THE INTERNATIONAL CIVIL SERVANT IN LAW AND IN FACT

*Lecture delivered to Congregation at Oxford University, 30 May 1961.**

I

In a recent article Mr. Walter Lippmann tells about an interview in Moscow with Mr. Krushchev. According to the article, Chairman Krushchev stated that 'while there are neutral countries, there are no neutral men,' and the author draws the conclusion that it is now the view of the Soviet Government 'that there can be no such thing as an impartial civil servant in this deeply divided world, and that the kind of political celibacy which the British theory of the civil servant calls for, is in international affairs a fiction.'

Whether this accurately sums up the views held by the Soviet Government, as reflected in the interview, or not, one thing is certain: The attitude which the article reflects is one which we find nowadays in many political quarters, communist and non-communist alike, and it raises a problem which cannot be treated lightly. In fact, it challenges basic tenets in the philosophy of both the League of Nations and the United Nations, as one of the essential points on which these experiments in international cooperation represent an advance beyond traditional 'conference diplomacy' is the introduction on the international arena of joint permanent organs, employing a neutral civil service, and the use of such organs for executive purposes on behalf of all the members of the organizations. Were it to be considered that the experience shows that this radical innovation in international life rests on a false assumption, because 'no man can be neutral,' then we would be thrown back to 1919, and a searching re-appraisal would become necessary.

II

The international civil service had its genesis in the League of Nations but it did not spring full-blown in the Treaty of Versailles and the Covenant. The Covenant was in fact silent on the

international character of the Secretariat. It contained no provisions comparable to those of Article 100 of the Charter and simply stated:

> 'The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.'

In the earliest proposals for the Secretariat of the League, it was apparently taken for granted that there could not be a truly international secretariat but that there would have to be nine national secretaries, each assisted by a national staff and performing, in turn, the duties of Secretary to the Council, under the supervision of the Secretary-General. This plan, which had been drawn up by Sir Maurice Hankey, who had been offered the post of Secretary-General of the League by the Allied Powers, was in keeping with the precedents set by the various international bureaux established before the war which were staffed by officials seconded by Member countries on a temporary basis.

It was Sir Eric Drummond, first Secretary-General of the League, who is generally regarded as mainly responsible for building upon the vague language of the Covenant a truly international secretariat. The classic statement of the principles he first espoused is found in the report submitted to the Council of the League by its British member, Arthur Balfour:

> 'By the terms of the Treaty, the duty of selecting the staff falls upon the Secretary-General, just as the duty of approving it falls upon the Council. In making his appointments, he had primarily to secure the best available men and women for the particular duties which had to be performed; but in doing so, it was necessary to have regard to the great importance of selecting the officials from various nations. Evidently, no one nation or group of nations ought to have a monopoly in providing the material for this international institution. I emphasize the word "international," because the members of the Secretariat once appointed are no longer the servants of the country of which they are citizens, but become for the time being the servants only of the League of Nations. Their duties are not national but international.'

Thus, in this statement, we have two of the essential principles of

an international civil service: (1) its international composition and (2) its international responsibilities. The latter principle found its legal expression in the Regulations subsequently adopted which enjoined all officials 'to discharge their functions and to regulate their conduct with the interests of the League alone in view' and prohibited them from seeking or receiving 'instructions from any Government or other authority external to the Secretariat of the League of Nations.'

Along with the conception of an independent, internationally responsible staff, another major idea was to be found: the international Secretariat was to be solely an administrative organ, eschewing political judgments and actions. It is not at all surprising that this third principle should have originated with a British Secretary-General. In the United Kingdom, as in certain other European countries, a system of patronage, political or personal, had been gradually replaced in the course of the nineteenth century by the principle of a permanent civil service based on efficiency and competence and owing allegiance only to the State which it served. It followed that a civil service so organized and dedicated would be non-political. The civil servant could not be expected to serve two masters and consequently he could not, in his official duties, display any political allegiance to a political party or ideology. Those decisions which involved a political choice were left to the Government and to Parliament; the civil servant was the non-partisan administrator of those decisions. His discretion was a limited one, bound by the framework of national law and authority and by rules and instructions issued by his political superiors. True, there were choices for him, since neither legal rules nor policy decisions can wholly eliminate the discretion of the administrative official, but the choices to be made were confined to relatively narrow limits by legislative enactment, Government decision and the great body of precedent and tradition. The necessary condition was that there should exist at all times a higher political authority with the capacity to take the political decisions. With that condition it seemed almost axiomatic that the civil service had to be 'politically celibate' (though not perhaps politically virgin). It could not take sides in any political controversy and, accordingly, it could not be given tasks which required it to do so. This was reflected in the basic statements laying down the policy to govern the international Secretariat. I may quote two of them:

'We recommend with special urgency that, in the interests of the League, as well as in its own interests, the Secretariat should not extend the sphere of its activities, that in the preparation of the work and the decisions of the various organizations of the League, it should regard it as its first duty to collate the relevant documents, and to prepare the ground for these decisions without suggesting what these decisions should be; finally, that once these decisions have been taken by the bodies solely responsible for them, it should confine itself to executing them in the letter and in the spirit.'*

'Une fois les décisions prises, le rôle du Secrétariat est de les appliquer. Ici encore, il y a lieu de faire une distinction entre application et interprétation, non pas, à coup sûr, que je demande au Secrétariat de ne jamais interpréter; c'est son métier! Mais je lui demande, et vous lui demanderez certainement tous, d'interpréter le moins loin possible, le plus fidèlement possible, et surtout de ne jamais substituer son interprétation à la vôtre.'†

Historians of the League have noted the self-restraining role played by the Secretary-General. He never addressed the Assembly of the League and in the Council 'he tended to speak . . . as a Secretary of a committee and not more than that.'‡ For him to have entered into political tasks which involved in any substantial degree the taking of a position was regarded as compromising the very basis of the impartiality essential for the Secretariat.

