineligible for resettlement were buying a new identity and life in developed countries while refugees and displaced persons facing imminent dangers who were on the verge of being resettled to Western countries were unknowingly losing their right to be ever resettled.<sup>105</sup>

Large-scale corruption scandals undermine the credibility of international organisations and attract unwanted attention from all quarters, particularly from governments of member states. International civil servants who engage in such behaviour do tremendous damage not only to their organisations but also to the international civil service.

### 2.1.3 – Sexual Exploitation and Abuse

Sexual exploitation and abuse by intergovernmental organisations is not a new phenomenon in conflict areas. The UN, the media, and nongovernmental organisations have reported instances of UN personnel participating in sexual exploitation and abuse, which included human trafficking in Cambodia, Bosnia and Herzegovina in the early and late 1990s, and in Kosovo, Timor-Leste, and West Africa in the early 2000s.<sup>106</sup> Nevertheless, the issue became the focus of public attention in 2002 because of widely reported instances of such behaviour by humanitarian workers

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<sup>103</sup> Colum Lynch, “UN Finds Fraud, Mismanagement in Peacekeeping”, *The Washington Post* (18 December 2007).

<sup>104</sup> Claudia Parsons, “US Urges Probe into UN Peacekeeping Fraud Report”, *Reuters* (18 December 2007): <https://www.reuters.com/article/us-un-corruption-idUSN1849413720071218>

<sup>105</sup> Charlotte Hauswedell, “UNHCR Probing Corruption in Resettlement Cases in Uganda, Kenya”. *InfoMigrants* (10 January 2020): <https://www.infomigrants.net/en/post/22018/unhcr-probing-corruption-in-resettlement-cases-in-uganda-kenya>

<sup>106</sup> Anna Shotton, “A Strategy to Address Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel Perspective” (2006) 39:1 *Cornell Int Law J* 97–108 at 98.

in West Africa.<sup>107</sup> On 26 February 2002, a headline that read 'Child Refugee Sex Scandal' appeared on BBC News, revealing sexual exploitation of children in refugee camps by staff members of various aid organisations and UN agencies, including the UNHCR.<sup>108</sup> The allegations of sexual exploitation and abuse of refugees referred to in the article had occurred in Guinea and Sierra Leone. In response to these allegations, in April 2003, the UN General Assembly requested the Secretary-General "to maintain data on investigations into sexual exploitation and related offences, irrespective of age and gender, by humanitarian and peacekeeping personnel, and all relevant actions taken thereon".<sup>109</sup> Data collection was clearly insufficient as occurrences of sexual exploitation and abuse only intensified. In June 2004, BBC News published another article containing testimonies of victims of extreme sexual violence by UN peacekeepers in DRC.<sup>110</sup> This led to an investigation by the UN Office of Internal Oversight Services, which released a report concluding that UN military contingent personnel were involved in sexual exploitation of women and children in the Democratic Republic of the Congo.<sup>111</sup> New allegations of sexual exploitation and abuse emerged a few months later, this time in the peacekeeping operation in Burundi.<sup>112</sup> In May 2006, the New York Times published the findings of a report by Save the Children UK where it was described how Liberian girls as young as 8 were being sexually exploited by UN personnel and aid workers in return for food and small favours.<sup>113</sup> The New York Times correctly remarked that "nothing discredits the United Nations more than the continuing sexual abuse of women and girls" – the people it is supposed to protect.<sup>114</sup>

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<sup>107</sup> Anthony J Miller, "Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations Perspective" (2006) 39:1 *Cornell Int Law J* 71–96 at 72.

<sup>108</sup> "Child Refugee Sex Scandal", *BBC News* (29 February 2002): <http://news.bbc.co.uk/2/hi/africa/1842512.stm> See also Kate Grady, "Sex, Statistics, Peacekeepers and Power: UN Data on Sexual Exploitation and Abuse and the Quest for Legal Reform" (2016) 79:6 *Mod Law Rev* 931–960.

<sup>109</sup> UNGA resolution 57/306 "Investigation into sexual exploitation of refugees by aid workers in West Africa", UN Doc. A/Res/57/306 at para. 10.

<sup>110</sup> Kate Holt, "DR Congo's Shameful Sex Secret", *BBC News* (3 June 2004): <http://news.bbc.co.uk/1/hi/world/africa/3769469.stm>

<sup>111</sup> Report of the Secretary-General on the activities of the Office of Internal Oversight Services, "Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo" UN Doc. A/59/661 (5 January 2005).

<sup>112</sup> Susannah Price, "New Sex Misconduct Claims Hit UN", *BBC News* (17 December 2004): <http://news.bbc.co.uk/2/hi/africa/4106515.stm>

<sup>113</sup> Sarah Lyall, "Aid Workers Are Said to Abuse Girls", *The New York Times* (9 May 2006): <https://www.nytimes.com/2006/05/09/world/africa/aid-workers-are-said-to-abuse-girls.html>

<sup>114</sup> Elizabeth F Defeis, "U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity" (2008) 7:2 *Wash Univ Glob Stud Law Rev* 185–214 at 189.

In 2016, the UN Secretary-General Ban Ki-moon had to admit that despite UN's efforts, sexual abuse by UN peacekeepers had become "a cancer in our system."<sup>115</sup> Six years later, his successor – Antonio Guterres – conceded that "despite clear gains, allegations [of sexual exploitation and abuse] implicating United Nations personnel regrettably continue to emerge."<sup>116</sup>

The review of cases above may give the impression that sexual exploitation and abuse are committed exclusively by UN military personnel as opposed to international civil servants. Whilst the incidences of sexual exploitation and abuse by military personnel are much more prevalent, there have been many cases where staff members of various UN entities have been accused of the same conduct in contexts other than peacekeeping. For instance, as a result of press reports of alleged sexual exploitation and abuse by WHO staff in the response to an Ebola outbreak in DRC,<sup>117</sup> WHO Director-General established an Independent Commission of Inquiry to investigate the allegations. The inquiry by the Commission led to findings of some form of sexual abuse by at least 21 staff members of WHO.<sup>118</sup>

Many other cases of sexual exploitation and abuse by UN staff members can be found in the jurisprudence of the UN Dispute Tribunal<sup>119</sup> as well as in Information Circulars of the Secretary-General that the UN publishes to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters.<sup>120</sup> The author himself prosecuted several cases of SEA in refugee camps involving UN staff.

