

Dobromir MIHAJLOV¹:

The Origin and the Early Development of International Civil Service

*Where is it that everybody is a foreigner
and nobody is a foreigner?*

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The antecedents

The establishment of international civil service is inseparably connected with the development of the institution of international organizations. Nowadays it would be impossible to imagine the international relations and the interstate cooperation not only in political but in all spheres of life without the activities of international organizations and mainly of the international governmental organizations (IGOs). One would think the institution of international organization is as old as the international legal order. Although the predecessors of the modern international organizations (commissions, unions) were formed in the nineteenth century the idea for a stronger cohesion between states and for coordinated or collective interstate actions may be traced back to ancient ages [e.g. amphictyons in Greece, the Etruscan *lucomons*, the Hanseatic League in the thirteenth century or the German *Zollverein* (customs union), formed in 1834]². The industrial revolution, the accelerated development of trade, transport, communications in the nineteenth century proved the insufficiency of the traditional diplomatic, economic, legal relationships existing between states to answer the new challenges. The states faced the urgent necessity to seek joint solutions for new fields of public administration such as international traffic of goods, services, railroads, shipping, standards of weight and measurement etc. In other words the new functions needed new forms of cooperation on international level for permanent coordination of states' actions and these functions brought about new structures. The Rhine Commission established by the Congress of Vienna (1814-1815) and later the similar commissions set for the Danube and Elbe rivers managed the navigation of these rivers, and as such performed direct administrative tasks not free from some political sensitiveness. This was not the case with the international unions [e.g. the International Telegraphic (later Telecommunication) Union (Paris, 1865), the Universal Postal Union (Berne, 1874), the International Union for the Protection of Industrial Property (Berne, 1886), the International Union for the Publication of Industrial, Literary and Artistic Work, (Brussels, 1890) and others] since the scope of their functions was of noncontroversial, technical character. By creation of these international bodies were surmounted the insufficiencies of the traditional forms of international cooperation, namely the way the international conferences worked. They took place irregularly without actual means to act in merits in intervals between their meetings. But even in the case of international conferences

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² Longrad, Georges: *The International Civil Service*, A.W. Sythoff-Leyden Oceana Publications – Dobbs Ferry, N.Y., 1963, p. 33.

the necessity for officials providing for their organisational background was recognized properly by the host states and the creation of such ad hoc units was the „embryo” of the international secretariat, bureau or council which nowadays is responsible for the management of any international organization. (Some distinguished international civil servants even describe the international secretariat as the real beginning of international organization³.) And the civil servants employed in these bodies were the predecessors of the international civil servants.

The evolution process though being not too long had to answer a number of successive challenges but in fact it was determined permanently and prevailing by the expectations and the functions which had to be satisfied by the officials working on interstate level. In the nineteenth century it was the host country which selected and employed its nationals for the technical and material provision of international conferences with some possibilities for the guest countries to propose their own nationals. For the Congress of Paris in 1865 technical services were provided by French, for the London Conferences in 1867 and 1871 by British diplomats and only later the Hague Conferences of 1899 and 1907 had a secretariat composed by diplomats of the participating countries. The next step towards „internationalisation” was realized by the secretariats of the international unions mentioned above with the main function of their day-to-day management. The officials in secretariats still did not compose a homogeneous international group of civil servants since they were either recruited from the host country or seconded by member governments⁴ and consequently their team could be defined as a multinational secretariat. This pattern partly reflected the proposal of William Penn for a body of clerks serving a general parliament in Europe established to settle peace disputes. Probably W. Penn was the first one to elaborate a vision of a neutral international body of civil servants in his *Essay toward the Present and Future Peace of Europe* published in 1694⁵.

The role and the scope of the secretariats gradually grew as the expansion of interstate cooperation demanded a permanent machinery of administration. In some cases the international union itself was identified by this unit and called after it [e.g. the International Bureau of Weights and Measures (Sèvres, 1875), the General Office for International Transport by Rail (Berne, 1893)]⁶. The way of recruitment of these officials however proved to be the next dominant bar to the effective work of the secretariats. Their national allegiance was dominating, they were naturally susceptible to influence exerted by their governments. Besides the legal order of the host country and its efforts to affect the activities of the international union in the domain of its interests also gave rise to the necessity of a completely new legal status of the officials working in international administration. The international treaty establishing the International Institute of Agriculture in Rome signed in 1905 by 38 countries defined for the first time as „international” the administrative staff of the Institute. It recommended that all staff should be recruited by the parties to the treaty though their appointment had to be previously approved by the Italian government. Another novelty was that officials of the Institute were conferred some privileges and immunities and some regulations tried to decrease their dependence from the home country. (Nevertheless the staff

³ Claude, Inis L. Jr.: *Swords into Plowshares*, Random House, N. Y., 3rd edition, 1964, pp. 174-175.

