



**Supplementary paper to JIU/REP/2011/10:**  
**Staff-management relations within the United Nations**

**Part A (in English)** issued in December 2012

What would mean a right to collective bargaining in the United Nations?

**Part B (in English)** issued in October 2012

**Complementary documents:**

- Summary of the Joint Inspection Unit's Report
- Recommendations of the JIU report
- Documents pertinent to recommendation 5 on collective bargaining

**Part B (en français)** issued in October 2012

**Documentation complémentaire :**

- Résumé du rapport du CCI
- Recommandations du Rapport
- Autour de la Recommandation 5 sur la négociation collective

**Part C** issued in May 2012

**Historical and recent background of staff-management relations within the United Nations**

**Prepared by Inspector Biraud, under his sole responsibility**

**Not an official document, to read the report JIU/REP/2011/10, [click here](#)**

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## Part A

The following note has been promised during the informal session of the Fifth Committee of the United Nations General Assembly held by video conference with the Joint Inspection Unit in Geneva on 5 December 2012. It develops the reasons for, and the content of the recommendation 5 of Inspector Biraud's to the General Assembly on the recognition of the collective bargaining (CB) in the United Nations in a format that the restrictions to the length of the already comprehensive report A/67/136 could not allow.

### **Why to propose to move to the Collective Bargaining?**

**In most of its reports and notes, the Joint Inspection Unit is looking for best practices in the area concerned. For social dialog, the International Labour Organization is recognized as the agency of excellence and has a normative role.** It defines in particular the **International Labour Standards (ILS)**, codes of practice, technical guidelines, resolutions, conclusions and declarations which form the core of ILO standards-related activities. Naturally stemming from its mandate; those normative activities are addressed to its constituency, As indicated above on the CB which is tripartite (Governments, Workers and Employers). Some ILO legal instruments issued from decisions of the International Labour Conference, as **the ILO Conventions, are proposed to the national governments for ratification and create binding legal obligations to give effect to their provisions in national policy, legislation and practice.**

**Today, by construction, the ILO Conventions and other ILS do not apply to any international organization.** But some major notions they contain, as **the concept of collective bargaining may be formally recognized in any of them either contractually or through a decision of its legislative/governing body.**

The former mechanism was used by the representatives of the Staff and the Executive Head of the ILO itself when signing in 2000 a "Recognition and Procedural Agreement" (RPA). As a result the notion of collective bargaining is provided by the ILO Staff Regulations in matter of Staff relations (Article 10.1)<sup>1</sup>. But, contrary to most other organizations of the United Nations system, ILO does not distinguish between Staff Regulations decided upon by the Legislative bodies and **Staff Rules which provide and detail the application of the Regulations under the sole authority of the Executive Head of the Secretariat as Chief Administrative Officer**, in consultation or negotiation with the duly elected representatives of staff. Hence the difficulties of interpretation in this respect of the somewhat ambiguous ILO Staff regulations and the content of the "collective agreements".

As far as the United Nations is concerned, could the second mechanism be used? If the constant and legally correct position of the Office for Legal Affairs (OLA) is that "[t]he right to organize trade unions is not synonymous with the right to insist that the employer bargain collectively.

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<sup>1</sup> This article 10.1 states in particular :

(c) Conditions of employment, including the general living conditions, of officials may be jointly determined by the Director-General or his or her designated representative(s) and the Staff Union through social dialogue, information, consultation and collective bargaining. The Director-General shall have authority to bargain collectively with the Staff Union, with a view to the conclusion of collective agreements. Collective agreements so concluded shall be attached to these Regulations.

[...]. In the United Nations, the right of CB and the method by which it is to be exercised are defined in the Staff Regulations and Rules [8.1]" 2. The obvious question then arises: **Why not to propose a new Staff Regulation which would assist the Organization social dialog by giving it the benefit of the ILO best practices? And particularly of the concept of CB conceived as a right?** It has been elaborated through decades of research and practical experience of the three groups constituting ILO, for a great variety of national contexts, economical and political systems. In the view of the Inspector, the **transposition of such a principle promulgated to inspire the policy of all ILO Members to the context of an international organization, mutatis mutandis i.e. while changing (only) what has to be changed to make sense**, is not only feasible but rather easy. It is exactly similar to the "transposing" a given melody from an instrument and a height to different musical instruments at different heights or paces or both: the melody will yet be recognized and enjoyed when "transposed". The idea is not new and in the past, when informally put forward in SMR, **it was regularly denied on the basis of the current state of law and the UNAT jurisprudence**<sup>3</sup>.

However, in 1944, the **Declaration of Philadelphia of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members affirmed (in its section V) that the principles set forth in [it] are "fully applicable to all peoples everywhere"**. Why the United Nations with a membership very similar to the ILO would not accept to be "inspired" by the same principles when dealing together with SMR in a Secretariat they collectively own and mandate even it cannot be construed as a "people", but only as a population of several dozens of thousands of staff members? **In 1947, in its resolution "Trade Union rights (freedom of associations)" the General Assembly declared that it endorsed the principles proclaimed by the International Labour Conference in favour of trade union rights as well as the principles [...] which are mentioned in the Constitution of the International Labour Organizations and the Declaration of Philadelphia and in particular subsection a of section II and subsections (a) to (j) inclusive of section III which are given in the annex to this resolution" (128 (II))..The paragraph III (e) is dedicated to "the effective recognition of the right to collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in the preparation and application of social and economic measures."**

Having this endorsement in mind and using in this regard his right to propose reforms as provided in Art. 5.5 of the JIU Statute, the Inspector **proposed to the General Assembly to import the social dialog "best practice" of CB where it could and should be enforceable: in a new Staff Regulation, an action only in the purview of the United Nations General Assembly. This is the meaning of the decision of principle recommended ns the report A/67/136 (after paragraph 130).**

### **The proposed procedure**

The form of such recommendation (to request the Secretary-General to present to it for its approval, an appropriate staff regulation confirming the recognition of the right of the United

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<sup>2</sup> UN Juridical Yearbook 1973, Chapter VI, *Legal aspects of the establishment of a trade union at the Geneva office of the United Nations*, Memorandum to the Under-Secretary-General for Administration and Management

<sup>3</sup> UNAT, Judgment No. 236, *Belchamber* (1978)

Nations staff to collective bargaining) gives to the Secretary General, then to the General Assembly the flexibility and the time necessary for the former to take into account for his proposal the various aspects of the CB related International Labour Standards to be transposed to the United Nations, and to the latter the possibility of a fruitful discussion which could take place at the next consideration of a General Assembly agenda item on H R Management. In addition, if, as recommended by the JIU, the decision of principle is made by the General Assembly at its 67<sup>th</sup> session, the Staff Management Committee could prepare through mutual information and consultation at its next session a series of rules which could be finalized and promulgated only after the discussion and adoption of the said additional staff regulation on the CB by the General Assembly, in the course of the 68<sup>th</sup> or 69<sup>th</sup> session of the General Assembly,

### **The content of the right to collective bargaining**

Which difference would make a formal recognition of the right to collective bargaining given to the United Nations staff? To answer this question, one should first look at the requirements proposed by the main texts on the Collective Bargaining (CB) to the acceptance of the ILO membership and see how the United Nations is prepared to comply to them through some transposition from a national to an organization context.

When looking for a **definition** of the collective bargaining, one can find that (as mentioned in the JIU report 2011/10, para 127), Article 2 of the Collective bargaining Convention No. 154 defines CB as “ **all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for : (a) determining working conditions and terms of employment ; and/or (b) regulating relations between employers and workers ; and/or (c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations.**”

The same Convention 154 provides in its PP 3 the list of the previous ILO instruments on which it is based: the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Collective Agreements Recommendation, 1951, the Voluntary Conciliation and Arbitration Recommendation, 1951, the Labour Relations (Public Service) Convention and Recommendation, 1978, and the Labour Administration Convention and Recommendation, 1978,4

#### **1) As indicated above CB exercises are negotiations**

The JIU report 2011/10 (or A/67/136) in its para 40 and 41 and 64 to 68 has conclusively shown that the discussion processes in the SMCC had de facto the character of negotiation and not only consultation, between employers and workers i.e. in the United Nations between representatives of the management, representing the Organization at its highest level (Executive Head) and negotiating on his behalf and staff representatives, negotiating on behalf of the staff at large. This negotiation feature, already present in the texts establishing the Joint Negotiating Committees (JNCs)<sup>5</sup> has acquired a legal status with the Terms of Reference of the Secretariat-wide Staff-Management Committee (SMC) promulgated as ST/SGB/2011/6 on 8

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4 All those texts can be easily found and downloaded from the ILO public data base called Normlex

5 See for example IC/Geneva/2008/18 for the UNOG JNC

September 2011. In ILO instruments, the scope of consultations is normally wider than that of collective bargaining<sup>6</sup>.

**2) In the definition given above one finds fundamental aspects of CB: negotiation takes place with a view to “the regulation of terms and conditions of employment...<sup>7</sup>**

In the United Nations, while **essential aspects of the terms and conditions of employment (salaries, allowances) are not subject to collective bargaining as they are determined by the General Assembly** on the basis of the recommendations of the International Civil Service Commission (ICSC) or by the United Nations Joint Staff Pension Fund, the work of the SMC (like the former SMCC) addresses such collective interests concerning all United Nations staff or a category thereof and already has the character of “bargaining”;

**3) The Right to Organize and Collective Bargaining Convention, 1949**

It requests (Art 1) that Workers shall enjoy “**adequate protection against acts of anti-union discrimination in respect of their employment**” [...]”more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

In the United Nations, the **Regulations 8.1 establishes the principle of “the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies” and Regulation 8.2 creates Staff Representative Bodies (SRBs). They logically imply a protection for those SRBs, their members and their elected leaders and representatives** who ensure the major official functions created by those texts. Such protection has been clearly confirmed in texts such as the ST/Administrative Instruction 293 and judgments of the UN Administrative Tribunal (judgments 15 (1952) and 924 (1999), similar to ILO Administrative Tribunal judgments 349 (1978) and 918 (1988)<sup>8</sup>.

In its article 2, the said convention establishes the principle of “**an adequate protection of Workers' and employers' organizations against any acts of interference** by each other or each other's agents or members in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organizations under the

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<sup>6</sup> “**Consultations** cover matters of common interest to workers and employers and allow their joint examination with a view to identifying, in so far as possible, appropriate solutions which are commonly agreed to and enabling the public authorities to receive opinions, advice and assistance from organizations of employers and workers on the preparation and application of legislation on matters relating to their interests, such as the composition of national bodies and the preparation and implementation of economic and social development plans. In contrast, collective bargaining is normally confined to determining terms and conditions of employment and relations between the parties.” (Bernard Gernigon, Alberto Odero and Horacio Guido, in “Collective bargaining: ILO standards and the principles of supervisory bodies, ILO, Geneva 2000).

<sup>7</sup> “ILO Convention No. 98 on Right to Organise and Collective Bargaining Convention – 1949

<sup>8</sup> See JIU Report 2011/10 on “the staff management relations within the United Nations paragraphs 94 and 95

domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article."

**In the United Nations this principle of non-interference, obviously conceived for the defense of the independence of the staff representative bodies (SRBs) is well known and internalized by both staff and management, but not legally established and promulgated as it should be to have CB formally recognized and organized.**

**The "machinery to be established where necessary for the purpose of ensuring respect for the right to organize as defined in the preceding Articles" exists with the United Nations Tribunal of Disputes and the United Nations Appeals Tribunal.** It will be available and operational as soon as such competence would be recognized to them. It should naturally be adapted to the context of the United Nations rather than to "national conditions" as mentioned in article 3 as another example of "mutatis mutandis" Those **adjustments are to be worked on with the competent authorities for the Administration of Justice.**

**As to "the machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements",** it also exist already and does not need transformations to be provide effective tools:

**For Secretariat-wide issues the Staff Management Committee (SMC) and for more specific issues the Joint Negotiating Committees** (praised in the SG report A/65/605) established for the main duty stations and for the field as well as comparable committees for SMR in other separately administered entities would be recognized in the United Nations as appropriate.

As in Article 5, "the extent to which the guarantees provided for" in the Convention 98 would apply to the armed forces and the police" would be determined by specific provisions.