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<sup>115</sup> Kevin Sieff, "Members of a U.N. peacekeeping force in the Central African Republic allegedly turned to sexual predation, betraying their duty to protect", *The Washington Post* (27 February 2016): <https://www.washingtonpost.com/sf/world/2016/02/27/peacekeepers/>

<sup>116</sup> Report of the Secretary-General, "Special measures for protection from sexual exploitation and abuse" UN Doc. A/76/702 (15 February 2022) at para. 2.

<sup>117</sup> See Robert Flummerfelt and Ange Kasongo, "New Sex Abuse Claims Ebola Aid Workers Exposed in Congo", *Thomson Reuters Foundation*, 12 May 2021.

<sup>118</sup> World Health Organization (WHO), "Final report of the independent commission on the review of sexual abuse and exploitation during the response to the 10th Ebola virus disease epidemic in the Democratic Republic of the Congo" (28 September 2021): <https://www.who.int/publications/m/item/final-report-of-the-independent-commission-on-the-review-of-sexual-abuse-and-exploitation-ebola-drc>

<sup>119</sup> *Erefa v. Secretary-General of the United Nations*, UNDT/2021/109 (UN Dispute Tribunal); *Muteeganda v. Secretary-General of the United Nations*, UNDT/2020/050 (UN Dispute Tribunal); *Gisage v. Secretary-General of the United Nations*, UNDT/2020/121 (UN Dispute Tribunal); *Kazagic v. Secretary-General of the United Nations*, UNDT/2016/086 (UN Dispute Tribunal).

<sup>120</sup> See for instance Information Circulars, "Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2016 to 30 June 2017" UN Doc. ST/IC/2017/33 (13 October 2017) at paras. 58-59; "Practice of the Secretary-General in disciplinary matters and cases of criminal behavior, 1 July 2015 to 30 June 2016" UN Doc. ST/IC/2016/26 (19 September 2016) at paras. 67-69. These Information Circulars were introduced to implement paragraph 17 of the UN General Assembly's resolution 59/287 in which it requested the Secretary-General to ensure that all staff of the Organization were informed of the most common examples of misconduct or criminal behaviour and their

Instances of sexual exploitation and abuse by UN personnel are so damaging for the entire system and other staff members that even the General Assembly found it necessary to highlight in a preamble of its resolution dealing with sexual exploitation and abuse that “the actions of a few will not be allowed to tarnish the achievement of all”.<sup>121</sup>

## 2.2 – OBLIGATIONS RELATING TO LOYALTY

The International Civil Service Advisory Board noted in its 1954 Report that a second basic requirement is the necessity of developing and maintaining an international outlook, based on loyalty to the international organisation. This ‘international outlook’ flows from an understanding of and loyalty to the objectives and purposes of the international organisation as set forth in its constitution, the acceptance of the oath of office and of the basic obligation to serve wholeheartedly and completely the organisation’s interests.<sup>122</sup> It is not a coincidence that before the publication of this report, in November 1952, the first chair of the ICSAB (who served as Under Secretary-General in the League of Nations) – Aghnides Thanassis – had remarked during a conference held at the UN headquarters that “if there is one brief way of characterising the primary demand placed by the Charter and the staff regulations upon the international civil servant it is the demand of loyalty to the organisation and to its objectives.”<sup>123</sup>

Loyalty is closely related to integrity. First, it “is the focal point of all duties of conduct”.<sup>124</sup> Like integrity, there cannot be too much of it. Some have argued that because the opposite of loyalty evokes disloyalty, treachery, betrayal, and treason, nobody is opposed to it.<sup>125</sup> Another similarity between integrity and loyalty is that neither concept is often empirically studied, perhaps because making the concepts operational is difficult.<sup>126</sup> However, what exactly does loyalty mean? An etymological sidestep suggests that loyalty was always meant to be a positive attribute. ‘Loyal’ is traced back through old French *loial* and *leial* to Latin *legalis* and *legalem*. The root *leg* and *lex* in Latin designate law or legal. Hence, at some point in history, loyal meant

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disciplinary consequences, including any legal action, with due regard for the protection of the privacy of the staff members concerned.

<sup>121</sup> UNGA resolution 76/303 “United Nations action on sexual exploitation and abuse” UN Doc. A/Res/76/303 (2 September 2022) preambular paragraph 4.

<sup>122</sup> Report on Standards of Conduct of the International Civil Service, *supra* note 1 at para. 5.

<sup>123</sup> Aghnides H E Thanassis, “Standards of Conduct of the International Civil Servant” (1953) 19:1 *Int Rev Adm Sci* 179 at 181.

<sup>124</sup> Ullrich, *supra* note 76 at 409.

<sup>125</sup> Jill W Graham & Michael Keeley, “Hirschman’s Loyalty Construct Research on Hirschman’s Exit, Voice, and Loyalty Model” (1992) 5:3 *Empl Responsib Rights J* 191–200.

<sup>126</sup> Gjalte de Graaf, “The Loyalties of Top Public Administrators” (2011) 21:2 *J Public Adm Res Theory* 285 at 288.

compliant with the law or meeting the conditions required by the law. It referred to being 'true to obligations' and 'faithful to the government'. Today, loyalty is a much broader and more elusive notion with normative, symbolic, and emotional connotations. There is no common definition of the term in the literature. It has been defined as "a willingness to stick with the group",<sup>127</sup> "an allegiance to a concept outside the self, such as an organisation",<sup>128</sup> a disposition not to criticise,<sup>129</sup> "willingness to sacrifice",<sup>130</sup> or devotion to some cause expressed in a "sustained and practical way, by acting steadily in the service of [t]his cause".<sup>131</sup> In the context of international civil servants, however, loyalty has a slightly narrower meaning. It is not allegiance; allegiance is a term more suitable to describe a relationship between a national government and its staff:

*La loyauté n'est pas une allégeance, celle-ci se définissant comme une subordination, une obéissance, une fidélité à un souverain ou à une nation : l'organisation internationale ne jouit pas de prérogatives étatiques à l'égard de ses agents et ne dispose à leur égard de pouvoirs de contrainte autres que professionnels.*<sup>132</sup>

The concept of loyalty to the international organisation, first introduced by Eric Drummond in the League of Nations, was described by a group of former senior officials of the League as follows:

*What is 'international loyalty'? It is not the denationalized loyalty of a man without a country. On the contrary, it is the conviction that the highest interests of one's own country are served best by the promotion of security and welfare everywhere, and the steadfast manifestation of that conviction without regard to changing circumstances.*<sup>133</sup>

It was first codified in 1932 when the League added to its Staff Regulations a provision which stated that "the officials of the Secretariat of the League of Nations are exclusively international officials and their duties are not national, but international." A separate provision requiring them to make a declaration of loyalty was introduced during the same year.<sup>134</sup> These provisions have become very common.