⁴ Bennett, A. LeRoy: *International Organizations, Principles and Issues*, Prentice Hall, New Jersey, 4th edition, 1988, p.386.

⁵ *Ibid*, 3, p. 385-386.

⁶ *supra* note 1, p. 38.

was prevailingly Italian because the salaries were too low to attract officials from other countries.)

Analysing the development in the organisation of international life in the nineteenth century Inis L. Claude states that a derivative of the increasing complexity of the economic, social, technical and cultural interconnections was an expanded concept of the subject matter of international relations: the sovereign states recognized that there is an area of international affairs within which they have a common interest in cooperative endeavour. The result was the non-political organisational system of that century. "The Concert stood for compromise; the Hague stood for regulation; the public international unions stood for cooperation". The latter provided the broad outlines of the special functional units and permanent staff for international administration⁷, new forms of bureaucracy were already under experimentation. (The number of international unions established until 1907 was more than one hundred, but not all of them fitted the category of IGOs.)

The concept of the modern international civil service was firstly realized in the international Secretariat of the League of Nations (Geneva, 1920) and in the International Labour Office (Geneva, 1920).

The concept of the international civil service and its application (1920-1945)

The origin of the concept of an international civil service can be traced to the vision and proposals of the first Secretary-General of the League of Nations. It had both traditional and tradition-breaking components. The former ones derived from the fact that Drummond was par excellence a genuine and committed representative of the British civil service based on the Northcote-Trevelyan reforms of the 1860s. His experiences as a chief administrative officer in the British Foreign Office convinced him that the values of the British civil service such as anonymity, nonpartisanship, impartiality, independence, loyalty to any government in power, promotion and career based on merits, might be of good use in establishing the legal and organisational framework of the international secretariat. The unusual component equal to historical breakthrough was his recognition that the essence of the international civil service should be its international composition and its international responsibility. Briefly it meant that the secretariat should employ civil servants possibly from all member countries and they should be loyal to the organisation rather than to the country of origin. He thought that an international organisation would be effective and would have a real *raison d'être* if by impartiality of its activities and independence of its officials from their home countries it inspired the confidence of its member countries. In an article published in 1924 he summarised his ideas:

"International conferences in the past had often suffered from the lack of any organised international preparatory work and we felt that it was exactly in this domain that a new system was required if the League were to fulfil the purposes for which it had been founded. It seemed to us that it would be of great value if an expert and impartial organization existed which, before discussion by the national representatives took place, could draw up objective statements of the problems to be discussed, and indicate those points on which it seemed that

⁷ supra note 2, p. 34.

the Governments were generally in accord. If this could be done, we held that discussion by the Government representatives would be automatically limited to matters where divergence of view really existed – and all who have had experience of international affairs know how much this increases the chances of reaching a definite and successful result. Further, we maintained that the execution of decisions should be entrusted to people who, being the servants of all the State Members of the League, could be relied upon to carry them out with complete freedom from national bias. ... Under this scheme the Secretary-General would not only be the co-ordinating centre of the activities of the Secretariat, but its members would be responsible to him alone, and not to the Government of the countries of which they were nationals, and would be remunerated from the general funds of the League ”⁸.

Since the Covenant of the League of Nations placed only formal limitations on the scope of the Secretary-General concerning his staff decisions (“Article 6. 3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council”), he was quite free to shape the composition and functioning of the secretariat according to his novel vision. The international character and responsibility of the officials was stressed in Article I. of the Staff Regulations of the League: “The officials of the Secretariat of the League of Nations are exclusive international officials and their duties are not national but international”.

The concept of the international civil service was in an exceptionally favourable position since it could be tested immediately after its formulation not only in the League of Nations, but also in the International Labour Office. Its Director Albert Thomas though being a former French politician and hence representing a different leading style came to similar conclusions concerning the management inside the Office. Drummond was a typical international chief administrator, who preferred the means of the quiet diplomacy. The dynamic, controversial and initiative personality of Thomas came to be also a lucrative pre-requisition of the introduction of the pattern of international civil service in the International Labour Office. In the case of the League the result was the formation of a secretariat focusing on the carrying out of its duties acting with full discretion and behind the scenes. The Office of A. Thomas was more initiative, active and its role was tangible not only in the execution but also in preparation of alternatives in decision-making process.