Because article 6 of the Convention 98 was stating: "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way" some people have inferred that it was not applicable to the public service, hence not transposable to an international organization. Here should be taken into account its exhaustive interpretation by the ILO's Committee on Freedom of Association (CFA), an expert body of high-level jurists reviewing the complaints of staff members in the field of Freedom of Association.<sup>9</sup> Where it is about depriving someone of a right, the people concerned should be in a limited number. In this spirit, the CFA<sup>10</sup> stated: "The mere fact that public servants are white-collar employees is not in itself conclusive of their qualification as employees engaged in the administration of the State; if this were the case,

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<sup>9</sup>[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/publication/wcms\\_090632.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_090632.pdf)  
<sup>f</sup> See in "Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO the comments made under The right to bargain collectively – General principles and Workers covered by collective bargaining, in particular under , for instances paras 886, 892, 893.

<sup>10</sup> 329th Report, Case Nos 2177/2183, para. 644.

Convention No. 98 would be deprived of much of its scope. Therefore, all public service workers, with the sole possible exception of the armed forces and the police and public servants directly engaged in the administration of the State, should enjoy collective bargaining rights. Finally, it must be reiterated that Article 1(2) and (3) of the Convention does not preclude member States from granting all public workers collective bargaining rights and all other guarantees laid down in the Convention.” In other words when looking at who is directly engaged in the administration of the State (or the Organization), two kinds of civil servants should be distinguished: those who personify the State and are identified with it and those who provide services on its behalf.

Art 4 of the Convention 98 advocates encouraging and promoting “the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations “by means of collective agreements”

It means that any negotiation is aiming at a conclusion in form of a written **collective agreement (CA)**

CAs are essential to the notion of negotiation, as confirmed by the majority of labour legislations around the world. They have been the subject of an ILO (not binding) “Collective Agreements Recommendation, 1951” and “ designed to be implemented by the parties concerned or by the public authorities as may be appropriate under national conditions”<sup>11</sup> (to be transposed as the conditions of the Organization). (1) For the purpose of this Recommendation, the term **collective agreements** is nearly identical to the definition for collective bargaining as mentioned in the JIU report (para 127) and reminded above. The only difference concerns the case of absence of such organisations of workers, which can be replaced by “the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations”. **Such agreements already exist in the United Nations with the only difference that the representatives of the workers while duly elected and authorized by them are not authorized in accordance with “national laws and regulations” of any country but with Staff Regulations and rules of the Organization establishing the principle of staff representation** (Regulations 8.1 and 8.2 for the United Nations) and the corresponding machinery (SMC and JNCs).

**In the United Nations, signatories could be, as now, the Executive Head (Secretary General) for the management which negotiated on his/her behalf and for the staff the democratically elected and authorized representative of UN SRBs.**

**4) The effects of Collective Agreements** are indicated in the Collective Agreements Recommendation, 1951 (No. 91) issued two years later the first Convention on CB.

**“3.(1) Collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded.** Employers and workers bound by a collective agreement should not be able to include in contracts of employment stipulations contrary to those contained in the collective agreement.”

If the United Nations is qualified as the employer and is represented by a mandated management when discussing and formalizing agreements, **it can be concluded that all features characterizing collective bargaining do presently exist in most formal SMR negotiating**

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<sup>11</sup> PP 3 of the “Collective Agreements Recommendation, 1951”.

**processes in the organization, in particular the SMC and JNCs.** When agreements reached do fall under the scope of the full and exclusive authority of the Secretary- General, to which delegated authority is given by the United General Assembly in his/her quality of Chief administrative officer in accordance with the United Nations Charter (art. 97) they are not only considered binding, but their implementation is also already subject to follow-up and joint follow-up procedures. However the research made for the JIU report has demonstrated that those procedures have in many cases failed to be effective.

3.(2) Stipulations in such contracts of employment which are contrary to a collective agreement should be regarded as null and void and automatically replaced by the corresponding stipulations of the collective agreement.

3.(3) Stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.

3.(4) If effective observance of the provisions of collective agreements is secured by the parties thereto, the provisions of the preceding subparagraphs should not be regarded as calling for legislative measures.

4. The stipulations of a collective agreement should apply to all workers of the classes concerned employed in the undertakings covered by the agreement unless the agreement specifically provides to the contrary

5. While, in the Inspector opinion, **the extension of CAs** as envisaged by the recommendation 91 **cannot apply in the context of an international organization**, their interpretation can and should be inspired by the following recommendation provision: **“Disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate** under national conditions.” Letting aside the last words, the provision requires that such appropriate procedure for settlement be agreed between management and staff and established either through a staff regulation or a staff rule.

Finally, also letting aside the allusion to each country the United Nations should apply the rest of the provision on the **“the supervision of the application of collective agreements [which] should be ensured by the employers' and workers' organisations parties to such agreements. This will be facilitated by the follow up procedures established and implemented during the last years for SMCC and SMC.**

As in Article 5, “the extent to which the guarantees provided for” in the Convention 98 would apply to the armed forces and the police” would be determined in the United Nations by specific provisions.

Because article 6 of the Convention 98 states: “This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way” some people have inferred that it was not applicable to the public service, hence not transposable to an international organization.

“The difficulties of interpretation which have arisen in respect of the application of relevant provisions of this Convention 98 to public servants, and the observations of the supervisory bodies of the ILO on a number of occasions that some governments have applied these

provisions in a manner which excludes large groups of public employees from coverage by that Convention”<sup>12</sup> have led the ILO to propose the following complementary Convention 151, specifically adapted to the public service..

#### **4) The Labour Relations (Public Service) Convention, 1978 (No. 151)**

After having noted in its Preamble the considerable expansion of public-service activities and the need for sound labor relations between public authorities and public employees' organizations, this Convention provides in its art. 1.1 the following scope for compliance: it **“applies to all persons employed by public authorities, to the extent that more favorable provisions in other international labor Conventions are not applicable to them.”** In addition to the specific provisions similar to Convention 98 about the police and armed forces (art. 1.3), it addresses also specifically (Article 1.2) the **“high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature”** .

**A transposition of such special mention to the United Nations would possibly concern the members of the Secretary-General's and other executive heads' executive offices staff, the USG and ASG. The cases for some D2 level staff and those at posts with highly confidential duties should be addressed in this respect.**

According to article 2 all those covered by the Convention would be called in it: **public employees**, and (art. 3) the organizations defending their interests **“public employees organizations”**. As necessary the notion of **staff and staff representative bodies or staff organizations** would help transposing those definitions to the United Nations context.

Art. 4 is identical to art. 1 of the convention 98 (concerning the protection against acts of anti-union discrimination in respect of the employment).

Art.5.1 states that **“Public employees' organizations shall enjoy complete independence from public authorities.”** It protects the employees organizations from any interference or undue competition using the same language as art. 2 of the Convention 98.

Art. 6

1.Introduces the principle of facilities to be afforded to public employees organizations: **“Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.”**

2. States that **“The granting of such facilities shall not impair the efficient operation of the administration or service concerned”** .

3. Requests that **“The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.”**

**In the United Nations, such facilities are already granted within the Secretariat** and some other entities through ST/AI/293 and A/C.5/50/64. See the JIU Report 2011/10 ( A/67/136) para 110 to 114) and in particular its recommendation 3.

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<sup>12</sup> Excerpts of the PP 6 of Convention 151.

Art 7 envisages the appropriate measures, “where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters. “

The transposition of art.7 to the United Nations should be rather easy , as for issues under the authority of the Secretary-General, the only ones envisaged here for application of the CB, such machinery does already exist at the Secretariat level in the United Nations (SMC) and has been recently revamped with new Terms of Reference with ST/SGB/2011/6. See also the chapter VIII of the above mentioned JIU report, aimed at “encouraging and promoting its full development”. The Secretariat main duties stations should all be given Joint Negotiating Committees similar to those established in New York, Geneva or Addis Ababa in the recent years, exclusively for local issues. **There also should be such a joint Staff-Management negotiating body in each separately managed U.N. entity** for issues affecting directly and exclusively their staff or a category thereof for which their executive head is accountable.

#### **5) The Collective Bargaining Convention N° 154 (1981)**

This Convention which (art.2) “applies to all branches of economic activity” with the same exceptions for police and army forces “extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations (a not transposable notion at the United Nations) and a workers' organisation or workers' organisations.

It explains also in its Part 1 dedicated to scope and definitions that “Workers' representatives” (to be replaced by staff representatives in the context of an international organization) are the “ persons who are recognised as such under national law or practice, (transpose and read “under Staff Regulations and rules of the Organization”) whether they are--

- (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or
- (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country (=Organization) concerned.”

Such definition is would be easily transposed and applied to UN SRBs and elected Staff Representatives.

## 6) Settlement of disputes

While the first Convention (N°98) on CB was mute on the settlement of disputes, this aspect of CB, met above about Recommendation 91, was the theme of art 8 in C 151 and a part of art. 5 in C 154. The former states: “The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.” The recent explanations given by the representative of OLA in an informal meeting of the 5<sup>th</sup> Committee (20-11-2012) to the question “What would happen if the SMC bargaining could not easily reach an agreement ?” exactly described the steps preconized by ILO on solving conflicts in terms of CB..

The title and the content of the most recent literature (2012) from the ILO on CB is called **Manual on the collective bargaining and dispute resolution**, with the first half of which dedicated to dispute prevention and the second one to the dispute resolution. This excellent manual, drawing concrete examples from all around the World should be of particular interest for those who are scared by the words “Collective Bargaining” with the feeling that confirming such a model for social dialog would develop conflicts. In the Inspector’s opinion and experience, there are many conflicts in the current framework: in spite of the creation and development of staff counsellors, ombudsmen , ethics offices and the reform of the administration of justice the number of litigations has not collapsed and the number of arbitrations for “non-staff” is at the risk of inflation. Savings are to be made on those various mechanisms as soon as possible, not only through the demonstration of their efficiency, but through establishing more firmly **a system of social dialog which would seriously recognize the staff at large, its conditions of service and its representatives**. Recognition is a basic need of any human being. The time of HR reforms impacting the staff but proposed by an email to be agreed in the following days should be over.

## 7) CB and Quality of life at work

Such an official recognition should become a legally protected value, with concrete sanctions putting an end to the fear of retaliation for so many staff members for their career following the expression of some collective rights or the criticism of some lack of fairness in the business processes.

In the workplace, factors that affect well-being and consequent outcomes, individually, socially, and economically, include: “opportunity for personal control, opportunity for skill use, job demands, variety, environmental clarity, income level, physical security, supportive supervision, opportunity for interpersonal contact, and valued social position” (Warr, 2001).

These non-material factors appear to be vital to well-being, but they do not always prevail. Succinctly, although from a far more comprehensive literature review, the evidence suggests<sup>13</sup>: some positive and negative factors:

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13 D. Campbell, “Well-being and the non-material dimension of work,” Employment Working Paper 125, Geneva: ILO, 2012.

Positive aspects

Negative aspects

<ul style="list-style-type: none"><li>• great decision-making power reduces rates of absence and turnover;</li><li>• decision-making power increases level of performance and job satisfaction and reduces financial losses;</li><li>• high support at work decreases the intention to quit jobs;</li><li>• managerial behaviour can have a significant impact on health outcomes of subordinates.</li></ul>	<ul style="list-style-type: none"><li>• lack of decision-making latitude and recognition increases the risk of cardiovascular diseases;</li><li>• low workplace support increases the rate of absence;</li><li>• abusive supervision is associated with an increase in absenteeism;</li><li>• high presence of interpersonal conflicts within a work team is associated with a reduction in performance;</li></ul>
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There is substantial evidence that collective bargaining reduces information asymmetry and consequently improves the quality of decisions – improving, therefore perception of relative welfare.

## Part B

### COMPLEMENTARY DOCUMENTATION: STAFF-MANAGEMENT RELATIONS WITHIN THE UNITED NATIONS

#### Summary of the Joint Inspection Unit's Report (JIU/REP/2011/10 = A/67/136)

**Premise:** In any organization, efficiency depends on the quality of labour relations and staff morale.

**Methodology:** Based on the symmetrical gathering and in-depth analysis (via interviews and questionnaires) of the perceptions of staff representatives and human resources management representatives in each entity, complemented by the views of a relevant sample of Member States.

**Main conclusions and recommendations:** The open crisis in SMR in 2011, and the light shed by 30 years of experience of the Staff Management Coordination Committee (SMCC – succeeded by the SMC in 2011), together with the analysis of the most obvious reasons for such a crisis, have led the Inspector to conclude that respect for the rule of law, overseen by the internal justice tribunals, should be the cornerstone of any trustworthy SMR.