True, this does not mean that political matters as such were entirely excluded from the area of the Secretariat's interests. It has been reported by Sir Eric Drummond and others that he played a role behind the scenes, acting as a confidential channel of communication to Governments engaged in controversy or dispute, but this behind-the-scenes role was never extended to taking action in a politically controversial case that was deemed objectionable by one of the sides concerned.

III

The legacy of the international Secretariat of the League is marked in the Charter of the United Nations. Article 100 follows

* Report of Committee Four, records of the Second Assembly.
† Statement by M. Noblemaire, Second Assembly, 1 October 1921.
‡ Proceedings of Conference on Experience in International Administration, Washington, D.C., Carnegie Endowment, 1943.

almost verbatim the League regulations on independence and international responsibility—barring the seeking or receiving of instructions from States or other external authority. This was originally proposed at San Francisco by the four sponsoring powers—China, the USSR, the United Kingdom and the United States—and unanimously accepted. The League experience had shown that an international civil service, responsible only to the Organization, was workable and efficient. It had also revealed as manifested in the behaviour of German and Italian Fascists, that there was a danger of national pressures corroding the concept of international loyalty. That experience underlined the desirability of including in the Charter itself an explicit obligation on officials and governments alike to respect fully the independence and the exclusively international character of the responsibilities of the Secretariat.

It was also recognized that an international civil service of this kind could not be made up of persons indirectly responsible to their national governments. The weight attached to this by the majority of Members was demonstrated in the Preparatory Commission, London, when it was proposed that appointments of officials should be subject to the consent of the government of the Member State of which the candidate was a national. Even in making this proposal, its sponsor explained that it was only intended to build up a staff adequately representative of the governments and acceptable to them. He maintained that prior approval of officials was necessary, in order to obtain the confidence of their governments which was essential to the Secretariat, but once the officials were appointed, the exclusively international character of their responsibilities would be respected. However, the great majority of Member States rejected this proposal, for they believed that it would be extremely undesirable to write into the regulations anything that would give national governments particular rights in respect of appointments and thus indirectly permit political pressures on the Secretary-General.

Similarly in line with Article 100, the Preparatory Commission laid emphasis on the fact that the Secretary-General 'alone is responsible to the other principal organs for the Secretariat's work,' and that all officials in the Organization must recognize the exclusive authority of the Secretary-General and submit themselves to rules of discipline laid down by him.

The principle of the independence of the Secretariat from national

pressures was also reinforced in the Charter by Article 105, which provides for granting officials of the Organization 'such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization'. It was in fact foreseen at San Francisco that in exceptional circumstances there might be a clash between the independent position of a member of the Secretariat and the position of his country, and consequently that an immunity in respect of official acts would be necessary for the protection of the officials from pressure by individual governments and to permit them to carry out their international responsibilities without interference.

In all of these legal provisions, the Charter built essentially on the experience of the League and affirmed the principles already accepted there. However, when it came to the functions and authority of the Secretary-General, the Charter broke new ground.

In Article 97 the Secretary-General is described as the 'chief administrative officer of the Organization', a phrase not found in the Covenant, though probably implicit in the position of the Secretary-General of the League. Its explicit inclusion in the Charter made it a constitutional requirement—not simply a matter left to the discretion of the organs—that the administration of the Organization shall be left to the Secretary-General. The Preparatory Commission observed that the administrative responsibility under Article 97 involves the essential tasks of preparing the ground for the decisions of the organs and of 'executing' them in cooperation with the Members.

Article 97 is of fundamental importance for the status of the international Secretariat of the United Nations, and thus for the international civil servant employed by the Organization, as together with Articles 100 and 101 it creates for the Secretariat a position, administratively, of full political independence. However, it does not, or at least it need not represent an element in the picture which raises the question of the 'neutrality' of the international civil servant. This is so because the decisions and actions of the Secretary-General as chief administrative officer naturally can be envisaged as limited to administrative problems outside the sphere of political conflicts of interest or ideology, and thus as maintaining the concept of the international civil servant as first developed in the League of Nations.

However, Article 97 is followed by Article 98, and Article 98 is

followed by Article 99. And these two Articles together open the door to the problem of neutrality in a sense unknown in the history of the League of Nations.