Drummond’s principles were supported and further specified in the reports of three League Committees published between 1920 and 1930. The Balfour Report⁹ of 1920 stated that “members of the Secretariat once appointed are no longer the servants of the country of which they are citizens, but become for the time being the servants only of the League of Nations.” This requirement was stipulated by the Staff regulations in 1930: “They may not seek or receive instructions from any government or other authority external to the secretariat of the League of Nations”. And reaffirming the basic principles of political independence and moral integrity, known in British civil service, the Balfour Report also stresses the necessity that the officials should obtain a lasting or at least a stable position. Some of the leading findings of the Noblemaire Report¹⁰ of 1921 also motivated the international officials and enhanced the

⁸ Article in *The World Today*, March 1924, as quoted by Robert S. Jordan (ed.) – *International Administration: Its Evolution and Contemporary Applications*, Oxford University Press, 1971, p. 48.

⁹ *Official Journal*, June 1920, pp.136-139.

¹⁰ *Actes de la Deuxième Assemblée Séances Plénières*, 1921, pp. 595-626.

attractiveness of their career. It stated that their recruitment and career should be based on merit and not on national or political protection. It urged that staff should be selected reflecting a wide geographical distribution. Permanent employment contracts are proposed to increase the security of job and to strengthen the capability of officials to resist pressures exerted by their home governments. And last but not least, the recommendation that for the sake of attracting highly qualified officials it is indispensable to establish their salary level as exceeding or at least equal to the best paid national civil services in the world (by that time the British one) reflects the lesson from the experience of the Institute for Agriculture in Rome and is known as the Noblemaire principle. In the same report the secretariat was defined as a clearinghouse for information.

Meanwhile the first case of litigation by a staff member against the organisation that took place in 1925 was also a unique step in historical development. For the purpose an ad hoc board of jurists was consulted, and in 1927 the Assembly established the first (temporary) Administrative Tribunal which was the predecessor of the permanent bodies administering justice in claims in the domain of employment relationships in international administration.

The cause for the establishment of the so-called Committee of Thirteen in 1930 was in fact the first impending danger threatening the independence of the Secretariat. After Germany and Italy joined the League, the officials from these countries considered that their national interests should be promoted and protected even if they interfere with the common interests of the international organization. The Report of the Committee of 13 formulated some recommendations for coping with these problems and although they were not adopted by the League their long discussion in the Assembly (1930-1932) proved the firm settlement of the spirit of international civil service in the management of international affairs.

When assessing the evolution of the international civil service until the beginning of World War II the objective difficulties should be also taken into consideration. Such were the budget and staff number limitations. In the first years the number of officials in the Secretariat was less than two hundred and their highest number ever reached was about seven hundred. Its international character was also left some room for correction since the officials were predominantly (Western) Europeans.

Anyhow, after E. Drummond was succeeded in 1933 by Joseph Avenol, a French financial expert, in spite of his less definite leading style and the deteriorating political situation it was only during the years of World War II when the survival of international civil service was really at stake. (In the period of 1940-1946 it was Sean Lester who had the responsibility to keep the truncated secretariat in life.) But even in this period international conferences kept in this topic (e.g. in Washington in 1943 and in New York also in 1943) reaffirmed that the empiric evidence collected for 20 years is enough to back up the necessity of the new institution for practicable management of international affairs.

The beneficiaries of the concept and its effective translation from blueprint into reality were the members of the Preparatory Commission of the United Nations whose recommendation to take over and apply the principles formulated by E. Drummond was finally reflected in the Charter of the Organisation of the United Nations (see Articles 100-101).

The definition of international civil service and its principles

One of the dominant features of the international civil service still valid nowadays is its polycentrism¹¹. There is still no general international regulation on the legal statute of the international civil servants accepted by most international organisations since they are very keen on preserving their autonomy in this field but also the essential differences between them hamper the common formulation. Attempts for codification were also sporadic. Briefly this lack of regulation logically resulted into a lack of generally acknowledged definition of the international civil service. The only definition quoted by different studies which has now become a classic, has been formulated in 1931 by S. Basdevant: "An international civil servant is a person to whom the representatives of several States, or an organ acting on their behalf, have entrusted, in virtue of an inter-State agreement and under their supervision, the continuous and exclusive exercise of functions in the common interests of the States in question subject to special legal rules"¹². (As the intended purpose of this study is a historical overview I will ignore comments on this definition emphasizing that an efficient method for definition seems to be the comparison with the national civil services¹³.)