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<sup>127</sup> R. E. Ewin, "Loyalty and Virtues" (1992) 42:169 *Philos Q* 403 at 418.

<sup>128</sup> Elizabeth A Hoffmann, "Exit and Voice: Organizational Loyalty and Dispute Resolution Strategies" (2005) 84:4 *Soc Forces* 2313–2330 at 2314.

<sup>129</sup> A H Birch, "Economic Models in Political Science: The Case of 'Exit, Voice, and Loyalty'" (1975) 5:1 *Br J Polit Sci* 69 at 75.

<sup>130</sup> P. H. Werhane and R. E. Freeman (eds.), *Encyclopedic Dictionary of Business Ethics* 2<sup>nd</sup> ed. (Oxford: Wiley-Blackwell, 2006).

<sup>131</sup> Josiah Royce, *The philosophy of loyalty* (New York: Macmillan, 1908) at 17.

<sup>132</sup> Plantey & Loriot, *supra* note 72 at 88.

<sup>133</sup> Mathiason, *supra* note 11 at 29.

<sup>134</sup> "Amendment in the Staff Regulations", Office Circular Nos. 75 and 76 (12 November 1932).

Similar rules can be found in staff rules and regulations of many IGOs, including entities of the United Nations System.

The duty of loyalty constitutes a fundamental obligation owed by every official to the institution to which the official belongs.<sup>135</sup> As a minimum, it requires the official to actively seek to preserve the relationship of trust between him and his institution by “refrain[ing] from conduct which reflects on his position and is detrimental to the respect due to the institution and its authorities [and to] conduct himself, particularly if he is of senior grade, in a manner that is beyond suspicion.”<sup>136</sup> The Administrative Tribunal of the World Bank specified that the duty of loyalty includes the obligation to avoid situations and activities that might (i) reflect adversely on the organisation; (ii) compromise operations of the organisation; and (iii) lead to real or apparent conflicts of interest.<sup>137</sup> As pointed out above, loyalty and integrity are interconnected; therefore, one’s failure to uphold high standards of integrity often entails a breach of one’s duty of loyalty and vice versa. This explains the reason for which international tribunals refer to the obligations of integrity and loyalty interchangeably. As the examples below reveal, in many instances, conduct characterised by international administrative tribunals as a breach of an official’s duty of loyalty may also be regarded as a lapse of integrity. Behaviour found to be a breach of loyalty included:

- engaging in treasonous espionage;<sup>138</sup>
- promoting policies or theories which the organisation believes to be wrong or mistaken;<sup>139</sup>
- misusing the organisation’s duty-free import privileges for the personal benefit of a family member;<sup>140</sup>
- writing and publishing a book that exposed the official’s fundamental opposition to his employer’s strategy, goals, and activities;<sup>141</sup>

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<sup>135</sup> *Connolly v Commission*, [1999] ECR-SC I-A-87 and II-463, Court of First Instance of the European Communities (First Chamber) of 19 May 1999 in Joined Cases T-34/96 and T-163/96, affirmed in *European Court Reports 2001 I-01611*, ECLI:EU:C:2001:127.

<sup>136</sup> *Ibid.* at para. 128.

<sup>137</sup> *A.J. v. IBRD*, WBAT Judgement No. 389 (25 March 2009) at para. 46; *G.N. v. IBRD*, WBAT Judgement No. 667 (3 June 2022) at para. 167; *F.Q. v. IFC*, WBAT Judgement 638 (16 November 2020) at para. 98.

<sup>138</sup> *M.K. v. NATO Allied Air Command*, NATO AT Judgement No. 2017-023 (21 November 2017): A former NATO staff member served seven years in a German prison for spying for Russia.

<sup>139</sup> *In re Stjernswärd*, [1998] Judgement No. 1732 (ILOAT).

<sup>140</sup> *R.D.A.G. v. PAHO*, Judgement No. 3295 (ILOAT).

<sup>141</sup> *Connolly v. Commission*, *European Court Reports 2001 I-01611*, ECLI:EU:C:2001:127 at para. 128.

- making public statements deprecating the official’s institution, organisational unit, or colleagues;<sup>142</sup>
- submitting frivolous and vexatious complaints or making gratuitously accusatory statements made against the official’s colleagues, organisation, or the host State;<sup>143</sup>
- engaging in outside activities without seeking prior authorisation;<sup>144</sup>
- writing a character letter (testimonial) for another staff member who has been tried for and convicted of paedophilia;<sup>145</sup>
- failing to disclose a conflict of interests;<sup>146</sup>
- taking sides with or showing political support for one party to a conflict;<sup>147</sup>
- falsely declaring being a national of an organisation’s member state;<sup>148</sup> and
- lobbying government officials to improve the staff member’s employment situation.<sup>149</sup>

Officials of international organisations may breach their duty of loyalty even when they are convinced that they are acting in the interests of the international community and of the organisation. The *Galbraith* case, described below, provides an example of such conduct.

In March 2009, the UN Secretary-General announced the appointment of Mr. Galbraith, a United States national, as Deputy Special Representative of the Secretary-General (“DSRSG”) for the United Nations Assistance Mission in Afghanistan

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<sup>142</sup> *Williams v. Court of Auditors of the European Communities*, European Court Reports 1991 II-01293, ECLI:EU:T:1991:61 at para. 72.

<sup>143</sup> *In Re Jurado*, [1966] Judgement No. 96 (ILOAT) at para. 5 and *J.-D. v. ILO*, [2018] Judgement No. 3982 (ILOAT) at para. 1; *In re Loomba*, [1970] Judgement No. 169 (ILOAT) at para. 4.