In Article 98 it is, thus, provided not only that the Secretary-General 'shall act in that capacity' in meetings of the organs, but that he 'shall perform such other functions as are entrusted to him by these organs'. This latter provision was not in the Covenant of the League. It has substantial significance in the Charter, for it entitles the General Assembly and the Security Council to entrust the Secretary-General with tasks involving the execution of political decisions, even when this would bring him—and with him the Secretariat and its members—into the arena of possible political conflict. The organs are, of course, not required to delegate such tasks to the Secretary-General but it is clear that they *may* do so. Moreover, it may be said that in doing so the General Assembly and the Security Council are in no way in conflict with the spirit of the Charter—even if some might like to give the word 'chief administrative officer' in Article 97 a normative and limitative significance—since the Charter itself gives to the Secretary-General an explicit political role.

It is Article 99 more than any other which was considered by the drafters of the Charter to have transformed the Secretary-General of the United Nations from a purely administrative official to one with an explicit political responsibility. Considering its importance, it is perhaps surprising that Article 99 was hardly debated: most delegates appeared to share Smuts' opinion that the position of the Secretary-General 'should be of the highest importance and for this reason a large measure of initiative was expressly conferred.' Legal scholars have observed that Article 99 not only confers upon the Secretary-General a right to bring matters to the attention of the Security Council but that this right carries with it, by necessary implication, a broad discretion to conduct inquiries and to engage in informal diplomatic activity in regard to matters which 'may threaten the maintenance of international peace and security.'

It is not without some significance that this new conception of a Secretary-General originated principally with the United States rather than the United Kingdom. It has been reported that at an early stage in the preparation of the papers that later became the Dumbarton Oaks proposals, the United States gave serious consideration to the idea that the Organization should have a President

as well as a Secretary-General. Subsequently, it was decided to propose only a single officer, but one in whom there would be combined both the political and executive functions of a President with the internal administrative functions that were previously accorded to a Secretary-General. Obviously, this is a reflection, in some measure, of the American political system, which places authority in a chief executive officer who is not simply subordinated to the legislative organs but who is constitutionally responsible alone for the execution of legislation and in some respects for carrying out the authority derived from the constitutional instrument directly.

The fact that the Secretary-General is an official with political power as well as administrative functions had direct implications for the method of his selection. Proposals at San Francisco to eliminate the participation of the Security Council in the election process were rejected precisely because it was recognized that the role of the Secretary-General in the field of political and security matters properly involved the Security Council and made it logical that the unanimity rule of the permanent Members should apply. At the same time, it was recognized that the necessity of such unanimous agreement would have to be limited only to the selection of the Secretary-General and that it was equally essential that he be protected against the pressure of a Member during his term in office. Thus a proposal for a three-year term was rejected on the ground that so short a term might impair his independent role.

The concern with the independence of the Secretary-General from national pressures was also reflected at San Francisco in the decision of the Conference to reject proposals for Deputies Secretary-General appointed in the same manner as the Secretary-General. The opponents of this provision maintained that a proposal of this kind would result in a group of high officials who would not be responsible to the Secretary-General but to the bodies which elected them. This would inevitably mean a dilution of the responsibility of the Secretary-General for the conduct of the Organization and would be conducive neither to the efficient functioning of the Secretariat nor to its independent position. In this action and other related decisions, the drafters of the Charter laid emphasis on the personal responsibility of the Secretary-General; it is he who is solely responsible for performing the functions entrusted to him for the appointment of all members of the Secretariat and for

assuring the organ that the Secretariat will carry out their tasks under his exclusive authority. The idea of a 'Cabinet system' in which responsibility for administration and political functions would be distributed among several individuals was squarely rejected.

It is also relevant in this connection that the provision for 'due regard to geographical representation' in the recruitment of the Secretariat was never treated as calling for political or ideological representation. It was rather an affirmation of the idea accepted since the beginning of the League Secretariat that the staff of the Organization was to have an international composition and that its basis would be as 'geographically' broad as possible. Moreover, as clearly indicated in the language of Article 101, the 'paramount consideration in the employment of the staff' should be the necessity of securing the highest standards of efficiency, competence and integrity. This terminology is evidence of the intention of the drafters to accord priority to considerations of efficiency and competence over those of geographical representation, important though the latter be.

To sum up, the Charter laid down these essential legal principles for an international civil service:

It was to be an international body, recruited primarily for efficiency, competence and integrity, but on as wide a geographical basis as possible;

It was to be headed by a Secretary-General who carried constitutionally the responsibility to the other principal organs for the Secretariat's work;

And finally, Article 98 entitled the General Assembly and the Security Council to entrust the Secretary-General with tasks going beyond the *verba formalia* of Article 97—with its emphasis on the administrative function—thus opening the door to a measure of political responsibility which is distinct from the authority explicitly accorded to the Secretary-General under Article 99 but in keeping with the spirit of that article.

This last-mentioned development concerning the Secretary-General, with its obvious consequences for the Secretariat as such, takes us beyond the concept of a non-political civil service into an area where the official, in the exercise of his functions, may be forced to take stands of a politically controversial nature. It does this, however, on an international basis and, thus, without departing from the basic concept of 'neutrality'; in fact, Article 98, as well

as Article 99, would be unthinkable without the complement of Article 100 strictly observed both in letter and spirit.