However a survey of the treaties establishing international organizations and their staff regulations establishes a number of identities between them which in fact are the formulations of the principles of international civil service common for most of international organisations. (The staff regulations and other rules/instructions adopted by the plenary organ or by the president/director/secretary-general of the international organization form the internal law of international organisations and as such is usually considered to be a part of public international law.)

For the first time these principles were stipulated in the Charter of United Nations as mentioned above. Later on they were taken over by the international organisations established in the second half of the twentieth century that suggests a slight trend of unification characterizing the evolution after the World War II. They draw the outlines of the international civil service and may be summarized as follows:

According to the principle of *loyalty* the officials of an international organization when performing their professional responsibilities should consider only the interests of the IGO. They should not receive instructions from their own governments and should refrain from attempts to protect the interests of their home countries. In extreme cases when an official is not able to cope with the conflict caused by his/her national allegiance he should resign.

The principle of *impartiality* involves the political neutrality of the official which he/she has to manifest in connection with political events in his home country, in the host country and mainly in the employing international organization. Otherwise both the international character of his position and the declared impartiality of the employing organisation might be disputed. In this case the personality of the leader of the organisation is of essential importance. As

¹¹ supra note 1, p. 56.

¹² Basdevant, Suzanne (Bastid): Les fonctionnaires internationaux, Recueil Sirey, Paris, 1931, p. 53. as quoted by M. B. Akehurst: The Law Governing Employment in International Organizations, Cambridge University Press, 1967, p. 358.

¹³ For a very detailed comparison see supra note 1, p. 68.

mentioned above some leaders preferred the merely executive type of official's performance, and others appreciated the readiness for initiatives. For example Dag Hammarskjöld Secretary-General of the UN for the period of 1953-1961 made distinction between neutrality toward fact and neutrality toward action. David Morse who was for a long time Director-General of the ILO admitted that his organization in some cases was "objective yet not neutral".

The mentioned principles formulate requirements vis-à-vis the officials. The next one, the principle of *independence* should be considered in organizational dimensions since it prescribes provisions to the advantage of the official helping him/her to satisfy the above requirements. The immunities and privileges of the official are ruled in the Convention on Privileges and Immunities of the United Nations¹⁴ and consequently in the Convention on Privileges and Immunities of the Specialized Agencies but only on functional grounds. The immunities are conferred to him/her on functional grounds (Article 105 of the Charter of the UN) vis-à-vis the jurisdiction of the host country, the home country and any third country even it is not a member state of the organization. Provisions have been made also for exemption from personal income tax in the home country. Other advantages are the prospects of international career service through permanent appointments though budget restrictions sometimes cross them. After World War II the comparative base for satisfying the Noblemaire principle was the remuneration of the American public servants and though remaining for the same cause just a good expectation, for officials of many countries an employment in an IGO is a very attractive prospect.

The final principle deals with *recruitment practice*. The officials should be selected on the base of their efficiency, competence and integrity taking into consideration the proportional geographical representation. The establishment of national quotas and the geographical distribution of posts is a concession to political necessity. Furthermore 55 % of the national quota is a derivative of the payments and contributions to the IGO budget by the country.

These principles prove the truth of the witty statement that in international organization the member states are "organized", but the staff is the "international" component¹⁵.

Some additional data characterizing the development of international civil service until 1960

Three advisory opinions of the International Court of Justice are of direct concern about international civil service. The most important of them is that on "Reparation for Injuries Suffered in the Service of the United Nations"¹⁶. Count Bernadotte a staff member of the UN was assassinated, when performing his functions in Palestine. The United Nations claimed for direct reparations of the damage caused to the institution and indirect damages for the family of Bernadotte. The opinion of the Court by which the diplomatic protection was conferred to an international organization in the terms of principle of protection on functional grounds permitted the organization to stand for the claims of its officials. The Court would not be in the

¹⁴ Document A/64, 1 July 1946

¹⁵ *supra* note 2, p. 174.

¹⁶ Advisory Opinion of 11 April 1949, International Court of Justice Reports, 1949, p. 179

position to bring such opinion if the phenomenon of international civil service were not generally accepted.

Based on judgments of the UN Administrative Tribunal the advisory opinion of 13 July 1954 dealt with contracts arranging employment relationships of staff and pointed out the employer's responsibility towards staff.