<sup>144</sup> *Nsabimana v. IFAD*, 2022-UNAT-1254 (UN Appeals Tribunal); *In re Moore*, [1995] Judgement No. 1405 (ILOAT); *Fichtner v. Commission of the European Communities*, European Court Reports 2003 I-A-00007, Case T-75/00, ECLI:EU:T:2003:9.

<sup>145</sup> *Bissell v. Secretary-General of the UN*, UNDT/2020/084 (UN Dispute Tribunal). The staff member’s actions were particularly negligent given her position of Director of the Global Partnership to End Violence Against Children in UNICEF.

<sup>146</sup> *Vedel v. Secretary-General of the United Nations*, UNDT/2019/110 (UN Dispute Tribunal). In this case, a UNICEF staff member working in the procurement and supply failed to disclose that her husband held executive roles with UNICEF suppliers.

<sup>147</sup> *Kuruc v. Secretary-General of the United Nations*, UNDT/2015/008 (UN Dispute Tribunal). A UNHCR staff member of Turkish nationality handed a white flag with the inscription “do not yield” to the Syrian President.

<sup>148</sup> *L.G. v CERN*, [2007] Judgement No. 2569 (ILOAT).

<sup>149</sup> *Banaj v. Secretary-General of the United Nations*, UNDT/2022/060 (UN Dispute Tribunal). To secure support for preserving her personal situation as the sole UNODC representative in Albania, the staff member lobbied government officials against the recruitment of a candidate who would hold a higher-ranking post. See also *Bel Ghazi v. WHO*, [1996] Judgement 1475 (ILOAT).

("UNAMA"). This was a rank of Assistant Secretary-General ("ASG"). Galbraith's role was to assist his supervisor – the Special Representative of the Secretary-General ("SRSG") – in the performance of his diplomatic, political, and managerial responsibilities in connection with UNAMA. Soon after his appointment, Galbraith began having disagreements with the SRSG regarding the elections in Afghanistan in 2009 and UNAMA's role therein. He was of the view that the UN, namely UNAMA, had the responsibility of ensuring that the Afghan Independent Electoral Commission ("IEC") operated in an impartial and honest manner. His supervisor, however, believed that the UN did not need to interfere in the activities of the IEC. Reports began emerging in the media that electoral fraud may have occurred in Afghanistan.<sup>150</sup> In September 2009, Galbraith returned to the United States and gave an interview for a news article in Burlington Free Press in which he disclosed his disagreement with the SRSG over how to address allegations of widespread electoral fraud. He stated during his interview that he wanted to take a harsher line on the vote fraud issue than his supervisor. Following this interview, the UN Secretary-General thanked Galbraith for his services and terminated his contract. Galbraith challenged this decision before the UN Dispute Tribunal, arguing that the Secretary-General ended his employment without cause. The Dispute Tribunal rejected this argument holding that,

*It is only possible for a mission to have and maintain a single policy line if there is a relation of full trust and cooperation between all the staff members, especially between the SRSG and the DSRSGs. [...] The Secretary-General acted in respect of this principle and his intervention was necessary in order to avoid any negative impact of the disagreement between the SRSG and the Applicant upon UNAMA's mandate at a very important time and consequently upon the relations between the mission, the Afghani government and the international community, so he did not abuse his discretionary power.<sup>151</sup>*

Not all failures to exhibit loyalty pose a risk to the independence of international civil servants and of international secretariats. Most cases of disloyal conduct are dealt with confidentially through disciplinary proceedings without much ado. Nonetheless, some actions by a few may discredit entire teams and seriously undermine the reputation of their organisation. Spying or acts of espionage by international civil servants for a government undoubtedly fall into this category of actions.

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<sup>150</sup> Jon Boone, "One in five Afghan ballots may be illegal, UN warns" *The Guardian* (24 August 2009): <https://www.theguardian.com/world/2009/aug/24/afghan-elections-fraud-karzai>

<sup>151</sup> *Galbraith v. Secretary-General of the United Nations*, UNDT/2013/102 (UN Dispute Tribunal) at paras. 69-70.

In February 2022, soon after Russia's invasion of Ukraine, the US government announced the expulsion of 12 Russian diplomats and one UN staff member for acts of espionage without, however, disclosing any details about the alleged activities. The expelled UN staff member was allegedly Russian intelligence operative working under the cover of UN official's status.<sup>152</sup> This did not surprise people familiar with the UN and Kremlin's long history of using the organisation for espionage. From the UN's earliest days, the Soviet government regarded the world body as an ideal cover. Over a period of several decades, its intelligence had penetrated and subverted key parts of the UN, including the human resources and communications functions.

Details about Soviet intelligence tactics are still coming to light. In September 2021, the British Foreign & Commonwealth Office declassified a file entitled "Russian intelligence service operating under UN cover", revealing USSR's sophisticated clandestine activities during the Cold War.<sup>153</sup> In the 1970s, the Soviet intelligence services, had hundreds of operatives working in the UN in New York and Geneva. They controlled key parts of the UN's bureaucracy, including the Division for Policy Coordination in the Office of Personnel Services in New York and Personnel Services in Geneva.

In May 1978, the FBI arrested and prosecuted two Soviet staff members of the UN on espionage charges. They were attempting to procure US Navy antisubmarine warfare documents from an FBI undercover agent who posed as a US navy officer. One of these individuals was an assistant to the Under Secretary-General and the second one was a Human Resources Officer.<sup>154</sup> The two UN officials were arrested while trying to retrieve a microfilm that the FBI undercover agent had dropped in an orange juice carton. A third Russian citizen, attached to the Soviet mission at the UN, was also arrested but was subsequently released because he had diplomatic immunity.<sup>155</sup>

In July 1978, another staff member of the UN in Geneva - Viktor Suvorov - defected to British intelligence and revealed that his mission was to steal scientific and technical secrets from Western countries through the UN Conference on Trade and

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<sup>152</sup> Michelle Nichols, "U.S. expels Russian Spy Working for United Nations - Spokesperson" *Reuters* (1 March 2022): <https://www.reuters.com/world/us/us-says-expels-russian-spy-working-united-nations-2022-03-01/>

<sup>153</sup> Calder Walton, "Soviet Espionage Under the Cover of Diplomacy" *The Cipher Brief* (16 March 2022): Soviet Espionage Under the Cover of Diplomacy (thecipherbrief.com)

<sup>154</sup> Charles R. Babcock, "Two Russians Are Indicted in Espionage" *The Washington Post* (31 May 1978).