Reverting for a moment to our initial question, I have tried to emphasize the distinction just made. If a demand for neutrality is made, by present critics of the international civil service, with the intent that the international civil servant should not be permitted to take a stand on political issues, in response to requests of the General Assembly or the Security Council, then the demand is in conflict with the Charter itself. If, however, 'neutrality' means that the international civil servant, also in executive tasks with political implications, must remain wholly uninfluenced by national or group interests or ideologies, then the obligation to observe such neutrality is just as basic to the Charter concept of the international civil service as it was to the concept once found in the Covenant of the League. Due to the circumstances then prevailing the distinction to which I have just drawn attention probably never was clearly made in the League, but it has become fundamental for the interpretation of the actions of the Secretariat as established by the Charter.

The criticism to which I referred at the beginning of this lecture can be directed against the very Charter concept of the Secretariat and imply a demand for a reduction of the functions of the Secretariat to the role assigned to it in the League and explicitly mentioned in Article 97 of the Charter; this would be a retrograde development in sharp conflict with the way in which the functions of the international Secretariat over the years have been extended by the main organs of the United Nations, in response to arising needs. Another possibility would be that the actual developments under Articles 98 and 99 are accepted but that a lack of confidence in the possibility of personal 'neutrality' is considered to render necessary administrative arrangements putting the persons in question under special constitutional controls, either built into the structure of the Secretariat or established through organs outside the Secretariat.

IV

The conception of an independent international civil service, although reasonably clear in the Charter provisions, was almost continuously subjected to stress in the history of the Organization. International tensions, changes in governments, concern with national security, all had their inevitable repercussions on the still

fragile institution dedicated to the international community. Governments not only strove for the acceptance of their views in the organs of the Organization, but they concerned themselves in varying degrees with the attitude of their nationals in the Secretariat. Some governments sought in one way or another to revive the substance of the proposal defeated at London for the clearance of their nationals prior to employment in the Secretariat; other governments on occasion demanded the dismissal of staff members who were said to be inappropriately representative of the country of their nationality for political, racial or even cultural reasons.

In consequence, the Charter Articles underwent a continual process of interpretation and clarification in the face of pressures brought to bear on the Secretary-General. On the whole the results tended to affirm and strengthen the independence of the international civil service. These developments involved two complementary aspects: first, the relation between the Organization and the Member States in regard to the selection and employment of nationals of those States; and second, the relation between the international official, his own State and the international responsibilities of the Organization. It is apparent that these relationships involved a complex set of obligations and rights applying to the several interested parties.

One of the most difficult of the problems was presented as a result of the interest of several national governments in passing upon the recruitment of their nationals by the Secretariat. It was of course a matter of fundamental principle that the selection of the staff should be made by the Secretary-General on his own responsibility and not on the responsibility of the national governments. The interest of the governments in placing certain nationals and in barring the employment of others had to be subordinated, as a matter of principle and law, to the independent determination of the Organization. Otherwise there would have been an abandonment of the position adopted at San Francisco and affirmed by the Preparatory Commission in London.

On the other hand, there were practical considerations which required the Organization to utilize the services of governments for the purpose of obtaining applicants for positions and, as a corollary of this, for information as to the competence, integrity and general suitability of such nationals for employment. The United Nations could not have an investigating agency comparable to those available

to national governments, and the Organization had therefore to accept assistance from governments in obtaining information and records concerning possible applicants. However, the Secretary-General consistently reserved the right to make the final determination on the basis of all the facts and his own independent appreciation of these facts.

It may be recalled that this problem assumed critical proportions in 1952 and 1953 when various authorities of the United States Government, host to the United Nations Headquarters, conducted a series of highly publicized investigations of the loyalty of its nationals in the Secretariat. Charges were made which, although relating to a small number of individuals and largely founded upon inference rather than on direct evidence or admissions, led to proposals which implicitly challenged the international character of the responsibilities of the Secretary-General and his staff. In certain other countries similar proposals were made and in some cases adopted in legislation or by administrative action.

In response, the Secretary-General and the Organization as a whole affirmed the necessity of independent action by the United Nations in regard to selection and recruitment of staff. The Organization was only prepared to accept information from governments concerning suitability for employment, including information that might be relevant to political considerations such as activity which would be regarded as inconsistent with the obligation of international civil servants. It was recognized that there should be a relationship of mutual confidence and trust between international officials and the governments of Member States. At the same time, the Secretary-General took a strong position that the dismissal of a staff member on the basis of the mere suspicion of a government of a Member State or a bare conclusion arrived at by that government on evidence which is denied the Secretary-General would amount to receiving instructions in violation of his obligation under Article 100, paragraph 1, of the Charter 'not to receive in the performance of his duties instructions from any government'. It should be said that, as a result of the stand taken by the Organization, this principle was recognized by the United States Government in the procedures it established for hearings and submission of information to the Secretary-General regarding U.S. citizens.