The interpretation of employment contracts was the topic of the advisory opinion of 23 October 1956 but this time it concerned the practice of the Administrative Tribunal of the International Labour Organization.

Political pressure, confrontation between powers and other conflicts seriously influenced and in some cases hampered the normal functioning of international civil service.

In 1952-53 the Secretariat of the UN faced a serious crisis when the principle of loyalty was put at stake by the McCarthyism doctrine. Eighteen United States citizens employed by the Secretariat had to be dismissed under the official pressure of the host country. Although when formulating the staff regulations the proposed requirement of presenting a security clearance from home government before appointment was rejected, in the early fifties the American Government checked its nationals working in the international civil service and those suspected of communist affiliation were assessed as undesirable to make use of the national quota of the USA. Secretary-General of the UN Trygve Lie's decision was not conform with the declared independence of the Secretariat but he reasoned that the employment of citizens assessed as imperilling the American constitutional order would hurt the reputation of the Secretariat.

The concept of international civil service was never accepted totally by the Soviet Union and the obedient socialist countries. N. Khrushchew stated that there are neutral countries but no neutral people and in "this deeply divided world an impartial official is a fiction"¹⁷. The national quotas of these countries were filled by officials nominated by ministries of foreign affairs with only a temporary appointment. Naturally the loyalty of these officials was only national.

Successive financial restrictions, sometimes crises decreased the possibilities of the international organizations to attract and select highly qualified officials and also compromises had to be made at the disadvantage of job security.

Nevertheless the legal, institutional and political framework of international civil service was more and more elaborated and the best proof of its indispensability was not only the increasing number of officials working for international community but also the fact that the newly established international governmental organizations applied its model. [The few exceptions (such as the case of NATO) were reasoned by the very specific profile and functions of these organizations.]

A good example for this is the emergence of the European civil service. It started with the establishment of the Council of Europe and its Secretariat (1949), the European Coal and Steel

¹⁷ Interview with N.S. Khrushchew, New York Herald Tribune, 17 April 1961

Community and its High Authority (1952), the European Economic Community and its Commission (1958) and Euratom and its Commission (1958). The High Authority of ECSC adopted the Statute for Service of its officials in 1956. Since these organizations were dominantly non-political their administration had to cope with less conflicts of less controversial nature. The geographical representation was not defined by quotas. The three personnels merged on 1 July 1967 with a total number of about five thousand and since that time it is common practice to define the officials of the European Communities as European civil servants.

This study had the moderate purpose to stress the antecedents and the early evolutionary stages of the institution of international civil service and also to describe its characteristics as an institution *sui generis*. This is how it came into being and how it functioned in the first forty years. Its development in the last forty years is just as much exciting but less studied and hence it is worthy of a separate scrutiny.

Dobromir Mihajlov: La naissance et l'évolution initiale de la fonction publique internationale

L'étude présente la création et les premières étapes de l'évolution de la fonction publique internationale.

La nécessité de la fonction publique internationale – comme institution *sui generis* – a été provoquée par la croissance de l'institution de l'organisation internationale. Les premières expériences relatives se rattachent au fonctionnement des sociétés internationales, créées au cours du XIX^e siècle. Les prédecesseurs de la fonction publique moderne étaient les bureaux, et les secrétariats qui ont été adoptés par eux, comme nouveaux modèles d'organisation.

C'était Sir Eric Drummond, un haut-fonctionnaire expérimenté de la fonction publique britannique qui en a formulé les principes de base actuels. En 1919 il a été mandaté de former la conception fonctionnelle et organisationnelle du secrétariat permanent de la Société des Nations, adéquatement aux exigences nouvelles. De nos jours, sa constatation est intégrée dans les statuts des organisations internationales. Selon sa vision, l'efficacité du fonctionnement de l'organisation est inséparable de l'impartialité et de l'indépendance des fonctionnaires, choisis entre les citoyens des états membres et de la loyauté de ces fonctionnaires vis-à-vis de l'organisation. Après avoir expérimentée en pratique au sein des organisations internationales, la conception de la fonction publique se montrait efficace, même sous les différents styles de direction.

L'étude aborde aussi le développement de la fonction publique internationale après la deuxième guerre mondiale, dans lequel on peut tracer les effets des événements de la politique mondiale à partir de la fondation de l'ONU, de même que les contre-effets de la pression politique.

En conclusion, c'était en premier lieu le traitement souple des problèmes dérivant de la pratique politique – y compris les échecs – qui a prouvé jusqu'à présent la vitalité de la fonction publique internationale, indispensable dans la vie internationale actuelle.