He recommends to both the management and staff representatives:

- 1) To base themselves on the rule of law, hence on the established texts, including the Charter of the United Nations, the Universal Declaration of Human Rights, Regulations 8.1 and 8.2 of the Staff Regulations and Rules, (see Annex II of the report) as well as relevant United Nations General Assembly (U.N.G.A.) resolutions.
- 2) To effectively respect and protect the official role of staff representatives, already acknowledged by the United Nations General Assembly.
- 3) To clarify the issue of who has authority over what in the area of human resources (particularly in view of the delegations of authority to associated United Nations entities).
- 4) To maintain a dialogue on an equal footing among representatives of Management and Staff in the areas defined by the above-mentioned Regulation 8.1, particularly via joint bodies such as Joint Negotiation Committees (JNCs) and the Staff Management Committee (SMC), at appropriate level, implying sufficient preparation time, background knowledge (possibly additional training) and openness on both sides.
- 5) To apply in such bodies the common sense rules applicable to any negotiations, including mutual respect, good faith and the abstention from any interference by one party in the internal affairs of the other.
- 6) To conduct mutual information and consultation processes before negotiations and to provide joint information for all interested parties, including Member States and the staff at large, following their completion.
- 7) To draw from previous decades of SMR experience (SMCC) and the crisis of 2011, the lessons learned for the SMC working process and on the basic need of mutual recognition, including by giving sufficient time for any new initiative to be known, understood, discussed and modified as appropriate through consultations within each party and between them in all consultative Joint bodies and through negotiations between them in the negotiation bodies, as well as to associate the Secretary-General to such a process in real time, to enable him to promulgate and defend before the Member States and the common system organs the agreements signed on his behalf.
- 8) To make public as soon as possible on the websites of the United Nations entities concerned the report adopted on the last day of each session of the SMC, including the texts as agreed to and signed.
- 9) To inform the Organization and its membership as employers of the staff, to ensure consistency in the application of decisions made by the UNGA on HR management and common system agenda items respectively.
- 10) To fully restore the role and meaning of organized SMR, structured and held on the basis of a mutual full recognition as formerly established and continuously encouraged by the UNGA, thus avoiding the risk of one party's unilateral decisions and consequent direct (and less consensual) actions by the other party..

The Inspector also recommends to the Member States (recommendation 5) to explicitly confirm the principle of the application as part of United Nations Staff Regulations, of the international labour standards promulgated for

the national public service by the International Labour Organization (Labour Relations (Public Service) Convention 151, 1978) and its broader “Declaration on fundamental principles and rights at work (1998)”. He also invites them to review the ILO “Manual on collective bargaining and dispute resolution in the Public Service” which can be downloaded from <http://www.ilo.org/global/industries-and-sectors/public-service>

## **Recommendations of the JIU report 2011/10 (or A/76/136) on Staff Management relations within the United Nations**

### **Recommendation 1**

The Secretary-General should provide all Member States with the reports of all forthcoming SMC sessions, including their annexes and should further facilitate the arrangement of an informal meeting on an annual basis for the SMC President to present to the Member States the report of each session, including reporting on the status of the implementation of agreements reached in previous SMCC sessions.

### **Recommendation 2**

The Secretary-General and the Executive Heads of the separately administered organs and programmes, acknowledging the official status of Staff Representative Bodies and elected staff representatives, should facilitate their access to all available and necessary means of communication with the staff-at-large, as agreed in SMCC XXXII (2011).

### **Recommendation 3**

Once an agreement has been reached in the SMC on fair and harmonized criteria for determining facilities and release for performing staff representation functions, the Secretary-General and the Executive Heads of the separately administered organs should issue revised administrative issuances in this regard; until then, ST/AI/293 and A/C.5/50/64, should be fully implemented and considered as minimal provisions.

### **Recommendation 4**

The Secretary-General and the Executive Heads of the separately administered organs and programmes should allot appropriate resources to their respective human resources units to develop (preferably jointly with staff representatives) and implement training activities on SMR-related issues and strongly encourage the participation of newly appointed managers and newly elected staff representatives in such training.

### **Recommendation 5**

The General Assembly should request the Secretary-General to present to it for its approval, an appropriate staff regulation confirming the recognition of the right of the United Nations staff to collective bargaining as outlined in the annex of its resolution 128 (II). The Secretary-General and the Executive Heads of the separately administered organs and programmes should apply to the staff of their respective entities the standards and principles emerging from the relevant ILO instruments, particularly the Declaration on Fundamental Principles and Rights at Work (1998).

### **Recommendation 6**

The Secretary-General and the Executive Heads of the separately administered organs and programmes should ensure to the Staff Representative Bodies of their respective entities an easy and frequent access to all appropriate levels of management, including at the highest level, through both formal and informal channels.

## **Documents pertinent to recommendation 5 (JIU/REP/2011/10) on collective bargaining**

### **Recommendation 5 (JIU/REP/2011/10)**

The General Assembly should request the Secretary-General to present to it for its approval, an appropriate staff regulation confirming the recognition of the right of the United Nations staff to collective bargaining as outlined in the annex to its resolution 128 (II). The Secretary-General and the Executive Heads of the separately administered organs and programmes should apply to the staff of their respective entities the standards and principles emerging from the relevant ILO instruments, particularly the Declaration on Fundamental Principles and Rights at Work (1998).

### **Universal Declaration of Human Rights**

#### **Article 20.**

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

#### **Article 23.**

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests

## United Nations General Assembly Resolution 128 (III)

### 128 (III). Trade union rights (Freedom of association)

*The General Assembly,*

*Taking note* of resolution 52 (IV)<sup>1</sup> adopted by the Economic and Social Council at its fourth session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on "Guarantees for the Exercise and Development of Trade Union Rights"<sup>2</sup> to the Commission on Human Rights, "in order that it may consider those aspects of the subject which might appropriately form part of the bill or declaration on human rights";

*Taking note* also of resolution 84(V)<sup>3</sup> adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organisation entitled "Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947",<sup>4</sup> to recognize the principles proclaimed by the International Labour

<sup>1</sup> See *Resolutions adopted by the Economic and Social Council* during its fourth session, page 43.

<sup>2</sup> See document A/374.

<sup>3</sup> See *Resolutions adopted by the Economic and Social Council* during its fifth session, page 54.

<sup>4</sup> See document A/374/Add.1.

### 128 (III). Droits syndicaux (liberté d'association)

*L'Assemblée générale,*

*Prenant acte* de la résolution 52 (IV)<sup>1</sup> du Conseil économique et social adoptée au cours de sa quatrième session, par laquelle il a été décidé de transmettre les points de vue de la Fédération syndicale mondiale et de l'*American Federation of Labor* sur les "garanties d'exercice et de développement du droit syndical"<sup>2</sup> à la Commission des droits de l'homme, "pour qu'elle étudie les aspects qui pourraient trouver place dans la Déclaration des droits de l'homme";

*Prenant acte* également de la résolution 84(V)<sup>3</sup> dudit Conseil, adoptée au cours de sa cinquième session, par laquelle il a été décidé de transmettre à l'Assemblée générale des Nations Unies le rapport de l'Organisation internationale du Travail intitulé "Décisions relatives à la liberté d'association adoptées à l'unanimité par la trentième session de la Conférence internationale du travail du 11 juillet 1947"<sup>4</sup>, de reconnaître les prin-

<sup>1</sup> Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa quatrième session, page 43.

<sup>2</sup> Voir le document A/374.

<sup>3</sup> Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa cinquième session, page 54.

<sup>4</sup> Voir le document A/374/Add.1.

Conference and to request the International Labour Organisation to continue its efforts in order that one or several international conventions may be adopted,

*Approves* these two resolutions;

*Considers* that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the improvement of the standard of living of workers and to their economic well-being;

*Declares* that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognized and which are mentioned in the Constitution of the International Labour Organisation<sup>1</sup> and in the Declaration of Philadelphia<sup>2</sup> and, in particular, sub-section (a) of section II, and sub-sections (a) to (j) inclusive of section III, which are given in the annex to this resolution;

*Decides* to transmit the report of the International Labour Organisation to the Commission on Human Rights with the same objects as those stated in resolution 52(IV) of the Economic and Social Council, and

*Recommends* to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

*Hundred and seventeenth plenary meeting,  
17 November 1947.*

#### Annex

#### PRINCIPLES SET FORTH IN SECTION II (a) AND SECTION III (a) TO (j) OF THE DECLARATION OF PHILADELPHIA

##### Section II

(a) All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

##### Section III

(a) Full employment and the raising of standards of living;

(b) The employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

(c) The provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

<sup>1</sup> See *First Report of the International Labour Organisation to the United Nations*, vol. II, page 1.

<sup>2</sup> *Ibid.*, page 19.

cipes énoncés par la Conférence internationale du travail et d'inviter l'Organisation internationale du Travail à poursuivre cet effort afin qu'il soit possible d'adopter une ou plusieurs conventions internationales,

*Approuve* les deux résolutions;

*Considère* que la liberté syndicale d'association, droit inaliénable, est, ainsi que d'autres garanties sociales, essentielle à l'amélioration de la vie des travailleurs et à leur bien-être économique;

*Déclare* qu'elle fait siens les principes énoncés par la Conférence internationale du travail en ce qui concerne les droits syndicaux ainsi que les autres principes dont l'importance pour le monde du travail a déjà été reconnue et qui sont mentionnés dans la constitution du Bureau international du Travail<sup>1</sup> et dans la Déclaration de Philadelphie<sup>2</sup> et en particulier à l'alinéa a) de la section II et aux alinéas a) à j) de la section III, qui sont donnés en annexe à la présente résolution;

*Décide* de transmettre le rapport de l'Organisation internationale du Travail à la Commission des droits de l'homme aux mêmes fins que celles exprimées par la résolution 52(IV) du Conseil économique et social et

*Recommande* à l'Organisation internationale du Travail sur sa base tripartite, de poursuivre d'urgence, en collaboration avec l'Organisation des Nations Unies et conformément à la résolution de la Conférence internationale du travail relative aux dispositions à prendre sur le plan international pour assurer les droits syndicaux et la liberté d'association, l'étude du contrôle de leur application pratique.

*Cent-dix-septième séance plénière,  
le 17 novembre 1947.*

#### Annexe

#### PRINCIPES ENONCES A LA SECTION II a) ET A LA SECTION III a) A j) DE LA DE- CLARATION DE PHILADELPHIE

##### Section II

a) Tous les êtres humains, quels que soient leur race, leur croyance ou leur sexe, ont le droit de poursuivre leur progrès matériel et leur développement spirituel dans la liberté et la dignité, dans la sécurité économique et avec des chances égales.

##### Section III

a) La plénitude de l'emploi et l'élévation des niveaux de vie;

b) L'emploi des travailleurs à des occupations où ils aient la satisfaction de donner toute la mesure de leur habileté et de leurs connaissances et de contribuer le mieux au bien-être commun;

c) Pour atteindre ce but, la mise en œuvre, moyennant garanties adéquates pour tous les intéressés, de possibilités de formation et de moyens propres à faciliter les transferts de travailleurs, y compris les migrations de main-d'œuvre et de colons;

<sup>1</sup> Voir le *Premier rapport de l'Organisation internationale du Travail aux Nations Unies*, vol. II, page 1.

<sup>2</sup> *Ibid.*, page 19.

(d) Policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(e) The effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

(f) The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

(g) Adequate protection for the life and health of workers in all occupations;

(h) Provision for child welfare and maternity protection;

(i) The provision of adequate nutrition, housing and facilities for recreation and culture;

(j) The assurance of equality of educational and vocational opportunities.

d) La possibilité pour tous d'une participation équitable aux fruits du progrès en matière de salaires et gains, de dure du travail et autres conditions de travail, et un salaire minimum vital pour tous ceux qui ont un emploi et ont besoin d'une telle protection;

e) La reconnaissance effective du droit de négociation collective et la coopération des employeurs et de la main-d'œuvre pour l'amélioration continue de l'organisation de la production, ainsi que la collaboration des travailleurs et des employeurs à l'élaboration et à l'application de la politique sociale et économique;

f) L'extension des mesures de sécurité sociale en vue d'assurer un revenu de base à tous ceux qui ont besoin d'une telle protection, ainsi que des soins médicaux complets;

g) Une protection adéquate de la vie et de la santé des travailleurs dans toutes les occupations;

h) La protection de l'enfance et de la maternité;

i) Un niveau adéquat d'alimentation, de logement, et de moyens de récréation et de culture;

j) La garantie de chances égales dans le domaine éducatif et professionnel.