A risk of national pressure on the international official may also be introduced, in a somewhat more subtle way, by the terms and

duration of his appointment. A national official, seconded by his government for a year or two with an international organization, is evidently in a different position psychologically—and one might say, politically—from the permanent international civil servant who does not contemplate a subsequent career with his national government. This was recognized by the Preparatory Commission in London in 1945 when it concluded that members of the Secretariat staff could not be expected 'fully to subordinate the special interests of their countries to the international interest if they are merely detached temporarily from national administrations and dependent upon them for their future'. Recently, however, assertions have been made that it is necessary to switch from the present system, which makes permanent appointments and career service the rule, to a predominant system of fixed-term appointments to be granted mainly to officials seconded by their governments. This line is prompted by governments which show little enthusiasm for making officials available on a long-term basis, and, moreover, seem to regard—as a matter of principle or, at least, of 'realistic' psychology —the international civil servant primarily as a national official representing his country and its ideology. On this view, the international civil service should be recognized and developed as being an 'intergovernmental' secretariat composed principally of national officials assigned by their governments, rather than as an 'international' secretariat as conceived from the days of the League of Nations and until now. In the light of what I have already said regarding the provisions of the Charter, I need not demonstrate that this conception runs squarely against the principles of Articles 100 and 101.

This is not to say that there is not room for a reasonable number of 'seconded' officials in the Secretariat. It has in fact been accepted that it is highly desirable to have a number of officials available from governments for short periods, especially to perform particular tasks calling for diplomatic or technical backgrounds. Experience has shown that such seconded officials, true to their obligations under the Charter, perform valuable service but as a matter of good policy it should, of course, be avoided as much as possible to put them on assignments in which their status and nationality might be embarrassing to themselves or the parties concerned. However, this is quite different from having a large portion of the Secretariat—say, in excess of one-third—composed of short-term officials. To

have so large a proportion of the Secretariat staff in the seconded category would be likely to impose serious strains on its ability to function as a body dedicated exclusively to international responsibilities. Especially if there were any doubts as to the principles ruling their work in the minds of the governments on which their future might depend, this might result in a radical departure from the basic concepts of the Charter and the destruction of the international civil service as it has been developed in the League and up to now in the United Nations.

It can fairly be said that the United Nations has increasingly succeeded in affirming the original idea of a dedicated professional service responsible only to the Organization in the performance of its duties and protected insofar as possible from the inevitable pressures of national governments. And this has been done in spite of strong pressures which are easily explained in terms of historic tradition and national interests. Obviously, however, the problem is ultimately one of the spirit of service shown by the international civil servant and respected by Member governments. The International Secretariat is not what it is meant to be until the day when it can be recruited on a wide geographical basis without the risk that then some will be under—or consider themselves to be under—two masters in respect of their official functions.

V

The independence and international character of the Secretariat required not only resistance to national pressures in matters of personnel, but also—and this was more complex—the independent implementation of controversial political decisions in a manner fully consistent with the exclusively international responsibility of the Secretary-General. True, in some cases implementation was largely administrative; the political organs stated their objectives and the measures to be taken in reasonably specific terms, leaving only a narrow area for executive discretion. But in other cases—and these generally involved the most controversial situations—the Secretary-General was confronted with mandates of a highly general character, expressing the bare minimum of agreement attainable in the organs. That the execution of these tasks involved the exercise of political judgment by the Secretary-General was, of course, evident to the Member States themselves.

It could perhaps be surmised that virtually no one at San Francisco envisaged the extent to which the Members of the Organization would assign to the Secretary-General functions which necessarily required him to take positions in highly controversial political matters. A few examples of these mandates in recent years will demonstrate how wide has been the scope of authority delegated to the Secretary-General by the Security Council and the General Assembly in matters of peace and security.

One might begin in 1956 with the Palestine armistice problem when the Security Council instructed the Secretary-General 'to arrange with the parties for adoption of any measures' which he would consider 'would reduce existing tensions along the armistice demarcation lines.' A few months later, after the outbreak of hostilities in Egypt, the General Assembly authorized the Secretary-General immediately to 'obtain compliance of the withdrawal of foreign forces.' At the same session he was requested to submit a plan for a United Nations Force to 'secure and supervise the cessation of hostilities,' and subsequently he was instructed 'to take all . . . necessary administrative and executive action to organize this Force and dispatch it to Egypt.'

In 1958 the Secretary-General was requested 'to dispatch urgently an Observation Group . . . to Lebanon so as to insure that there is no illegal infiltration of personnel or supply of arms or other matériel across the Lebanese borders.' Two months later he was asked to make forthwith 'such practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan.'

Most recently, in July 1960, the Secretary-General was requested to provide military assistance to the Central Government of the Republic of the Congo. The basic mandate is contained in a single paragraph of a resolution adopted by the Security Council on 13 July 1960, which reads as follows:

> '*The Security Council*
>
> . . . .
>
> '2. *Decides* to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance, as may be necessary, until, through the efforts of the Congolese Government with the technical

assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks.'

The only additional guidance was provided by a set of principles concerning the use of United Nations Forces which had been evolved during the experience of the United Nations Emergency Force. I had informed the Security Council before the adoption of the resolution that I would base any action that I might be required to take on these principles, drawing attention specifically to some of the most significant of the rules applied in the UNEF operation. At the request of the Security Council I later submitted an elaboration of the same principles to the extent they appeared to me to be applicable to the Congo operation. A report on the matter was explicitly approved by the Council, but naturally it proved to leave wide gaps; unforeseen and unforeseeable problems, which we quickly came to face, made it necessary for me repeatedly to invite the Council to express themselves on the interpretation given by the Secretary-General to the mandate. The needs for added interpretation referred especially to the politically extremely charged situation which arose because of the secession of Katanga and because of the disintegration of the Central Government, which, according to the basic resolution of the Security Council, was to be the party in consultation with which the United Nations activities had to be developed.