<sup>155</sup> Charles R. Babcock, "FBI Arrests Two Soviets in Spying Case" *The Washington Post* (21 May 1978).

Development (UNCTAD).<sup>156</sup> He later published a book describing the intricacies of the Soviet intelligence gathering through the UN.<sup>157</sup>

A few months earlier, the revelations made by Arkady Shevchenko who worked as Under-Secretary-General in the UN Secretariat had already shaken the UN Secretariat's reputation. Shevchenko sought political asylum and admitted that he was a KGB officer. Shevchenko's revelations were sensational; half of all Soviet nationals working for the UN in New York Geneva were intelligence officers or assigned to intelligence activities. Brian Urquhart – who also served as the Under-Secretary-General for political affairs under several Secretaries-General – corroborated this account, pointing out that Soviet nationals holding senior posts in the UN “seemed to be in a twenty-four-a-day competition to be first to relay the output of [his] office to the Soviet delegation”.<sup>158</sup> In 1985, Shevchenko published a book *Breaking with Moscow*, which shed light on the extent of damage inflicted on the UN Secretariat's good repute.<sup>159</sup> What exacerbated Shevchenko's conduct is that while spying for the Soviets, he was, at the same time, spying for the CIA as a double agent.<sup>160</sup>

Another seasoned spy from USSR who worked as an Information Officer for the World Health Organization in Geneva was Ilya Dzhirkelov. He defected in 1980 and published a book in 1987, where Dzhirkelov explained the organisational structures and operational techniques of Soviet intelligence agencies.<sup>161</sup>

These high-profile defections and betrayals did not discourage the USSR. On the contrary, the number of its spies in the UN continued to increase. For instance, in 1980, the Swiss government estimated that of the 650 or so Soviet officials residing in Switzerland, at least 200 were engaged in espionage. In 1984, the Soviets had as many as 126 diplomats accredited to the UN in New York in comparison with 59 diplomats in the US mission and just 20 in the UK mission. The recently unveiled file of the British Foreign & Commonwealth Office indicates that most of these Soviet officials were carrying out intelligence work.<sup>162</sup>

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<sup>156</sup> Luke Harding, “‘Will they forgive me? No’: ex-Soviet spy Viktor Suvorov speaks out” *The Guardian* (29 December 2018).

<sup>157</sup> Viktor Suvorov, *Inside the Aquarium: The Making of a Top Soviet Spy* (New York: Macmillan, 1986).

<sup>158</sup> Urquhart, *supra* note 88 at 290.

<sup>159</sup> Arkady N Shevchenko, *Breaking with Moscow* (New York: Ballantine Books, 1985).

<sup>160</sup> Robert D. McFadden, “A Soviet Defector Says He Was a Spy for U.S. for Years” *The New York Times*, Section A, page 1 (4 February 1945).

<sup>161</sup> Ilya Dzhirkelov, *Secret Servant: My Life with the KGB and the Soviet Elite* (New York: Harper Collins, 1987).

<sup>162</sup> Calder Walton, “Soviet Espionage Under the Cover of Diplomacy” *The Cipher Brief* (16 March 2022): Soviet Espionage Under the Cover of Diplomacy (thecipherbrief.com)

NATO has had its own share of spies. The most famous case of espionage in its history was the Pâques Affair.<sup>163</sup> In 1962, when the Cold War was in full swing, Georges Pâques – a prominent French civil servant – started work as Deputy Director of the NATO Press Service. This important position gave Pâques access to information discussed during high-level meetings and recorded in confidential documents. He also had impressive connections not only at NATO but also in the French government, which exposed him to important dignitaries and officials from whom he could obtain valuable intelligence. For a long period, Pâques disclosed NATO secrets to the Soviet Union.<sup>164</sup> Amongst the documents he transmitted to the USSR were plans related to psychological warfare, force posture, military exercises, and defence plans for Berlin. He also prepared extensive biographies of senior officials at NATO and within Allied governments. The French authorities apprehended Pâques in 1963 after receiving tips that the CIA itself had collected from a former KGB spy. Pâques' trial became a highly publicised affair, attracting press from around the world. During the trial, Pâques explained the reason for his betrayal by advancing an unconvincing excuse:

*Je suis un homme pacifique. Je n'aime pas les Soviétiques, mais je suis également convaincu que les Américains, en raison de leurs conceptions très primaires, sont de dangereux fauteurs de guerre. J'ai donc pensé que pour éviter un conflit international, aboutissant fatalement à une catastrophe mondiale, il était indispensable de rétablir les forces en présence. Voilà le mobile qui n'a jamais cessé de m'animer.*<sup>165</sup>

Although he was sentenced to life imprisonment, Pâques served less than seven years. The then President of France – Georges Pompidou – who was Pâques' classmate in *École Normale Supérieure*, pardoned him in 1970.<sup>166</sup>

In the more recent past, another case of espionage caused embarrassment to NATO. In 2013, Manfred Koenig, a NATO staff member of German nationality, was sentenced to seven years of imprisonment for selling secret data to Russian intelligence services.<sup>167</sup> Koenig worked as an IT expert at the Ramstein Air Force Base in western Germany. He was caught with USB sticks and top-secret plans of American land and air operations on his computer. Criminal proceedings revealed that Koenig was attempting to sell passwords to top secret computer programmes for military

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<sup>163</sup> "The Pâques Affair", Declassified Memo of the Secretary-General of NATO, NATO Ref. PO/64/118 (25 March 1964) available online: [https://archives.nato.int/uploads/r/null/2/1/217022/PO\\_64\\_118\\_ENG\\_NHQL672901.pdf](https://archives.nato.int/uploads/r/null/2/1/217022/PO_64_118_ENG_NHQL672901.pdf)

<sup>164</sup> "Georges Paques, 79, French NATO Aide Jailed for Espionage", *The New York Times* (3 January 1994).