## **ILO C151 Labour Relations (Public Service) Convention, 1978**

### **Preamble**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Noting the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Workers' Representatives Convention and Recommendation, 1971, and

Recalling that the Right to Organise and Collective Bargaining Convention, 1949, does not cover certain categories of public employees and that the Workers' Representatives Convention and Recommendation, 1971, apply to workers' representatives in the undertaking, and

Noting the considerable expansion of public-service activities in many countries and the need for sound labour relations between public authorities and public employees' organisations, and

Having regard to the great diversity of political, social and economic systems among member States and the differences in practice among them (e.g. as to the respective functions of central and local government, of federal, state and provincial authorities, and of state-owned undertakings and various types of autonomous or semi-autonomous public bodies, as well as to the nature of employment relationships), and

Taking into account the particular problems arising as to the scope of, and definitions for the purpose of, any international instrument, owing to the differences in many countries between private and public employment, as well as the difficulties of interpretation which have arisen in respect of the application of relevant provisions of the Right to Organise and Collective Bargaining Convention, 1949, to public servants, and the observations of the supervisory bodies of the ILO on a number of occasions that some governments have applied these provisions in a manner which excludes large groups of public employees from coverage by that Convention, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-seventh day of June of the year one thousand nine hundred and seventy-eight the following Convention, which may be cited as the Labour Relations (Public Service) Convention, 1978:

### **PART I. SCOPE AND DEFINITIONS**

#### ***Article 1***

1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.

2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.

3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

#### **Article 2**

For the purpose of this Convention, the term *public employee* means any person covered by the Convention in accordance with Article 1 thereof.

#### **Article 3**

For the purpose of this Convention, the term *public employees' organisation* means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

### **PART II. PROTECTION OF THE RIGHT TO ORGANISE**

#### **Article 4**

1. Public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organisation;

(b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of participation in the normal activities of such an organisation.

#### **Article 5**

1. Public employees' organisations shall enjoy complete independence from public authorities.

2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.

3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

### **PART III. FACILITIES TO BE AFFORDED TO PUBLIC EMPLOYEES' ORGANISATIONS**

#### **Article 6**

1. Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.

2. The granting of such facilities shall not impair the efficient operation of the administration or service concerned.

3. The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.

## **PART IV. PROCEDURES FOR DETERMINING TERMS AND CONDITIONS OF EMPLOYMENT**

### **Article 7**

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

## **PART V. SETTLEMENT OF DISPUTES**

### **Article 8**

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

## **PART VI. CIVIL AND POLITICAL RIGHTS**

### **Article 9**

Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

## **PART VII. FINAL PROVISIONS**

### **Article 10**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### **Article 11**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*(All procedural aspects of the Convention have not been reproduced here and can be found in ILO Normlex)*

## **ILO Declaration on fundamental principles and rights at work, 1998**

Description: (Declaration on fundamental principles)

Document: (CIT/1998/PR20A)

Document No. (ilolex): 261998

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

### **The International Labour Conference,**

#### **1. Recalls:**

(a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

(a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

(b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

(c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

### **Useful Reading -International Labour Office**

(Sectoral Activities Department): Manual on collective bargaining and dispute resolution in the Public Service: <http://www.ilo.org/global/industries-and-sectors/public-service/lang--en/index.htm>

Bernard Gernigon, Alberto Otero and Horacio Guido ILO principles concerning collective bargaining International Labor Review, Vol. 139 (2000), No.1  
[www.ilo.org/public/english/revue/download/pdf/gernigon.pdf](http://www.ilo.org/public/english/revue/download/pdf/gernigon.pdf)

Alfred Wisskirchen and Christian Hess: Employer's handbook on ILO standards-related activities Bureau for Employers' Activities (ACT/EMP) 2001 International Labour Office Geneva

## **Part B (en français)**

### **DOCUMENTATION COMPLEMENTAIRE: RELATIONS PERSONNEL- ADMINISTRATION AUX NATIONS UNIES**

#### **Résumé du rapport du Corps commun (JIU/REP/2011/10 = A/67/136)**

Le **postulat de départ** : Dans toute organisation, l'efficacité dépend de la qualité des relations de travail et du moral des personnels. Le rapport se fonde sur une analyse symétrique et en profondeur des perceptions respectives des représentants des Personnels et de l'Administration dans chaque entité, complétées par l'approche d'un échantillon d'Etats Membres.

**Principales conclusions et recommandations** : La crise ouverte des Relations Personnel Administration (RPA) en 2011 et l'éclairage de 30 années d'expérience du Comité de Coordination des RPA, auquel a succédé depuis le Comité des RPA ainsi que l'analyse des raisons les plus évidentes de cette crise ont conduit l'Inspecteur à conclure que le respect de l'état de droit, sous la surveillance des instances judiciaires, devrait être la pierre angulaire de RPA confiantes et à recommander tant à l'Administration qu'au Personnel de

- 1) Se fonder sur le droit, donc les textes Officiels y compris la Charte des Nations Unies, la Déclaration Universelle des Droits de l'Homme, les Articles 8.1 et 8.2 du Règlement du personnel et les résolutions pertinentes de l'Assemblée générale des Nations Unies (A.G.N.U.) ;
  - 2) Respecter et protéger effectivement les fonctions de représentant du personnel, déjà reconnues comme officielles par l'A.G.N.U.;
  - 3) Faire clairement établir qui a autorité sur quoi en matière de Ressources Humaines (délégations de pouvoir, en particulier aux entités associées des Nations Unies) ;
  - 4) Maintenir un dialogue sur un pied d'égalité entre représentants de l'administration et du personnel dans les domaines définis par l'art. 8.1 déjà cité, à niveau approprié, grâce à des Organes Mixtes de l'Administration et du Personnel (OMAP/JBs), tels que les Comités mixtes de négociation et le Comité Personnel-Administration (CPA/SMC), ce qui implique suffisamment de temps de préparation, de connaissances des dossiers (parfois un supplément de formation) et une réelle ouverture de part et d'autre;
  - 5) Soumettre le fonctionnement de ces organes mixtes aux règles de bon sens de la négociation, y compris le respect mutuel, la bonne foi et l'abstention par chaque partie de toute interférence dans les affaires internes de l'autre.
  - 6) Les faire précéder d'une information et consultation réciproques et suivre d'une large action commune information des intéressés, y compris les personnels et Etats Membres;
  - 7) Tirer les leçons des décennies précédentes de RPA (CCPA/SMCC) et de la crise de 2011 pour le fonctionnement du CPA, y compris du besoin essentiel de reconnaissance mutuelle, y compris en donnant aux initiatives prises dans le domaine défini plus haut le temps d'être connues, comprises et modifiées comme il convient par des consultations à l'intérieur de chaque groupe et entre eux et des négociations entre eux dans les organes mixtes de négociation et en associant le Secrétaire Général à ces développements en temps réel, pour qu'il puisse promulguer et défendre devant les Etats Membres et les organes du régime commun les accords qu'auront signés ses représentants;
  - 8) Aussitôt que possible après chaque session, rendre publics sur les sites Internet des entités concernées le rapport de chaque session du CPA/SMC tel qu'adopté à sa session finale, y compris les textes des accords passés et signés.
  - 9) Informer l'Organisation et ses Etats-Membres, en tant qu'employeurs des personnels et assurer une cohérence entre les décisions prises par l'Assemblée Générale sous les points de son ordre du jour concernant les Ressources Humaines, respectivement à l'ONU (Gestion des ressources humaines) et dans les organes du régime commun;
  - 10) Restaurer pleinement le rôle et le sens de RPA telles qu'organisées initialement et maintes fois encouragées par l'A.G.N.U. et éviter les risques d'actions plus directes que peuvent provoquer des décisions unilatérales.
- L'Inspecteur recommande aussi aux Etats Membres (recommandation 5) de confirmer explicitement dans un article du Règlement du personnel le principe de l'application des normes de l'Organisation Internationale du Travail (OIT) pour les services publics nationaux (Convention 151) et, au-delà, de sa Déclaration sur les principes et droits fondamentaux au travail (1998).

Il invite à consulter le Manuel (du BIT) sur la négociation collective et le règlement des différends téléchargeable depuis <http://www.ilo.org/global/industries-and-sectors/public-service/facet/lang--fr/index.htm> (matériel didactique).

## **Recommandations du Rapport JIU/REP/2011/10 sur les relations entre le personnel et l'Administration à l'Organisation des Nations Unies**

### **Recommandation 1**

Le Secrétaire général devrait distribuer à tous les États Membres le rapport de toutes les sessions futures du CAP, y compris ses annexes, et devrait en outre faciliter l'organisation d'une réunion informelle annuelle lors de laquelle le Président du CAP présenterait aux États Membres le rapport de chaque session, et rendrait notamment compte de l'état d'exécution des accords conclus lors des sessions du CCAP.

### **Recommandation 2**

Le Secrétaire général et les chefs de secrétariat des organismes et programmes administrés séparément, reconnaissant le statut officiel des organes représentatifs du personnel et des représentants élus du personnel, devraient faciliter l'accès de ceux-ci à tous les moyens de communication disponibles qui leur sont nécessaires pour communiquer avec l'ensemble du personnel, comme convenu à la XXIIe session du CCAP (2011).

### **Recommandation 3**

Une fois que le Comité Administration - personnel sera parvenu à un accord sur des critères justes et harmonisés pour déterminer les facilités et le détachement à accorder aux fins de l'exécution des fonctions de représentation du personnel, le Secrétaire général et les chefs de secrétariat des organes administrés séparément devraient publier des instructions administratives révisées à ce sujet; en attendant, les dispositions contenues dans les documents ST/AI/293 et A/C.5/50/64 devraient être appliquées intégralement et considérées comme un minimum.

### **Recommandation 4**

Le Secrétaire général et les chefs de secrétariat des organes et programmes administrés séparément devraient allouer des ressources appropriées à leurs services respectifs chargés des ressources humaines pour qu'ils conçoivent (de préférence en collaboration avec les représentants du personnel) et mettent en oeuvre des activités de formation portant sur les questions paritaires, et inciter vivement les responsables nouvellement nommés et les représentants du personnel nouvellement élus à participer à ces formations.

### **Recommandation 5**

L'Assemblée générale devrait prier le Secrétaire général de lui soumettre, afin qu'elle l'approuve, une disposition appropriée du Statut du personnel confirmant la reconnaissance du droit de négociation collective du personnel de l'ONU, tel que ce droit est défini à l'annexe de sa résolution 128 (II). Le Secrétaire général et les chefs de secrétariat des organes et programmes administrés séparément devraient appliquer au personnel de leurs entités respectives les normes et les principes découlant des instruments pertinents de l'OIT, en particulier la Déclaration relative aux principes et droits fondamentaux au travail (1998).

### **Recommandation 6**

Le Secrétaire général et les chefs de secrétariat des organes et programmes administrés séparément devraient veiller à ce que les organes représentatifs du personnel de leurs entités respectives puissent avoir facilement et régulièrement accès à la hiérarchie à tous les échelons appropriés, y compris à l'échelon le plus élevé, par des canaux tant formels qu'informels.

**Autour de la Recommandation 5 sur la négociation collective, du rapport du Corps Commun  
d'Inspection sur les relations entre le personnel et l'Administration à l'Organisation des  
Nations Unies**

(JIU/REP/2011/10 sur le site du CCI ou A/67/136 sur le site des documents officiels des Nations Unies)

**Recommandation 5 (JIU/REP/2011/10)**

L'Assemblée générale devrait prier le Secrétaire général de lui soumettre, afin qu'elle l'approuve, une disposition appropriée du Statut du personnel confirmant la reconnaissance du droit de négociation collective du personnel de l'ONU, tel que ce droit est défini à l'annexe de sa résolution 128 (II). Le Secrétaire général et les chefs de secrétariat des organes et programmes administrés séparément devraient appliquer au personnel de leurs entités respectives les normes et les principes découlant des instruments pertinents de l'OIT, en particulier la Déclaration relative aux principes et droits fondamentaux au travail (1998).

**Déclaration universelle des droits de l'homme**

**Article 20**

1. Toute personne a droit à la liberté de réunion et d'association pacifiques.
2. Nul ne peut être obligé de faire partie d'une association.

**Article 23**

1. Toute personne a droit au travail, au libre choix de son travail, à des conditions équitables et satisfaisantes de travail et à la protection contre le chômage.
2. Tous ont droit, sans aucune discrimination, à un salaire égal pour un travail égal.
3. Quiconque travaille a droit à une rémunération équitable et satisfaisante lui assurant ainsi qu'à sa famille une existence conforme à la dignité humaine et complétée, s'il y a lieu, par tous autres moyens de protection sociale.
4. Toute personne a le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.