These recent examples demonstrate the extent to which the Member States have entrusted the Secretary-General with tasks that have required him to take action which unavoidably may have to run counter to the views of at least some of these Member States. The agreement reached in the general terms of a resolution, as we have seen, no longer need obtain when more specific issues are presented. Even when the original resolution is fairly precise, subsequent developments, previously unforeseen, may render highly controversial the action called for under the resolution. Thus, for example, the unanimous resolution authorizing assistance to the Central Government of the Congo offered little guidance to the Secretary-General when that Government split into competing centers of authority, each claiming to be the Central Government and each supported by different groups of Member States within and outside the Security Council.

A simple solution for the dilemmas thus posed for the Secretary-General might seem to be for him to refer the problem to the political organ for it to resolve the question. Under a national parliamentary regime, this would often be the obvious course of action for the executive to take. Indeed, this is what the Secretary-General must also do whenever it is feasible. But the serious problems arise precisely because it is so often not possible for the organs themselves to resolve the controversial issue faced by the Secretary-General. When brought down to specific cases involving a clash of interests and positions, the required majority in the Security Council or General Assembly may not be available for any particular solution. This will frequently be evident in advance of a meeting and the Member States will conclude that it would be futile for the organs to attempt to reach a decision and consequently that the problem has to be left to the Secretary-General to solve on one basis or another, on his own risk but with as faithful an interpretation of the instructions, rights and obligations of the Organization as possible in view of international law and the decisions already taken.

It might be said that in this situation the Secretary-General should refuse to implement the resolution, since implementation would offend one or another group of Member States and open him to the charge that he has abandoned the political neutrality and impartiality essential to his office. The only way to avoid such criticism, it is said, is for the Secretary-General to refrain from execution of the original resolution until the organs have decided the issue by the required majority (and, in the case of the Security Council, with the unanimous concurrence of the permanent members) or he, maybe, has found another way to pass responsibility over on to governments.

For the Secretary-General this course of action—or more precisely, non-action—may be tempting; it enables him to avoid criticism by refusing to act until other political organs resolve the dilemma. An easy refuge may thus appear to be available. But would such refuge be compatible with the responsibility placed upon the Secretary-General by the Charter? Is he entitled to refuse to carry out the decision properly reached by the organs, on the ground that the specific implementation would be opposed to positions some Member States might wish to take, as indicated, perhaps, by an earlier minority vote? Of course the political organs may always instruct him to discontinue the implementation of a resolution, but

when they do not so instruct him and the resolution remains in effect, is the Secretary-General legally and morally free to take no action, particularly in a matter considered to affect international peace and security? Should he, for example, have abandoned the operation in the Congo because almost any decision he made as to the composition of the Force or its role would have been contrary to the attitudes of some Members as reflected in debates, and maybe even in votes, although not in decisions?

The answers seem clear enough in law; the responsibilities of the Secretary-General under the Charter cannot be laid aside merely because the execution of decisions by him is likely to be politically controversial. The Secretary-General remains under the obligation to carry out the policies as adopted by the organs; the essential requirement is that he does this on the basis of his exclusively international responsibility and not in the interest of any particular State or groups of States.

This presents us with the crucial issue; is it possible for the Secretary-General to resolve controversial questions on a truly international basis without obtaining the formal decision of the organs? In my opinion and on the basis of my experience, the answer is in the affirmative; it is possible for the Secretary-General to carry out his tasks in controversial political situations with full regard to his exclusively international obligation under the Charter and without subservience to a particular national or ideological attitude. This is not to say that the Secretary-General is a kind of delphic oracle who alone speaks for the international community. He has available for his task varied means and resources.

Of primary importance in this respect are the principles and purposes of the Charter which are the fundamental law accepted by and binding on all States. Necessarily general and comprehensive, these principles and purposes still are specific enough to have practical significance in concrete cases.

The principles of the Charter are, moreover, supplemented by the body of legal doctrine and precepts that have been accepted by States generally, and particularly as manifested in the resolutions of United Nations organs. In this body of law there are rules and precedents that appropriately furnish guidance to the Secretary-General when he is faced with the duty of applying a general mandate in circumstances that had not been envisaged by the resolution.

Considerations of principle and law, important as they are, do

not of course suffice to settle all the questions posed by the political tasks entrusted to the Secretary-General. Problems of political judgment still remain. In regard to these problems, the Secretary-General must find constitutional means and techniques to assist him, insofar as possible, in reducing the element of purely personal judgment. In my experience I have found several arrangements of value to enable the Secretary-General to obtain what might be regarded as the representative opinion of the Organization in respect of the political issues faced by him.

One such arrangement might be described as the institution of the permanent missions to the United Nations, through which the Member States have enabled the Secretary-General to carry on frequent consultations safeguarded by diplomatic privacy.