<sup>165</sup> Thierry Wolton, *Le KGB en France* (Paris: Grasset, 1986) at 175.

<sup>166</sup> Paul Veyne, "Naïvetés et noblesse de la trahison" (1985) 81 *L'Histoire* at 22.

<sup>167</sup> *M.K. v. NATO Allied Air Command*, NATO AT Judgement No. 2017-023 (21 November 2017).

operations. The Russian secret services FSB had already paid him 5 million dollars.<sup>168</sup> This treason made some NATO member nations reluctant to share with NATO and its various subsidiary entities sensitive information.

Do acts of spying or espionage represent disloyalty or lack of independence? It is probably both. However, it fits better under disloyal conduct because spies steal secrets or gather information that is usually unrelated to their official functions. They often perform well their ostensible work for international organisations because it provides them a suitable cover. For example, a Human Resources Officer trying to obtain and transmit military secrets does not perform functions related to personnel administration. He does not take instructions from external sources in carrying out his roles and responsibilities as a Human Resources Officer. Problematic conduct points to a lack of independence when international civil servants seek or accept instructions from external sources on the way they perform their official functions.

### 2.3 – OBLIGATIONS RELATING TO INDEPENDENCE

The Advisory Board observed that a third requirement closely related to international loyalty is that of independence. The word *independence* as defined in Chapter 2 of this work is broad and includes notions of loyalty, impartiality, and integrity. This section explores the meaning of the word *independence* as it was used by the International Civil Service Advisory Board in its report of 1954. The Advisory Board used the term *independence* in the narrow sense of the word, noting that the international civil servant must, in the exercise of his functions, remain independent of any authority outside the organisation he serves, and that his conduct should at all times reflect such independence:

*“In taking his oath of office he has undertaken an obligation not to seek or accept instructions in regard to the performance of his duties from any government or other authority external to his organization. It is not only the strict letter of this oath but the spirit which must be understood and adhered to.”<sup>169</sup>*

Viewed from this angle, independence refers to the ability of international civil servants to make decisions and perform official acts free of external influence. Lack of independence is to a certain extent a form of disloyalty, but it is perhaps less egregious and not always premeditated. In some cases, staff members’ lack of independence may be due to circumstances and conditions beyond their control. For instance, a staff

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<sup>168</sup> Allan Hall, “German spy caught selling top secret U.S. battle plans while working for NATO is jailed for seven years” *Daily Mail* (20 November 2013): <https://www.dailymail.co.uk/news/article-2510548/German-spy-caught-selling-secret-U-S-battle-plans-working-NATO-jailed-seven-years.html>

<sup>169</sup> Report on Standards of Conduct of the International Civil Service, *supra* note 1 at para. 7.

member may be working on a project funded entirely by one country. If the country ceases to fund the project, the organisation may have two options. It may either (a) transfer the staff member on another vacant post and continue employing him on other projects; or (b) abolish the staff member's post and separate him from service. Unless the staff member is confident that the organisation will opt for the first alternative, he may be inclined to do everything in his power to gain and maintain the donor state's trust and confidence. In such a case, it is only normal that the staff member may not be entirely independent from a member state for reasons beyond his control. Similarly, if the international organisation assigns a staff member to work on an exclusively national project under the control and command of a member state's government, the staff member's independence is jeopardised by the organisation itself. However, where a staff member has not been given any reason to fear adverse consequences, he has no excuse taking instructions from a government of a member state in carrying out his activities.

A case in point is the recent saga at the World Bank. In September 2021, the World Bank released an independent investigation report prepared by external investigators into the involvement of senior World Bank management in data manipulation.<sup>170</sup> The investigation found that Bank officials altered data to benefit both China and Saudi Arabia in its flagship 'Doing Business' report, which ranks countries on their business regulations. The 'Doing Business index', first published by the World Bank in 2002, ranked countries on several aspects of business regulation, from the time it took to get a construction permit or clear customs to more controversial measures like the scope of labour rights or corporate tax rates.<sup>171</sup> While these reports do not attract much interest in many Western countries, Doing Business indexes often made headlines in major international newspapers. Some governments are so interested in these reports and the way they score on the index that they set up entire governmental units to maximise their score.

The investigation revealed that in the month leading up to the publication of the Doing Business report, outreach from senior Chinese officials to Bank leaders over the country's ranking in Doing Business intensified. In some private meetings, with World Bank senior officials, Chinese delegates exerted pressure, expressly mentioning

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<sup>170</sup> Ronald C. Machen Matthew et al., Investigation Findings and Report to the Board of Executive Directors "Investigation of Data Irregularities in *Doing Business 2018 and Doing Business 2020*" (15 September 2021): <https://thedocs.worldbank.org/en/doc/84a922cc9273b7b120d49ad3b9e9d3f9-0090012021/original/DB-Investigation-Findings-and-Report-to-the-Board-of-Executive-Directors-September-15-2021.pdf>

<sup>171</sup> See for instance "Doing Business 2020 Report: Comparing Business Regulation in 190 Economies" (Washington DC: World Bank, 2020): <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>

that “if China’s ranking improved everyone would be relieved.”<sup>172</sup> A senior Chinese delegate had dinner with Kristalina Georgieva (the current IMF executive head) during which he emphasised her role as the responsible person at the Bank to ensure that China’s reforms were acknowledged in the report.<sup>173</sup> Georgieva then asked her team to explore ways to alter the methodology so that China’s score did not drop. Georgieva and her colleagues had no reason to fear retaliation from the Chinese government against them personally. Hence, there was no reason to alter the methodology to please the Chinese government.

When this report was released, Georgieva was already the Managing Director of IMF. The allegations were perceived to be so damaging that the Economist magazine called for Georgieva to step down.<sup>174</sup> She was spared when the IMF executive board announced that it had full confidence in her “leadership and ability to continue to effectively carry out her duties.”<sup>175</sup> Nevertheless, former staff, government officials, and outside experts pointed out that “regardless of whether IMF chief Kristalina Georgieva was to blame for changes to World Bank data in 2017 that benefited China, the scandal has dented the research reputations of both institutions [i.e. the World Bank and IMF].”<sup>176</sup>

A recent empirical study revealed that another factor that affects the independence of international civil servants is not their seniority or rank but “proximity to the local environment” which makes them vulnerable “to local patronage, political pressures and expectations from the local community.”<sup>177</sup> The same study established that when staff members are recruited from outside their country of nationality, they undergo what the authors call a “national identity dilution” which blurs national identities and perspectives. They are then more likely to lose their national perspective through a mechanism of alienation and to acquire a new international identity through assimilation. They acquire an international *esprit de corps* and are less vulnerable to external influences. The study found even locally recruited staff members who perform administrative and clerical functions are less

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<sup>172</sup> *Ibid.*, at para. 5.