## Résolution de l'Assemblée Générale des Nations Unies 128 (II)

### 128 (II). Trade union rights (Freedom of association)

*The General Assembly,*

*Taking note* of resolution 52 (IV)<sup>1</sup> adopted by the Economic and Social Council at its fourth session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on "Guarantees for the Exercise and Development of Trade Union Rights"<sup>2</sup> to the Commission on Human Rights, "in order that it may consider those aspects of the subject which might appropriately form part of the bill or declaration on human rights";

*Taking note* also of resolution 84(V)<sup>3</sup> adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organisation entitled "Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947",<sup>4</sup> to recognize the principles proclaimed by the International Labour

<sup>1</sup> See *Resolutions adopted by the Economic and Social Council* during its fourth session, page 43.

<sup>2</sup> See document A/374.

<sup>3</sup> See *Resolutions adopted by the Economic and Social Council* during its fifth session, page 54.

<sup>4</sup> See document A/374/Add.1.

### 128 (II). Droits syndicaux (liberté d'association)

*L'Assemblée générale,*

*Prenant acte* de la résolution 52 (IV)<sup>1</sup> du Conseil économique et social adoptée au cours de sa quatrième session, par laquelle il a été décidé de transmettre les points de vue de la Fédération syndicale mondiale et de l'*American Federation of Labor* sur les "garanties d'exercice et de développement du droit syndical"<sup>2</sup> à la Commission des droits de l'homme, "pour qu'elle étudie les aspects qui pourraient trouver place dans la Déclaration des droits de l'homme";

*Prenant acte* également de la résolution 84(V)<sup>3</sup> dudit Conseil, adoptée au cours de sa cinquième session, par laquelle il a été décidé de transmettre à l'Assemblée générale des Nations Unies le rapport de l'Organisation internationale du Travail intitulé "Décisions relatives à la liberté d'association adoptées à l'unanimité par la trentième session de la Conférence internationale du travail du 11 juillet 1947"<sup>4</sup>, de reconnaître les prin-

<sup>1</sup> Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa quatrième session, page 43.

<sup>2</sup> Voir le document A/374.

<sup>3</sup> Voir les *Résolutions adoptées par le Conseil économique et social* pendant sa cinquième session, page 54.

<sup>4</sup> Voir le document A/374/Add.1.

Conference and to request the International Labour Organisation to continue its efforts in order that one or several international conventions may be adopted,

*Approves* these two resolutions;

*Considers* that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the improvement of the standard of living of workers and to their economic well-being;

*Declares* that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognized and which are mentioned in the Constitution of the International Labour Organisation<sup>1</sup> and in the Declaration of Philadelphia<sup>2</sup> and, in particular, sub-section (a) of section II, and sub-sections (a) to (j) inclusive of section III, which are given in the annex to this resolution;

*Decides* to transmit the report of the International Labour Organisation to the Commission on Human Rights with the same objects as those stated in resolution 52(IV) of the Economic and Social Council, and

*Recommends* to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application.

*Hundred and seventeenth plenary meeting,  
17 November 1947.*

#### Annex

#### PRINCIPLES SET FORTH IN SECTION II(a) AND SECTION III(a) TO (j) OF THE DECLARATION OF PHILADELPHIA

##### Section II

(a) All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

##### Section III

(a) Full employment and the raising of standards of living;

(b) The employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

(c) The provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

<sup>1</sup> See *First Report of the International Labour Organisation to the United Nations*, vol. II, page 1.

<sup>2</sup> *Ibid.*, page 19.

cipes énoncés par la Conférence internationale du travail et d'inviter l'Organisation internationale du Travail à poursuivre cet effort afin qu'il soit possible d'adopter une ou plusieurs conventions internationales,

*Approuve* les deux résolutions;

*Considère* que la liberté syndicale d'association, droit inaliénable, est, ainsi que d'autres garanties sociales, essentielle à l'amélioration de la vie des travailleurs et à leur bien-être économique;

*Déclare* qu'elle fait siens les principes énoncés par la Conférence internationale du travail en ce qui concerne les droits syndicaux ainsi que les autres principes dont l'importance pour le monde du travail a déjà été reconnue et qui sont mentionnés dans la constitution du Bureau international du Travail<sup>1</sup> et dans la Déclaration de Philadelphie<sup>2</sup> et en particulier à l'alinéa a) de la section II et aux alinéas a) à j) de la section III, qui sont donnés en annexe à la présente résolution;

*Décide* de transmettre le rapport de l'Organisation internationale du Travail à la Commission des droits de l'homme aux mêmes fins que celles exprimées par la résolution 52(IV) du Conseil économique et social et

*Recommande* à l'Organisation internationale du Travail sur sa base tripartite, de poursuivre d'urgence, en collaboration avec l'Organisation des Nations Unies et conformément à la résolution de la Conférence internationale du travail relative aux dispositions à prendre sur le plan international pour assurer les droits syndicaux et la liberté d'association, l'étude du contrôle de leur application pratique.

*Cent-dix-septième séance plénière,  
le 17 novembre 1947.*

#### Annexe

#### PRINCIPES ÉNONCÉS A LA SECTION II a) ET A LA SECTION III a) A j) DE LA DÉCLARATION DE PHILADELPHIE

##### Section II

a) Tous les êtres humains, quels que soient leur race, leur croyance ou leur sexe, ont le droit de poursuivre leur progrès matériel et leur développement spirituel dans la liberté et la dignité, dans la sécurité économique et avec des chances égales.

##### Section III

a) La plénitude de l'emploi et l'élévation des niveaux de vie;

b) L'emploi des travailleurs à des occupations où ils aient la satisfaction de donner toute la mesure de leur habileté et de leurs connaissances et de contribuer le mieux au bien-être commun;

c) Pour atteindre ce but, la mise en œuvre, moyennant garanties adéquates pour tous les intéressés, de possibilités de formation et de moyens propres à faciliter les transferts de travailleurs, y compris les migrations de main-d'œuvre et de colons;

<sup>1</sup> Voir le *Premier rapport de l'Organisation internationale du Travail aux Nations Unies*, vol. II, page 1.

<sup>2</sup> *Ibid.*, page 19.

(d) Policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(e) The effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

(f) The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

(g) Adequate protection for the life and health of workers in all occupations;

(h) Provision for child welfare and maternity protection;

(i) The provision of adequate nutrition, housing and facilities for recreation and culture;

(j) The assurance of equality of educational and vocational opportunities.

d) La possibilité pour tous d'une participation équitable aux fruits du progrès en matière de salaires et gains, de dure du travail et autres conditions de travail, et un salaire minimum vital pour tous ceux qui ont un emploi et ont besoin d'une telle protection;

e) La reconnaissance effective du droit de négociation collective et la coopération des employeurs et de la main-d'œuvre pour l'amélioration continue de l'organisation de la production, ainsi que la collaboration des travailleurs et des employeurs à l'élaboration et à l'application de la politique sociale et économique;

f) L'extension des mesures de sécurité sociale en vue d'assurer un revenu de base à tous ceux qui ont besoin d'une telle protection, ainsi que des soins médicaux complets;

g) Une protection adéquate de la vie et de la santé des travailleurs dans toutes les occupations;

h) La protection de l'enfance et de la maternité;

i) Un niveau adéquat d'alimentation, de logement, et de moyens de récréation et de culture;

j) La garantie de chances égales dans le domaine éducatif et professionnel.

## **OIT C151 - Convention (n° 151) sur les relations de travail dans la fonction publique, 1978**

Convention concernant la protection du droit d'organisation et les procédures de détermination des conditions d'emploi dans la fonction publique (Entrée en vigueur: 25 févr. 1981) Adoption: Genève, 64ème session CIT (27 juin 1978) - Statut: Instrument à jour (Convention Techniques).

### **Préambule**

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 7 juin 1978, en sa soixante-quatrième session;

Notant les dispositions de la convention sur la liberté syndicale et la protection du droit syndical, 1948, de la convention sur le droit d'organisation et de négociation collective, 1949, et de la convention et de la recommandation concernant les représentants des travailleurs, 1971;

Rappelant que la convention sur le droit d'organisation et de négociation collective, 1949, ne vise pas certaines catégories d'agents publics et que la convention et la recommandation concernant les représentants des travailleurs, 1971, s'appliquent aux représentants des travailleurs dans l'entreprise;

Notant l'expansion considérable des activités de la fonction publique dans beaucoup de pays et le besoin de relations de travail saines entre les autorités publiques et les organisations d'agents publics;

Constatant la grande diversité des systèmes politiques, sociaux et économiques des Etats Membres ainsi que celle de leurs pratiques (par exemple en ce qui concerne les fonctions respectives des autorités centrales et locales, celles des autorités fédérales, des Etats fédérés et des provinces, et celles des entreprises qui sont propriété publique et des différents types d'organismes publics autonomes ou semi-autonomes, ou en ce qui concerne la nature des relations d'emploi);

Tenant compte des problèmes particuliers que posent la délimitation du champ d'application d'un instrument international et l'adoption de définitions aux fins de cet instrument, en raison des différences existant dans de nombreux pays entre l'emploi dans le secteur public et le secteur privé, ainsi que des difficultés d'interprétation qui ont surgi à propos de l'application aux fonctionnaires publics de dispositions pertinentes de la convention sur le droit d'organisation et de négociation collective, 1949, et des observations par lesquelles les organes de contrôle de l'OIT ont fait remarquer à diverses reprises que certains gouvernements ont appliqué ces dispositions d'une façon qui exclut de larges groupes d'agents publics du champ d'application de cette convention;

Après avoir décidé d'adopter diverses propositions relatives à la liberté syndicale et aux procédures de détermination des conditions d'emploi dans la fonction publique, question qui constitue le cinquième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale, adopte, ce vingt-septième jour de juin 1978, la convention ci-après, qui sera dénommée Convention sur les relations de travail dans la fonction publique, 1978.

## **PARTIE I. CHAMP D'APPLICATION ET DÉFINITIONS**

### **Article 1**

1. La présente convention s'applique à toutes les personnes employées par les autorités publiques, dans la mesure où des dispositions plus favorables d'autres conventions internationales du travail ne leur sont pas applicables.
2. La mesure dans laquelle les garanties prévues par la présente convention s'appliqueront aux agents de niveau élevé dont les fonctions sont normalement considérées comme ayant trait à la formulation des politiques à suivre ou à des tâches de direction ou aux agents dont les responsabilités ont un caractère hautement confidentiel sera déterminée par la législation nationale.
3. La mesure dans laquelle les garanties prévues par la présente convention s'appliqueront aux forces armées et à la police sera déterminée par la législation nationale.

### **Article 2**

Aux fins de la présente convention, l'expression **agent public** désigne toute personne à laquelle s'applique cette convention conformément à son article 1.

### **Article 3**

Aux fins de la présente convention, l'expression **organisation d'agents publics** désigne toute organisation, quelle que soit sa composition, ayant pour but de promouvoir et de défendre les intérêts des agents publics.

## **PARTIE II. PROTECTION DU DROIT D'ORGANISATION**

### **Article 4**

1. Les agents publics doivent bénéficier d'une protection adéquate contre tous actes de discrimination tendant à porter atteinte à la liberté syndicale en matière d'emploi.
2. Une telle protection doit notamment s'appliquer en ce qui concerne les actes ayant pour but de:
  - (a) subordonner l'emploi d'un agent public à la condition qu'il ne s'affilie pas à une organisation d'agents publics ou cesse de faire partie d'une telle organisation;
  - (b) congédier un agent public ou lui porter préjudice par tous autres moyens, en raison de son affiliation à une organisation d'agents publics ou de sa participation aux activités normales d'une telle organisation.

### **Article 5**

1. Les organisations d'agents publics doivent jouir d'une complète indépendance à l'égard des autorités publiques.
2. Les organisations d'agents publics doivent bénéficier d'une protection adéquate contre tous actes d'ingérence des autorités publiques dans leur formation, leur fonctionnement et leur administration.
3. Sont notamment assimilées aux actes d'ingérence, au sens du présent article, des mesures tendant à promouvoir la création d'organisations d'agents publics dominées par une autorité publique, ou à soutenir des organisations d'agents publics par des moyens financiers ou autrement, dans le dessein de placer ces organisations sous le contrôle d'une autorité publique.

## **PARTIE III. FACILITÉS À ACCORDER AUX ORGANISATIONS D'AGENTS PUBLICS**

#### **Article 6**

1. Des facilités doivent être accordées aux représentants des organisations d'agents publics reconnues, de manière à leur permettre de remplir rapidement et efficacement leurs fonctions aussi bien pendant leurs heures de travail qu'en dehors de celles-ci.
2. L'octroi de telles facilités ne doit pas entraver le fonctionnement efficace de l'administration ou du service intéressé.
3. La nature et l'étendue de ces facilités doivent être déterminées conformément aux méthodes mentionnées dans l'article 7 de la présente convention ou par tous autres moyens appropriés.