Another arrangement, which represents a further development of the first, has been the advisory committees of the Secretary-General, such as those on UNEF and the Congo, composed of representatives of governments most directly concerned with the activity involved, and also representing diverse political positions and interests. These advisory committees have furnished a large measure of the guidance required by the Secretary-General in carrying out his mandates relating to UNEF and the Congo operations. They have provided an essential link between the judgment of the executive and the consensus of the political bodies.

VI

Experience has thus indicated that the international civil servant may take steps to reduce the sphere within which he has to take stands on politically controversial issues. In summary, it may be said that he will carefully seek guidance in the decisions of the main organs, in statements relevant for the interpretation of those decisions, in the Charter and in generally recognized principles of law, remembering that by his actions he may set important precedents. Further, he will submit as complete reporting to the main organs as circumstances permit, seeking their guidance whenever such guidance seems to be possible to obtain. Even if all of these steps are taken, it will still remain, as has been amply demonstrated in practice, that the reduced area of discretion will be large enough to expose the international Secretariat to heated political controversy and to accusations of a lack of neutrality.

I have already drawn attention to the ambiguity of the word 'neutrality' in such a context. It is obvious from what I have said that the international civil servant cannot be accused of lack of neutrality simply for taking a stand on a controversial issue when this is his duty and cannot be avoided. But there remains a serious intellectual and moral problem as we move within an area inside which personal judgment must come into play. Finally, we have to deal here with a question of integrity or with, if you please, a question of conscience.

The international civil servant must keep himself under the strictest observation. He is not requested to be a neuter in the sense that he has to have no sympathies or antipathies, that there are to be no interests which are close to him in his personal capacity or that he is to have no ideas or ideals that matter for him. However, he is requested to be fully aware of those human reactions and meticulously check himself so that they are not permitted to influence his actions. This is nothing unique. Is not every judge professionally under the same obligation?

If the international civil servant knows himself to be free from such personal influences in his actions and guided solely by the common aims and rules laid down for, and by the Organization he serves and by recognized legal principles, then he has done his duty, and then he can face the criticism which, even so, will be unavoidable. As I said, at the final last, this is a question of integrity, and if integrity in the sense of respect for law and respect for truth were to drive him into positions of conflict with this or that interest, then that conflict is a sign of his neutrality and not of his failure to observe neutrality—then it is in line, not in conflict, with his duties as an international civil servant.

Recently, it has been said, this time in Western circles, that as the international Secretariat is going forward on the road of international thought and action, while Member States depart from it, a gap develops between them and they are growing into being mutually hostile elements; and this is said to increase the tension in the world which it was the purpose of the United Nations to diminish. From this view the conclusion has been drawn that we may have to switch from an international Secretariat, ruled by the principles described in this lecture, to an intergovernmental Secretariat, the members of which obviously would not be supposed to work in the direction of an internationalism considered unpalatable

to their governments. Such a passive acceptance of a nationalism rendering it necessary to abandon present efforts in the direction of internationalism symbolized by the international civil service—somewhat surprisingly regarded as a cause of tension—might, if accepted by the Member nations, well prove to be the Munich of international cooperation as conceived after the first World War and further developed under the impression of the tragedy of the second World War. To abandon or to compromise with principles on which such cooperation is built may be no less dangerous than to compromise with principles regarding the rights of a nation. In both cases the price to be paid may be peace.

PRESS CONFERENCE COMMENTS ARISING FROM LECTURE AT OXFORD

From transcript, 12 June 1961

QUESTION: In your widely commented-upon Oxford University speech about two weeks ago you warned that to abandon or compromise with the principles on which international cooperation is based, as symbolized in an independent international civil service, might well prove to be the Munich of international cooperation. You also pointed out two basic principles in the Charter: that decisions were to be political and that the administration and implementation were to be lifted out of the realm of the political. I want to ask you whether you consider these principles applicable to any political decisions taken on nuclear tests, on disarmament, or on any possible arrangement for the United Nations in Berlin.

THE SECRETARY-GENERAL: I believe that the principles do apply whenever you want an impartial implementation or execution of a decision which has been reached or an agreement which has been established. You may remember that at the last press conference I made a distinction between what I called a natural veto, which is based on substance, and an artificial and imposed veto.

(He had said: 'There is a real veto problem and there is an artificial one. The real veto problem, for which in fact the word "veto" is a misnomer is based on the fact that there are questions which cannot be solved without agreement between the big

Powers, especially, in this case, between the predominant military Powers.

There is the artificial veto problem, that is to say, the attempt by this or that Power to make its consent essential for questions which naturally should be solved, let us say, on a majority basis.

On the first point neither you nor I can change anything because there we are up against a hard fact. It is a real problem and it can be solved only by agreement and by the will to agree among the big Powers.

As regards the other question, what I call the artificial veto problem, it is my firm and strong feeling that the introduction and development of such a problem is harmful to international cooperation because it stymies a development which could take place on majority decisions here in this Organization or on some other kind of objective basis.')

I believe one could develop the theme further in the light of your question and say that, as regards agreements, or basic decisions, of course the cooperation of all parties concerned is necessary, and, for that reason, to a greater or lesser extent, a political element enters basically into the operation. On the other hand, once an agreement is reached or a decision taken with the necessary support —that is to say, when you reach the stage of execution—it is just as essential that all parties should be able to feel that the execution will not give rise to new negotiations or, so to speak, tear up the agreement or decision.