<sup>173</sup> *Ibid.*

<sup>174</sup> “Why the Head of IMF Should Resign”, *The Economist* (25 September 2021): <https://www.economist.com/leaders/2021/09/25/why-the-head-of-the-imf-should-resign>

<sup>175</sup> Bjarke Smith-Meyer, “IMF chief Kristalina Georgieva survives China scandal: What you need to know”, *Politico* (12 October 2021): <https://www.politico.eu/article/georgievas-scandal-geopolitics-china-and-data-tampering/>

<sup>176</sup> Andrea Shalal and David Lawder, “Analysis: World Bank, IMF face long-term damage after data rigging scandal”, *Reuters* (4 October 2021): <https://www.reuters.com/business/world-bank-imf-face-long-term-damage-after-data-rigging-scandal-2021-10-04/>

<sup>177</sup> Valentina Mele, Simon Anderfuhren-Biget & Frédéric Varone, “Conflicts of Interest in International Organizations: Evidence from Two United Nations Humanitarian Agencies” (2016) 94:2 *Public Adm* 490 at 504.

independent from a government of a member state than internationally recruited staff who have political and managerial roles and responsibilities. According to the authors, even though locally recruited staff members do not make strategic decisions, they have access to information that member states consider valuable.<sup>178</sup>

Hence, to minimise the influence of member states on international organisations, international civil servants should, whenever possible, regularly change duty stations. Mobility fosters a 'supranational' identity. Where rotation is not feasible either because they are recruited locally or because they cannot secure suitable positions in other duty stations, international civil servants should avoid fraternizing with governmental officials or getting involved in national and local politics. Similarly, to avoid financial dependence, international civil servants should sever all links with their national public service before assuming international functions. Secondments or leave without pay from national public service allow sending governments to retain some influence over their nationals.

#### **2.4 – OBLIGATIONS RELATING TO IMPARTIALITY AND NEUTRALITY**

The 1954 report of the International Civil Service Advisory Board mentioned impartiality as the fourth and last category of obligations owed by international civil servants. The Advisory Board observed that impartiality implies objectivity, lack of bias, tolerance, restraint - particularly when political or religious disputes or differences arise. It acknowledged that even though personal views and convictions of staff members remain inviolate, they do not have the freedom of "a private person to take sides, to enter a dispute as a partisan, or publicly to express his convictions on matters of a controversial nature, either singly or as a member of a group", adding that "just as the practice of impartiality will strengthen the secretariat, repeated instances of partiality, or bias, will do serious harm to the organisation."<sup>179</sup> The description above conflates aspects of impartiality with neutrality. As pointed out in Chapter 2, although the two terms designate related but different concepts, in the context of public service, the notions of impartiality and neutrality are often used interchangeably. Consequently, in the interests of simplicity and consistency, this work refers to both principles even when it uses only one of these two terms.

Impartiality involves respect and tolerance for and willingness to understand different points of view, cultures, ethnicities, religions, and political beliefs. It requires international civil servants to work without prejudice or bias with persons of all nationalities, religions, and cultures. An impartial civil servant is continually conscious of how proposals, events and statements of opinion may appear to a very

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<sup>178</sup> *Ibid.*

<sup>179</sup> Report on Standards of Conduct of the International Civil Service, *supra* note 1 at para. 8.

wide range of nationalities and cultures. Impartiality involves exercise of judgment and restraint in all expressions of view whether public or private. Expressions that could be construed as biased or intolerant, particularly in respect of national interests or political issues with which the organisation is confronted is a breach of impartiality and neutrality. While staff members of IGOs are not expected to relinquish their personal or political views or their cultural and national characteristics, they cannot allow these views and characteristics cloud their judgement. Impartial international civil servants can easily reconcile their personal views with their international obligations. “What is essential is not the absence of personal, political, or national views, but rather restrained at all times, not merely during working hours, and the expression of such views.”<sup>180</sup> This is particularly important when international civil servants deal with conflicts or disputes opposing two or more member states. If in the treatment of such conflicts international officials conduct themselves as delegates by sponsoring or promoting the views of one of the parties to the dispute, they will inevitably defeat the aim of international cooperation through multilateral institutions and incidentally put an end to their own usefulness to the organisation since, by definition, they cease to be international officials and revert to the status of national agents.<sup>181</sup>

The four examples below illustrate problematic conduct that is contrary to an international civil servant’s duty of impartiality and neutrality.

Each year since 2002, the United Nations holds a forum on indigenous issues. The Forum was established by the Economic and Social Council (ECOSOC) in 2000 as a high-level advisory body on indigenous issues related to economic and social development, culture, the environment, education, health, and human rights.<sup>182</sup> In April 2017, Mr. Dolkun Isa, a Uighur activist and President of an NGO called ‘World Uighur Congress’ based in Germany had duly registered for the conference and was intending to participate in the forum. During this period, a former Chinese diplomat appointed to the post of the Under-Secretary-General for the UN Department of Economic and Social Affairs ordered Isa’s expulsion from the forum. Following protests from American and German diplomats, Mr. Isa was eventually allowed to return.<sup>183</sup> Mr. Wu later boasted about his actions on Chinese state television CCTV, stating that “when it comes to Chinese national sovereignty and security, we will

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<sup>180</sup> *Ibid.* at para. 5.

<sup>181</sup> Thanassis, *supra* note 123 at 186–187.

<sup>182</sup> “Establishment of a Permanent Forum on Indigenous Issues”, ECOSOC Resolution 2000/22, UN Doc.: E/2000/22 (28 July 2000).