### **PARTIE IV. PROCÉDURES DE DÉTERMINATION DES CONDITIONS D'EMPLOI**

#### **Article 7**

Des mesures appropriées aux conditions nationales doivent, si nécessaire, être prises pour encourager et promouvoir le développement et l'utilisation les plus larges de procédures permettant la négociation des conditions d'emploi entre les autorités publiques intéressées et les organisations d'agents publics, ou de toute autre méthode permettant aux représentants des agents publics de participer à la détermination desdites conditions.

### **PARTIE V. RÈGLEMENT DES DIFFÉRENDS**

#### **Article 8**

Le règlement des différends survenant à propos de la détermination des conditions d'emploi sera recherché, d'une manière appropriée aux conditions nationales, par voie de négociation entre les parties ou par une procédure donnant des garanties d'indépendance et d'impartialité, telle que la médiation, la conciliation ou l'arbitrage, instituée de telle sorte qu'elle inspire la confiance des parties intéressées.

### **PARTIE VI. DROITS CIVILS ET POLITIQUES**

#### **Article 9**

Les agents publics doivent bénéficier, comme les autres travailleurs, des droits civils et politiques qui sont essentiels à l'exercice normal de la liberté syndicale, sous la seule réserve des obligations tenant à leur statut et à la nature des fonctions qu'ils exercent.

### **PARTIE VII. DISPOSITIONS FINALES**

#### **Article 10**

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

#### **Article 11**

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.
2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

*(Nous n'avons pas reproduit ici tous les aspects de procédure de la Convention, le texte intégral est disponible sans Normlex, la base de données des textes de l'OIT)*

## **Déclaration de l'OIT relative aux principes et droits fondamentaux au travail**

(Adoptée par la Conférence internationale du Travail à sa 86ème Session, Genève, 18 juin 1998)

Attendu que la création de l'OIT procédait de la conviction que la justice sociale est essentielle pour assurer une paix universelle et durable;

Attendu que la croissance économique est essentielle mais n'est pas suffisante pour assurer l'équité, le progrès social et l'éradication de la pauvreté, et que cela confirme la nécessité pour l'OIT de promouvoir des politiques sociales solides, la justice et des institutions démocratiques;

Attendu que l'OIT se doit donc plus que jamais de mobiliser l'ensemble de ses moyens d'action normative, de coopération technique et de recherche dans tous les domaines de sa compétence, en particulier l'emploi, la formation professionnelle et les conditions de travail, pour faire en sorte que, dans le cadre d'une stratégie globale de développement économique et social, les politiques économiques et sociales se renforcent mutuellement en vue d'instaurer un développement large et durable;

Attendu que l'OIT doit porter une attention spéciale aux problèmes des personnes ayant des besoins sociaux particuliers, notamment les chômeurs et les travailleurs migrants, mobiliser et encourager les efforts nationaux, régionaux et internationaux tendant à résoudre leurs problèmes, et promouvoir des politiques efficaces visant à créer des emplois;

Attendu que, dans le but d'assurer le lien entre progrès social et croissance économique, la garantie des principes et des droits fondamentaux au travail revêt une importance et une signification particulières en donnant aux intéressés eux-mêmes la possibilité de revendiquer librement et avec des chances égales leur juste participation aux richesses qu'ils ont contribué à créer, ainsi que de réaliser pleinement leur potentiel humain;

Attendu que l'OIT est l'organisation internationale mandatée par sa Constitution, ainsi que l'organe compétent pour établir les normes internationales du travail et s'en occuper, et qu'elle bénéficie d'un appui et d'une reconnaissance universels en matière de promotion des droits fondamentaux au travail, en tant qu'expression de ses principes constitutionnels;

Attendu que, dans une situation d'interdépendance économique croissante, il est urgent de réaffirmer la permanence des principes et droits fondamentaux inscrits dans la Constitution de l'Organisation ainsi que de promouvoir leur application universelle;

### **LA CONFÉRENCE INTERNATIONALE DU TRAVAIL**

#### **1. Rappelle:**

(a) qu'en adhérant librement à l'OIT, l'ensemble de ses Membres ont accepté les principes et droits énoncés dans sa Constitution et dans la Déclaration de Philadelphie, et se sont engagés à travailler à la réalisation des objectifs d'ensemble de l'Organisation, dans toute la mesure de leurs moyens et de leur spécificité;

(b) que ces principes et droits ont été exprimés et développés sous forme de droits et d'obligations spécifiques dans des conventions reconnues comme fondamentales, tant à l'intérieur qu'à l'extérieur de l'Organisation.

2. Déclare que l'ensemble des Membres, même lorsqu'ils n'ont pas ratifié les conventions en question, ont l'obligation, du seul fait de leur appartenance à l'Organisation, de respecter,

promouvoir et réaliser, de bonne foi et conformément à la Constitution, les principes concernant les droits fondamentaux qui sont l'objet desdites conventions, à savoir:

- (a) la liberté d'association et la reconnaissance effective du droit de négociation collective;
- (b) l'élimination de toute forme de travail forcé ou obligatoire;
- (c) l'abolition effective du travail des enfants
- (d) l'élimination de la discrimination en matière d'emploi et de profession.

3. Reconnaît l'obligation qui incombe à l'Organisation d'aider ses Membres, en réponse à leurs besoins établis et exprimés, de façon à atteindre ces objectifs en faisant pleinement appel à ses moyens constitutionnels, pratiques et budgétaires, y compris par la mobilisation des ressources et l'assistance extérieures, ainsi qu'en encourageant d'autres organisations internationales avec lesquelles l'OIT a établi des relations, en vertu de l'article 12 de sa Constitution, à soutenir ces efforts:

- (a) en offrant une coopération technique et des services de conseil destinés à promouvoir la ratification et l'application des conventions fondamentales;
- (b) en assistant ceux de ses Membres qui ne sont pas encore en mesure de ratifier l'ensemble ou certaines de ces conventions dans leurs efforts pour respecter, promouvoir et réaliser les principes concernant les droits fondamentaux qui sont l'objet desdites conventions
- (c) en aidant ses Membres dans leurs efforts pour instaurer un climat propice au développement économique et social.

4. Décide que, pour donner plein effet à la présente Déclaration, un mécanisme de suivi promotionnel, crédible et efficace sera mis en œuvre conformément aux modalités précisées dans l'annexe ci-jointe, qui sera considérée comme faisant partie intégrante de la présente Déclaration.

5. Souligne que les normes du travail ne pourront servir à des fins commerciales protectionnistes et que rien dans la présente Déclaration et son suivi ne pourra être invoqué ni servir à pareilles fins; en outre, l'avantage comparatif d'un quelconque pays ne pourra, en aucune façon, être mis en cause du fait de la présente Déclaration et son suivi.

#### **Lectures Utiles - Organisation internationale du Travail (OIT)**

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## Part C

# Historical and recent background of staff-management relations within the United Nations

### Introduction

Staff-Management Relations are the tip of the iceberg: their quality measures of a result: what is immediately seen and perceived on both “sides”, not the underlying reasons explaining changes. The existence and development of international organizations have for long been justified by the perceived impossibility to find purely national solutions to more and more issues recognized as critical and the necessity to entrust them to a dedicated growing International Civil Service.(section I below). Its subsequent growth followed the development of the mandates and scope of the international organizations due to the historical, technological, demographical, economic, ideological and political transformations of the World since one century, As such, those upward adaptations, in a still restricted skills world market were not, a source of major SMR difficulties (section II). But progressively a general realization by the member States, as contributors that other changes are necessary to decrease the financial burden of the secretariats became a major if not, for some of them the major reasons for budgetary conservatism, as well as HR “reform” as the latter had progressively become a must in the private sector entities looking to maximized short term profit including through minimizing all costs. Hence a number of new human resources policies appeared (section III), imported by the organizations from member States where similar experiences had been made (section IV) **Change management became a major part of HR management: this is giving today a particular actuality to an informed SMR** as the logics behind each proposal should be explained to, consulted and negotiated with the staff at large through its legitimate representatives with mutual full transparency, cleverness, good faith and respect.

The experience shows that when advantages for the general interest of the organizations concerned are demonstrated, when their main values are respected and where there is a “continuous contact” between staff representatives and Management up to the highest level, the Staff representative bodies accept surprisingly well those changes. By contrast, SMR crisis appear in case of collision of the recommended changes with the logics of the organization fundamental texts, as internalized by its staff. This is aggravated or even created where prevail clumsiness, authoritarianism, lack of transparency, communication and consultation with the staff representative bodies. They were precisely created to avoid those situations of bad surprise, fait accompli and no-recognition.

**The present note offers four approaches to the SMR background which can be read separately and address respectively:**

- I) The roots of the international civil service;
- II) The broad evolution and dissemination in United Nations staff jobs and functions;
- III) Some major trends and questions in Human Resources policies in the national public sectors
- IV) Which type of future Human Resources management?

## I. 1920-1950: Birth of the International Civil Service and Staff-Management Relations<sup>14</sup>

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14 See Dobromir Mihajlov: Origin and Early Development of International Civil Service in Miskolc Journal of International Law, to which the first part of this note owes much.

In the 19<sup>th</sup> century, when multilateral events were restricted to international conferences, the need to have small ad-hoc units to provide an organizational background was generally agreed upon. The members of the secretariats of various “international unions” on technical issues related with transports and communications were either recruited from the host country or seconded by member governments.<sup>15</sup> For the first time the Hague Conferences of 1899 and 1907 had a secretariat composed of diplomats from participating countries.

The concept of the modern international civil service was first realized in the international Secretariat of the League of Nations (LON) and in the International Labour Office (ILO) in Geneva, 1920<sup>16</sup>. It can be traced to the vision and proposals of the first Secretary-General of the LON who summarized the civil service tasks needed to prepare the new conferences as follows: “summing up the points of convergence among national representatives and preparing the discussion of others”. “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 coordinating centre of the activities of the Secretariat, but its members would be responsible to him alone, and not to the Governments of the countries of which they were nationals, and would be remunerated from the general funds of the League”<sup>17</sup>.

These principles were supported and further specified in the reports of three League Committees published between 1920 and 1930. **The Balfour Report**<sup>18</sup> 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.” In accordance with this **principle of loyalty, they should consider only the best interest of their Intergovernmental Organization (IGO)**, a requirement stipulated by the Staff regulations in 1930 (and subsequently by art. 100 of the UNITED NATIONS Charter): “They may not seek or receive instructions from any government or other authority external to the secretariat of the League of Nations”.

The only definition of the principle of loyalty quoted by different studies was formulated by Suzanne Basdevant,<sup>19</sup> “*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*”. Based on judgments 26 and 37 to 46 of the United Nations Administrative Tribunal (UNAT), the International Court of Justice’s advisory opinion of 13 July 1954<sup>20</sup> dealt with contracts arranging employment relationships of staff and pointed out **the organization’s responsibility as employer towards the staff**, contesting the “right” of the General Assembly as budgetary power to oppose the supplementary appropriation requested by the Secretary-General in order to pay the compensations awarded to employees as per the decision of the Tribunal.<sup>21</sup>

The Balfour Report also stresses the **necessity that officials should obtain a lasting or at least a stable position**. Some of the main findings of **the Noblemaire Report**<sup>22</sup> of 1921 also motivated

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15 Bennett, A. Le Roy : International Organizations, Principles and Issues, Prentice Hall, New Jersey, 4<sup>th</sup> edition 1988, p. 386

16 The bolded parts of this note result from the Inspector’s wish.

17 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.

18 Official Journal (of the League of Nations), June 1920, pp.136-139.

19 *Les fonctionnaires Internationaux*, Librairie du Recueil Sirey, Paris, 1931, the first chapter of which is devoted to the definition of the International Civil Servants.

20 Effects of awards of compensation made by the United Nations Administrative Tribunal

21 Secretary-General report A/2534

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

international officials and enhanced the 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 job security and to strengthen the capability of officials to resist pressures exerted by their home governments. And last but not least is 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** (at that time the UK, followed by the USA after WWII). This reflected the lesson from the experience of the Institute for Agriculture in Rome, predecessor to the FAO, where the low salaries offered at its creation could not attract and retain in Rome many other nationals other than Italians.<sup>23</sup>

As soon as an international civil service appeared, staff and management were facing challenges in the implementation of their complementary roles to be performed for the organizations. The LON Secretariat had to be built up with no precedents to serve as guide<sup>24</sup>, while ILO Secretariat grappled with the question of “rights guaranteed to members of the staff.”<sup>25</sup> The first Staff Regulations in the ILO Secretariat, resulted from **negotiations between members of administration and representatives of staff**; the outcome document, entitled: “Rights Guaranteed to Members of Staff” was issued around 1 May 1920, with a Chapter IV named “**Staff Committee and the Joint Committee**”, where Article 9(1) stated in a very positive manner that those Committees were **vested with the powers to “facilitate relations between the Director and the staff as a whole, and place these relations on a more regular basis.”** The Staff Committee envisaged in the aforementioned rules emerged as a new entity, the “**Staff Union**”, presumably reflecting the mode of thinking of trade unions.