Therefore my conclusion is that the principles I tried to develop, especially the principle of the international character of an executive, do apply to all operations in which parties to an agreement or decision should feel assured that the decision will be carried out in a way which is not partisan.

I believe very strongly that the basic principle of internationalism, as established especially in Article 100, is decisive, because if it were not applied, if it were not respected, what would we have? We would have executives or Secretariats which in fact were a lower-level government and party representation. That being so, of course, you would have not an impartial execution of a decision or an agreement, but you would have, in a sense, a continued negotiation or a continued effort to reach decisions. And there you can see how the

very logic of the situation indicates the need of the international character which I mentioned. If we were to lose the international character of the executive part of the operation, of the Secretariats, I think that it would mean a very serious slowing-down of the execution of agreements and the carrying through of decisions. And, when I talked about those principles in somewhat dramatic terms, it was because of the fear which I feel for what we may risk if in this way the whole process of international cooperation were to be slowed down.

* * *

. . . . QUESTION: Mr. Secretary-General, in connection with what you have just said, I would like to ask you a question on a sort of broader aspect. We have seen during the past few months the emergence of a theory of international relations which actually goes back behind the theory of Thomas Hobbes, namely, that objectivity or neutrality is irreconcilable with the working of the human mind and that there is not a single neutral person on this globe. Now, in connection with this new theory, I would like to ask you two questions. First, as a man who was a neutral even in a neutral country, what do you think about the possibility of the freedom of the individual from dependence on ideologies or loyalties to one particular country? And second, what do you think can be done to counter this new theory in order to make possible the theoretical and practical working of international organizations?

THE SECRETARY-GENERAL: In a sense, I have said what I feel can be said about the neutrality of an executive and the neutrality of an international civil servant in the speech at Oxford to which reference has been made. But you put the question in more personal terms, and I may try to explain myself in personal terms.

It may be true that in a very deep, human sense there is no neutral individual, because, as I said at Oxford, everyone, if he is worth anything, has to have his ideas and ideals—things which are dear to him, and so on. But what I do claim is that even a man who is in that sense not neutral can very well undertake and carry through neutral actions, because that is an act of integrity. That is to say, I would say there is no neutral man, but there is, if you have integrity, neutral action by the right kind of man. And 'neutrality' may develop, after all, into a kind of *jeu de mots*. I am not a neutral as regards the Charter; I am not neutral as regards facts. But that is

not what we mean. What is meant by 'neutrality' in this kind of debate, is of course, neutrality in relation to interests; and there I do claim that there is no insurmountable difficulty for anybody with the proper kind of guiding principles in carrying through such neutrality one hundred per cent.

* * *

. . . . QUESTION: A part of the discussion this morning seems to have centered on an interpretation I was looking for of a statement made [in] your Oxford speech. There you raised the question that once the possibility of the impartiality of an international civil servant is questioned there may be—and you go into a sentence which implies a need for changes, constitutional or otherwise, to meet the possibility . . . I wondered—whereas you have previously indicated that a resignation would be forthcoming if the majority of the Assembly should vote against you on a crucial issue—does this represent a sort of *de facto* evolution of the Charter as a constitution or would such an interpretation be beyond what you were saying in the Oxford speech?

THE SECRETARY-GENERAL: I think that in fact you mix two problems here. What I meant . . . is covered by the trite expression, 'Caesar's wife must not even be suspected.' Under such circumstances any international service should be willing to submit itself to all checks and controls which are found constitutionally advisable. That is one thing and I would be quite happy to have it. You may remember that I have at various stages during the Congo operation, for example, invited decisions to the effect that there would be what I called a sharing of responsibilities. You can also say that such a sharing of responsibilities means that the people will have the chance to look at the spirit, the way in which decisions are carried out so as to ascertain that there is this neutrality of action to which I referred. That is really what I had in mind here.

You bring up the other question, the question, of, so to say, the standing offer of resignation. That represents a *de facto* development. It does not have any precedent. There is nothing in the Charter indicating that form. You may perhaps say that it is built on a kind of parliamentary theory in the interpretation of the Charter, a parliamentary theory which, however, I have never, so to say, spelled out. We have a situation where one of the permanent members has ceased cooperation. What should the consequences

be? Obviously the General Assembly comes into the picture, too. The Security Council is not the only one to decide in such matters. I am not in the position to extend Article 97* to cover the whole period of the service of the Secretary-General. That certainly would be absolutely preposterous for the Secretary-General to do. But he must, on the other hand, take into account the hard facts of the situation. Bringing the General Assembly into the question the way I did, I think that, if you want to translate it into constitutional terms—I should not like to formalize it myself but you may want to do so—it is reasonable to say that if the Secretary-General has lost the support of one of the permanent members of the Security Council, which presumably is one of the conditions for his functioning, and if, moreover, he does not have the support of at least two-thirds of the General Assembly, he is no longer in a position to function.

* Art. 97 says, 'The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council.' The vote in the Security Council is subject to the veto rule.