<sup>183</sup> “In the UN, China uses threats and cajolery to promote its worldview”, *The Economist*, 7 December 2019 edition; Colum Lynch, “U.S. Once Jailed Uighurs, Now Defends Them at U.N.: China tries to silence the group and lashes out at a U.S. diplomat” *Foreign Policy* (25 May 2018).

undoubtedly defend our country's interests."<sup>184</sup> In 2018, under pressure from the Chinese government, the UN again denied Mr. Isa access to the UN Indigenous Forum again, citing security concerns. This is an evident example of partial and biased conduct by international civil servants and the UN Secretariat.

Another incident in which UN officials exhibited partial and biased conduct occurred in Ethiopia. In October 2021, two senior United Nations officials have been recalled from Ethiopia after audio recordings containing criticism of senior UN officials was released online.<sup>185</sup> In the recordings, the Directors of UNFPA and IOM tell a freelance journalist during an unauthorised interview that top UN officials are wrong to sympathise with forces from the northern Tigray region who are fighting Ethiopia's government. During the interview, one of the UN officials called the Tigrayan minority "dirty" and "vicious".<sup>186</sup> These remarks were particularly serious because there was already a considerable amount of tension between the UN and the Ethiopian government. The UN made repetitive calls requesting the Ethiopian government to allow humanitarian aid to reach certain pockets of the Tigrayan population. Perceiving these demands as criticism, Ethiopia expelled several UN staff members for taking sides.

When the audio recordings of this unauthorised interview were leaked, the IOM immediately suspended and subsequently dismissed its Director in Ethiopia. However, a few months later, in November 2022, the Ethiopian government rewarded the dismissed staff member by appointing her as the Representative of the Intergovernmental Authority on Development (IGAD) to the African Union.<sup>187</sup>

A less obvious violation of the principle of impartiality occurred in 2022 in Palestine where it was alleged that a UN staff member had breached her duty of impartiality and neutrality. The head of the UN Office for the Coordination of Humanitarian Affairs (OCHA) in the Occupied Palestinian Territory tweeted "Relieved to see a ceasefire agreed ending hostilities impacting both Palestinians and Israeli civilians. Such indiscriminate rocket fire of Islamic Jihad provoking Israeli

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<sup>184</sup> Anne Applebaum, "How China Outsmarted the Trump Administration", *The Atlantic* (11 October 2020): <https://www.theatlantic.com/magazine/archive/2020/11/trump-who-withdrawal-china/616475/>

<sup>185</sup> Maggie Fick, "U.N. officials recalled from Ethiopia over audio recordings" *The Reuters* (13 October 2021).

<sup>186</sup> "UN recalls Ethiopia migration head over Tigray war remarks", *France24* (11 October 2021): [www.france24.com/en/live-news/20211011-un-recalls-ethiopia-migration-head-over-tigray-war-remarks](http://www.france24.com/en/live-news/20211011-un-recalls-ethiopia-migration-head-over-tigray-war-remarks)

<sup>187</sup> Gebrekirstos Gebremeskel, "Ethiopian Regime Rewards Maureen Aching an IGAD Job for her anti-Tigrayan work at UN Ethiopia" *Tghat* (28 November 2022): [www.tghat.com/2022/11/28/ethiopian-regime-rewards-maureen-aching-an-igad-job-for-her-anti-tigrayan-work-at-un-ethiopia/](http://www.tghat.com/2022/11/28/ethiopian-regime-rewards-maureen-aching-an-igad-job-for-her-anti-tigrayan-work-at-un-ethiopia/)

retaliation is condemned".<sup>188</sup> The staff member came under massive criticism, particularly from pro-Palestinian activists, for taking sides and apportioning blame in a conflict. Although she subsequently apologised for her Tweet, the UN had removed her from the post. Israel criticised the UN for preventing its staff members from telling what it perceived to be the truth. This incident illustrates how a single imprudent comment may be viewed by some as partial and biased conduct.

## CONCLUSION

The obligations of international civil servants are numerous and far-reaching. As informal ambassadors of their organisations, officials of IGOs are expected to have an irreproachable conduct not only in the performance of their official functions but also in their private lives. Technically excellent public servants may be a completely unfit international officials if they fail to recognise the importance of preserving the independence of the international secretariat and its staff. The officials' conduct and attitude may make the difference between success and failure of the organisation. After all, international organisations consist of people and cannot be better than the people that serve it.<sup>189</sup>

Scenarios of wrongful and unethical conduct are limitless; therefore, it is not always possible to list all forms of desirable and prohibited behaviour. Even the most complete staff regulations and staff rules are never exhaustive. Hence, it is essential to identify broad principles that international officials should comply with. The ICSAB categorised the wide variety of concrete legal obligations of international civil servants into four broad categories of conduct, which are integrity, loyalty, independence, and impartiality. Although these standards were initially developed for the UN System, legal frameworks of most international organisations contain these four standards. It is therefore reasonable to conclude that they have become universal.

As mentioned above, most behavioural breaches do not produce effects beyond disciplinary sanctions imposed on recalcitrant staff members. In other words, wrongful conduct investigated and sanctioned by international organisations remains largely hidden from the public eye. Yet, a few types of conduct can attract a lot of attention from member states and the public. Such conduct can be particularly damaging not only for the concerned officials but also for the independence of their organisations and colleagues.

Under the principle of integrity, the most frequent types of problematic behaviour are unethical conduct by leadership, large-scale fraud and corruption

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<sup>188</sup> Jacob Magid, "Senior UN official loses her post after tweet condemning PIL rocket fire at Israel", *The Times of Israel* (13 August 2022).

<sup>189</sup> Thanassis, *supra* note 123 at 186.

schemes by staff members, and sexual exploitation and abuse. Under the principle of loyalty, spying and espionage are the highest forms of disloyal conduct. Under the principle of independence, staff members have a duty to reject attempts to interfere by national authorities and governments of member states in the decision-making process, even when the interfering states are important donors or politically powerful countries. Under the principles of impartiality and neutrality, staff members should abstain from making public statements that can embarrass their organisation and colleagues or reveal divisions within the organisation. They can never take sides in conflicts opposing two or more states.

The most egregious transgressions of these four standards described above undermine the credibility of international secretariats, significantly reduce the value-added of international organisations in the eyes of member states, lead to excessive scrutiny by national administrations, and eventually erode the independence of international secretariats.