Meanwhile, the first case of litigation by a staff member against the organization took place in 1925 and was a unique step in its 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 which in ILO and the U.N. administered justice with regards to claims in the domain of employment relationships in international administrations**.

In their first conferences in Washington and in New York in 1943, **the Allies under the name of United Nations** reaffirmed that the empiric evidence collected for 20 years was enough to back up the necessity of the new institution for practicable management of international affairs. The first beneficiaries of the concept were the members of the Preparatory Commission of the United Nations whose recommendation to take over and apply the principles formulated by the first LON Secretary-General was finally reflected in the Charter of the Organization of the United Nations (Articles 100-101).

**When the UN was created in 1945** with elements taken from existing prior models of the international civil service, HR and SMR were those of the politically (but not technically) discredited LON,<sup>26</sup> the ILO Secretariat<sup>27</sup> and the Foreign Services of countries like the USA and UK.

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23 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

24 Supra n. 1, p. 176

25 Supra n. 2, p. 15.

26 See Howard-Ellis C. *The Origin Structure and Working of the League of Nations*, London: George Allen & Unwin, 1928.

27 See Djokitch Alexandre, *The Staff Union of International Labour Office – Its origins and the commencement of its activity*, Geneva: ILO, 1973.

In the first years of the United Nations, the role of professional and support staff was aimed essentially at promoting, respectively, the political basis and logistics of **normative and parliamentary functions**, i.e. documentation, research, substantive studies and missions of experts focused on peace, international law, human rights and disarmament on one hand, and logistics of conference services on the other.

“In its report to the Secretary General on 31 October 1949, the **Flemming Committee recommended what is by and large the structure of posts we still have**, with different categories: the General Service, Professional and higher categories. With this recommendation, the Committee abolished the 19-grade scale that had been carried over from the LON. With regard to General Service (GS) staff, the Flemming Committee recommended that: *“salaries and wages for locally engaged staff should be fixed and paid in local currency and should be sufficiently high to recruit and retain staff of high quality and standing. This means that, generally speaking, a local salary and wage scale should be equivalent to the “best” prevailing local rates, corresponding to the situation at headquarters. Particular account should be taken of rates paid by governmental or public authorities in the area where such authorities themselves use the formula of best prevailing rates”*.<sup>28</sup>

The newly recruited staff members were highly qualified, young and motivated and considered themselves (at least) as the international equivalent of national public servants, in particular those of the foreign affairs ministries. They strove towards a lifelong career in the stable environments of New York and Geneva, punctuated for some by missions in the field.

The specialized agencies based in Rome (FAO), Geneva (ILO, WHO, UNHCR) and Paris (UNESCO) were not so different, working fundamentally as discussion fora in their respective technical areas, and benefiting from a nucleus of high level experts with the requisite technical knowledge necessary for their normative functions.

The staff were and in principle continue to be recruited on the basis of the Noblemaire Principle, carried on from the time of the LON and Flemming principle, to ensure respectively to the U.N. professional selected on the world labour market and the GS staff on the local market optimal working conditions and full independence at a time when many nations were in a rebuilding phase and eager to keep their qualified national staff to themselves.

## **II. 1950-2010 Growth, Diversification and dissemination of the United Nations labour force**

Various factors contributed rapidly towards eroding the reality and legitimacy of a quasi-monopoly by career civil servants, particularly in New York, on SMR in the organization: the growth and diversification of the labour force, its decentralization with the creation of both Offices Away from Headquarters (OAH) (Geneva, Vienna, Nairobi) and a global network of duty stations focused on humanitarian, development, peace keeping, peace building and post-conflict rehabilitation tasks.

### **A) Development focus and decentralization**

Beyond the continuation of its original studies and debates on the conditions for peace, disarmament, law of the sea etc. polarized by the cold war climate, the decline of colonialism increased the responsibilities of the United Nations and its various specialized agencies by enhancing the need for the promotion of development in the newly independent countries, shifting

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<sup>28</sup> Gerhard Schramek’s article “General Service salaries: the Flemming principle” written for the ICSC Working Group for the comprehensive review of the General Service salary survey methodology (1997).

thinking and research towards developmental goals and related operational activities. The United Nations and its specialized agencies in agriculture, education, health, employment, industry etc. subsequently witnessed a corresponding shift in priorities, spearheaded by the new majority of developing countries.

The efforts of the main contributors to strictly limit the recourse to assessed budget for the funding of technical cooperation and humanitarian activities resulted in the development of new instruments relying exclusively on voluntary contributions, such as UNICEF, WFP, UNHCR, UNRWA and UNFPA. UNDP served as the main instrument for allocating funds towards furthering technical assistance capacities within the UN system and other entities. Under the leadership of UNDP resident representatives, then the UN resident coordinators, the capitals of developing countries witnessed an influx of representatives and international experts from bilateral and multilateral agencies, particularly of the UN system. Many agencies furthered decentralization efforts with shift in staff from headquarters to national and regional structures in developing countries.

### **B) Geneva-New York-Geneva**

Prior to the United Nations, Geneva hosted several international organizations including the ICRC (since 1863), ITU (since 1865)<sup>29</sup> and ILO (since 1919). Subsequent agencies to headquarter themselves in Geneva include: WHO (since 1946/8); WMO (since 1951) succeeding International Meteorological Organization (since 1873); WIPO (since 1967) and UNAIDS (since 2001). Non-UN IGOs headquartered in Geneva include IOM (since 1951) and WTO (since 1995). Within the UN Secretariat,<sup>30</sup> Geneva hosts UNECE (since 1947), UNHCR (since 1950), UNCTAD (since 1964), Conference on Disarmament (since 1979), OHCHR (since 1993), and OCHA (since 1998) - all established by the General Assembly. a global then regional structure dedicated to environment has also been operational in Geneva. The United Nations Office in Geneva (UNOG) established in 1966 as the first of three OAHs and succeeding the European Office of the UN, also manages some cultural and administrative functions to more rationally serve a number of these entities. The organization's expansion has increased UNOG-Staff Coordinating Council's (UNOG SCC) responsibilities, with the HR structure in Geneva being stretched between HR personnel in some entities (like UNCTAD and OHCHR, International Trade Center) and HRM in UNOG, but also HE related actions and certainly policies being determined in New York.

### **C) Operational peace keeping and peace building activities**

Shortly after its creation, the United Nations began participating in peace keeping missions through dispatching military observers,<sup>31</sup> police and military contingents and operations units – resulting in the creation of a new category of civilian employees - the field officers. **The growth in peace-keeping operations in the last two decades** has been a well-known factor in the transformation of the United Nations labour force. Spurred on by the Security Council, many new functions were created (policing, disarmament, demobilization and reintegration, establishment of the rule of law, exercise of judicial power, operational protection of human rights, and the de-facto assumption of the entire governance function as in the cases of Kosovo and East Timor). **The corresponding structures required distinct categories of U.N. staff, in particular between international and national or local staff, novel recruitment strategies, lines of authority and differentiated conditions of service.** Such functions were characterized by dissimilar appointment categories, delicate civilian-military relations, less safety and often more difficult work-life relations, particularly in “non-family missions”.

After initially being represented by UNSU, the civilian component of the first generation of Peace Keeping Operations separated into two SRBs, when the mobile Field Service officers created the

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29 Named until 1934 Union Télégraphique Internationale (UTI)

30 See ST/SGB/1997/5 Organization of the Secretariat of the United Nations

31 1948: United Nations Truce Supervision Organization (UNTSO) still existing; 1949: United Nations Military Observer Group in India and Pakistan (UNMOGIP) still existing, to be followed by dozens of others.

UN Field Service Staff Union (FSSU), justified by their conditions of service differing greatly from HQ staff in New York. The professional field staff managed to structure themselves into one staff union with a global dimension and many local committees. The New York based UNSU continues to officially represent the local (national) staff in field missions (whose conditions of service are even more contrasted compared to HQ staff).

#### **D) A growing membership to serve**

From its 51 founding Member States in 1945, UN membership expanded rapidly to 99 Members States by 1960, 127 by 1970, 154 by 1980 and 193 today, augmented largely in the 1950s-70s by the newly independent post-colonial States and in the 1990s by the breakup of a number of states in Eastern Europe. New efforts were also required for the countries “in transition”. In addition to the above-mentioned growing complexity, the UN’s parliamentary machinery also grew in relation to its membership, resulting in a steadily increasing number of administrative and financial posts. Such growth was further compounded by the successive adoption of four new official UN languages, justifying the creation of numerous conference services and linguistic posts in Geneva and New York followed by Vienna.

#### **E) Resulting decentralized, diversified and fragmented Staff-Management Relations**

As a result of these transformations, institutional arrangements - particularly Staff Regulations 8.1 and 8.2 on “Staff relations”, initially conceived for one U.N. Staff Council and one Joint Advisory Committee, have been extended and decentralized over the years. They now include OAHs, field staff in 40+ duty stations represented by UNFSU and the regional economic commissions (Addis Ababa, Bangkok, Beirut and Santiago). Inevitably, such expansion, depriving the New York-centric UNSU from its initial monopoly, created an understandable frustration among its members and leaders.

In the eighties, an effort was made to give some coordination tool to the various UN SRBs, with the creation of a Staff-Management Coordination Committee (SMCC) inaugurated in 1980. It met nearly every year until its 32<sup>nd</sup> session in June 2011, gathering an equal number of Staff and Management Representatives from all UN Secretariat and associated UN entities (except UNRWA & WFP), for mutual consultation and negotiation. But the UN SRBs never established the representative legal structure which would have democratically federated them into one UN meta-association or union representing the whole UN Staff through one established democratic process and one authorized spokesperson, with the necessary communications procedures. FICSA, CCISUA and UNISERV are not recognized as performing such a role at the SMCC level, even though they are active in the ICSC and to a lesser extent within the HLCM.

### **III. 1980-2008 Evolution of employment relations in the Public Sector of the “model” countries<sup>32</sup>**

Shaped in the 20<sup>th</sup> century by western national civil services, could the international civil service develop in pure isolation while the various national public sectors and civil services which initially served as models were transforming in depth, including their industrial relations? For the United Nations and its sister organizations, living and managed in a changing world, some important questions have to be raised from the analysis of the transformation observed in the EU and OECD countries.

A) Job security versus denial of the right to negotiate wages

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32 Much of this section is derived from the article “Trade unions and employment relations in the context of public sector change”, International Journal of Public Sector Management, Volume 20, Issue 1 (2007), Emerald Insight Publishers.

The international civil service was born from a conception where the State or the public service was the representative of the general interest of the nation, including the interest of its employees. Thus, the independence of its staff members had to be especially protected and preserved from both private and national pressures and temptations. At the national level, this translated into a special employment status, consisting of various substantive and procedural prerogatives: apart from employment security, other special conditions focused on aspects of the internal labour market, such as recruitment, the job classification system, vertical and horizontal mobility and careers as well as compensation schemes. Initially, privileged conditions of service were conceived to compensate for the denial of the right to collective bargaining to establish salary scales (and at times also of the right of association and the right to strike) in favor of unilateral regulation of the terms and conditions of employment through laws or administrative measures.

### **B) A new, private sector inspired HR management**

Since the early 1960s, the clear-cut differentiation between the system of public and private sector employment relations became increasingly blurred as the number of employees engaged in typical welfare state activities (education, health and social services) rapidly increased and such services were often provided by the private sector which used employment contracts subject to ordinary or commercial law. In the 1980s and 1990s, cost-efficiency pressures due to increasing macro-economic constraints associated with the internationalization and the overall submission of the economy to financial criteria, as well as the development of sophisticated anti-tax technologies and tax-free paradises made fiscal discipline an economic imperative for all governments.

It became necessary to sustain investments and employment, control inflation, limit the burden on taxpayers, and improve the overall competitiveness of their respective economies. Within this context, the efficiency of public services and the containment of public sector expenditures, including take-home pay, became one of the urgent priorities of government economic policy in many countries. The number of non-permanent, fixed term, temporary or contingent and part time workers, as well as the use of real and disguised consultants or external collaborators increased steadily, although less so in the civil service and central government functions than elsewhere. Non-permanent fixed term contracts are often used at the two extremes of the job ladder: either at the most junior grade-level for manual and blue collar occupations, or at the most senior level for top managerial positions.

In the eighties, many political leaders and scholars were influenced by the beneficiaries of the deregulation principle, theoretically justified by the neoclassical macroeconomics of the Chicago school with Milton Friedman as its foremost champion. Unrealistic double digit profit rates and as limited as possible public intervention became universal standards, maintained in spite of their clear attached risks for the employees<sup>33</sup> and disadvantages for the final consumers and clients. Some of the reforms conceived for the national public services in previous years emphasized that the public sector had to borrow as much as possible from the private sector practices and its model of governance and employment relations. This selectively included, among its main features the strengthening and hardening of the powers and prerogatives of managers. .

### **C) Resulting changes in the status of public civil servants**

“There is a range of imperatives for change that vary from the market-led to the politically directed and the technologically facilitated.<sup>34</sup> Ian Kirkpatrick identifies three main aspects of organizational change in the public sector which dovetail with the development of organizational forms in the private sector: a departure from vertical integration, the move to fragment and decentralize the

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33 Stress, harassment and even suicides when the human dimension of personnel management is removed from consideration.

34 “Post-Fordism and organization change within the state administration” in Alonso L.E. and Martinez Lucio M., (Eds) in *Employment relations in a changing society*, Palgrave Macmillan, London 2006

management of public services, and the final one is the trend to more flexible service delivery and employment.”<sup>35</sup>

Changes that have seriously challenged the special status of public service and central government employees in terms of reform strategies include:

1) **Cutting back the number and proportion of employees with special employment status:** This strategy has been pursued through privatization, outsourcing, non-replacement of retiring employees, increased turnover and the transfer of services and tasks from the central government to decentralized or independent authorities, with a possible shift of activities from career public servants to contractual employees.

2) **Eroding or weakening the special prerogatives attached to special employment status:** This strategy was pursued through gradual rule changes in national labour law as regards dismissal conditions, pay and promotion practices, retirement and pension arrangements; such gradual changes are more easily implemented than an outright abolition of the special status attached to career public servants.

Steps towards harmonization of special employment status with private sector practices were:

- Flexibility in recruitment practices;
- Reduction in importance of seniority in career and promotion processes in favor of merit and performance;
- Facilitation of mobility;
- Extension of fixed-term contracts to (senior) civil servants;
- Introduction of variable components in remuneration and performance-related pay;
- Curtailment of retirement and pension privileges;
- Weakening of job protection;
- Dismissal procedures and collective redundancies made easier and less costly.

The majority, if not all of the former EU 15 countries were affected by the processes of privatization and outsourcing of public services and state-owned activities, which in the 1990s also had a major impact on all the former communist countries of central and eastern Europe.

“In Western Europe where there are some of the most regulated systems of industrial relations, their transformation has become an acute debate both for trade unionists and employees. Forms of privatization, the adoption of quality management systems<sup>36</sup>, the decentralization of service delivery, the adoption of new accounting standards, and increasingly individualized forms of management impact upon the way people in the public sector are managed.”<sup>37</sup> The latter translates with a “greater emphasis on performance management and measurement within the public sector and its employment relations. There is an attempt at a greater alignment of pay and labour activities to determined outputs” and even “a cult of surveillance.” The word ‘client’ appeared also in this context, including in the United Nations management language to parallel the firm-customer relations.

“Despite significant changes in 1990s and 2000s, a large proportion of central government employees in many EU countries continue to enjoy special status”. Two key features stand out within the public sector: a distinction between employees with special employment status (career civil servants) usually subject to public or administrative law and personnel on ordinary employment contracts, subject to private or commercial law.” In almost every country, there is “a system where career civil servants – unlike public workers under ordinary employment contract and private sector employees – are usually appointed unilaterally or ‘nominated’ by administrative

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35 Miguel Martinez Lucio: The public sector , “old welfare states” and the politics of managerialism: introduction, Trade Unions and employment relations in the context of public sector change.

36 I Kirkpatrick and M M Lucio: the politics of quality in the public sector, particularly the chapter 11: Quality and ‘new industrial relations’: the case of Royal Mail, Routledge, London and New York, 1995

37 Miguel Martinez Lucio: The public sector , old welfare states” and the politics of managerialism,

measure, and enjoy special prerogatives in terms of recruitment, career, mobility, job protection and often remuneration and pension arrangements.”

Another typical feature of the public sector in Western Europe is the **fragmentation of its organizational structure**: apart from ideological divisions (with former Confederations recognizing themselves in the Christian-Democrats, communists etc.), a clear demarcation also exists along occupational and professional lines. The United Nations and the other organizations of the UN system are not immune from such trend, nor the landscape of the staff representation.

But is reforming the civil service simply a question of making it more like the private sector? Can we treat the business of government just like any other business, or are there **fundamental cultural values embedded in a national or an international civil service** which are important to society and which need to be safeguarded in the reform process?

#### **IV. Which type of public service, including within the United Nations?<sup>38</sup>**

There are two basic models for employment in the core public service in OECD countries, “**career-based**” or “**position-based**”. The choice of one system or the other has a profound effect on a country’s public service culture and in particular on the desirability and possibility of collective bargaining.

In career-based systems, public servants are expected to stay in the public service (more or less) throughout their working life. Initial entry is based on academic credentials and/or a civil service entry (possibly competitive) examination. Once recruited, people are placed in positions at the will of the organization. This may include a duty of mobility from one ministry to another and from one area of specialization to another. Promotion is based on a system of grades attached more to the individual rather than to a specific position. This sort of system is characterized by limited possibilities for entering the civil service mid-career and a strong emphasis on career development. In position-based systems, the focus is on selecting the best-suited candidate for each position, whether by external recruitment or internal promotion. Position-based systems allow for more open access, and lateral entry is relatively common.

“The challenge for career-based systems is how to have a civil service which is responsive to the needs and specialized skill demands of contemporary society. The challenge for position-based systems is how to ensure that the collective interest is served. Is it then just a matter of “mixing and matching” between the two approaches? Unfortunately it is not so easy. Career-based systems have an implied contract with employees that, having passed the demanding entry conditions, their career will progress to higher and more varied responsibilities. Making some positions “open” challenges that implied contract and may undermine morale and motivation. On the other hand making some career-type appointments in a position based system, unless it is confined to clearly specified positions, challenges the integrity of the competitive principle.”<sup>39</sup>

If there is an overall trend in well-developed countries, it would seem to be towards a position-based approach. But one disadvantage of such systems is that any negative effects fall on areas important to government, such as a sense of collective values, direction and responsibility. A number of countries which have sharpened the position focus of their civil service employment systems are taking action to protect against any loss of critical cultural attributes – mainly by refocusing their efforts on building a collective culture among the senior government management group. But there is some concern that these remedies may be insufficient once the impact of current policies finally works its way through to influencing the public service culture.

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38 This section owes much to the OECD policy brief: Public Sector Modernization: modernizing public employment, published by the OECD Observer, July 2004

39 Ibid, p3.

No current OECD country civil service is a pure example of either the career-based or position-based type. There seems to be a tendency for each to adopt some processes from the other to mitigate the weaknesses to which each system is prone. Four main forces influence the behavior of organizations: 1) Markets 2) Internal and external regulation 3) Contracts with internal or external parties and 4) Social pressures which mould individual and group behaviour.

Any organization is influenced by all four factors, but the mix varies. In general it appears that social pressures influence behavior more in career-based civil service systems than in position-based ones. In a career-based system, a public servant's progress depends to a large extent on how he/she is viewed by the organizational hierarchy, a powerful lever for moulding behaviour to conform with group norms. By contrast, in a position-based system, technical considerations are likely to be more important and the individual will be somewhat less responsive to social pressures.

Authority and the conceptual role for Human Resource Management (HRM) policy is still highly centralized in most OECD countries, but in half of them the implementation of these policies has been decentralized. Although the scope and pace of devolution vary from one country to another, most OECD countries have moved towards delegating responsibility for HRM to give managers more flexibility and freedom. In general, there appear to be three strategies with regards to delegation:

- 1) Transferring responsibility for HRM from central bodies to line departments;
- 2) Simplifying rules and procedures;
- 3) Developing more flexible policies.

A good indicator of the freedom to manage is the degree to which departments, rather than central agencies, control the personnel budget. Devolving budgetary authority is essential before central control over key HRM aspects such as staff numbers, classification, grading and pay can be relaxed. In general, position-based systems seem to go hand in hand with higher freedom to manage. In many countries this freedom has been accompanied by a focus on holding managers accountable for results through systems of corporate and personal performance management and RBM frameworks.

### **A job for life?**

Permanent employment has traditionally been the norm in OECD public sectors, with much greater job security than the private sector. Indeed, job security and retirement benefits led to a popular belief in many countries that it was a good thing for a young person to obtain a public service job. This situation has changed significantly since the late 1980s. The differences between public sector and private sector employment are lessening; legislation is becoming more flexible and fixed-term contracts are becoming more prevalent. The employment status of civil servants is now very similar to that of employees generally in 16 OECD countries. The move towards more temporary employment – and away from lifelong careers – appears to be driven mainly by the realities of the contemporary labour market. There have also been changes in recruitment practices, with many OECD countries moving towards recruiting employees from the market rather than nurturing their careers from an early stage. Whatever recruitment strategy they adopt, there is similarity in the principles they espouse: recruitment by open competition and selection based on merit and competence.

### **Resulting challenges for HRM and SRM within the United Nations**

As illustrated by the decision making process toward the end of the permanent contracts in some of the UN system Organizations, particularly the United Nations, the aforementioned transformations in the national public services had a substantial impact on a number of factors affecting HRM and SMR in inter-governmental organizations: the nature, quantity, and conditions of recruitment; increased competition on the global and local skills market; plurality of contractual arrangements, of qualifications, remunerations, compensations, location, security and safety among others. Because such transformative changes appeared only progressively, they rarely pushed the Executive Heads (either individually or collectively through the CEB), ICSC and the General Assembly, to

envisage and discuss new HR policies with a medium term outlook. Nor did some of these entities equip themselves with an approach and framework for sufficient dialogue among all stakeholders.

On the other hand, in spite of the major reforms undertaken on various fronts by the administrations spurred on by some influential member States, the Staff Representative Bodies (SRBs) failed to develop a unified staff representational structure within the United Nations, to identify, examine and concretize proposals that would assist the United Nations and its associate entities to solve key HR issues affecting the staff-at-large. Beyond that Organization, SRBs organized themselves within one, then two and now three “staff Federations” at the U.N. system level. As will be seen from the second JIU report on the SMR, in addition to a coordinating role among SRBs, their officials are performing representational tasks in various common system bodies.

What is cementing the United Nations system is a common belief in the core values embedded in the United Nations Charter and the Universal Declaration on Human rights. “If we look to the private sector for models in modernizing public employment we must not forget that the fundamental purpose of the public service is government, not management. This means paying attention to fundamental values like fairness, equity, justice, and social cohesion to maintain confidence in the governmental and political system as a whole. Managerial aspects, while important, must be considered secondary.”<sup>40</sup>

We also borrow from the excellent 2004 OECD policy brief on “Modernizing Public employment” its conclusion which, in our view retains full validity for the universe of international organizations of the United Nations system:

“New problems and a changing labour market, as much as new management ideas, have driven the main trends in public employment modernization in the past two decades. The OECD’s most important finding is that the two archetypical civil service systems – the traditional career-based system, and the position-based system which in many countries is replacing it – are both under pressure. However, the actions taken to date have tended to be adaptations of particular employment instruments to meet specific problems, with less attention to their impact on the public management system as a whole. It is important to give more attention to these systemic issues and in particular to three fundamental dilemmas:

- The increasing knowledge and skill demands of modern government, and the increasing difficulty of government in attracting and keeping high quality staff.
- The interconnectedness of key public problems, and the fragmentation of public action and the individualization of public service responsibilities and incentives.
- The need to attract and motivate senior executives who meet the high performance demands of a modern ministry, while keeping them in a wider cross-government culture bound by the public interest. (...).

In the medium term, it appears that countries with career-based systems will be working on ways to bring more market pressures to bear, while those with position-based systems are looking for ways to strengthen cultural cohesion. It is unclear how effective the current modifications to both kinds of system will be in changing the deeper tendencies.” ./..

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40 Ibid, p 2