

The Problem of Determining the Status of an International Employee Between Historical and Legal Development

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Submission 01.01.2026 | Acceptance.04.04.2026 | Publication: 29.05.2026

Abstract

This study addresses the problem of determining the status of an international employee by tracing its historical and legal development, highlighting the standards adopted in international jurisprudence and judiciary and the legal texts regulating the international job. It also presents the various jurisprudential and judicial definitions of an international employee, and analyzes their accuracy in distinguishing him from other employees in international organizations. The study also discusses the shortcomings and criticisms of these definitions, particularly with regard to the criteria of independence and loyalty to the international organization. It concluded that the status of an international employee has remained a flexible and evolving concept linked to the development of international organizations and their competencies.

Introduction

International organizations embody an advanced stage in the development of the international community in its quest to consolidate cooperation and enhance communication between countries, in a way that achieves international solidarity in various fields, serves collective security and contributes to the progress of humanity.

These organizations have gained a prominent position within the framework of international law, to the point that it has become difficult to list them due to their multiplicity and diversity of fields of work, which has made them a fundamental feature that distinguishes the modern era, which is rightly called “the era of international organizations”.

The international organization enjoys legal and legal personality at the international level, and this personality and the resulting independence of will and decision have been recognized. This enabled it to manage its internal affairs and achieve the goals for which it was established, and this recognition is one of the most important characteristics that distinguish it and give it an independent functional character.

However, the international organization cannot carry out its tasks and powers directly, so these functions are assigned to an administrative body known as the “Organization Secretariat”, which consists of a group of employees who undertake the implementation of the various works and tasks assigned to them, and they are called “international employees”.

These employees are the essential element in the work of the international organization, as its system relies heavily on them, as Accordingly, the importance of studying the status of international employees within international organizations emerges, as they are the pivotal

human element upon which the effectiveness of these organizations in performing their functions and achieving their goals depends. Despite the essential role played by the international employee, defining his concept precisely continues to raise many problems, given the multiple angles through which he is viewed, the diversity of the legal systems that govern him, in addition to the difference in his legal status from the national employee on the one hand, and from the rest of the actors within the international organization on the other hand.

Hence the following problem arises:

To what extent can a precise and unified concept of the international employee be established in light of the diversity of legal systems and the multiple nature of his duties within international organizations?

Ever since international civil service law was established, there has been ongoing debate among experts regarding the precise meaning of the term "international civil servant." Some have adopted a broad interpretation of the term, while others have opted for a narrower definition. Additionally, international jurisprudence has weighed in on this issue, alongside treaty provisions and other international legal instruments. The following sections will address these perspectives in detail.

The First topic :The Legislative Definition of the International Civil Servant:

Most relevant legal instruments, such as the charters establishing international organizations, agreements concerning privileges and immunities, and headquarters agreements, have not provided a specific definition of the ICS. Instead, they have primarily outlined their rights, obligations, terms of appointment, rights, and privileges.

However, by referring to UN employees in Article 1 with the phrase "For the purposes of this Convention..." the Convention on the Safety of United Nations and Associated Personnel¹ sought to define international public servants.

« -People who work for the UN Secretary-General or are designated by them to serve in the military, police, or civilian elements of a UN operation.

-Officials and other specialists assigned on missions for the International Atomic Energy Agency (IAEA), the United Nations, or its specialized organizations who are in a region where a United Nations operation is taking place.

In 2011, at its 63rd session, the International Law Commission endorsed the Draft Articles on the Responsibility of International Organizations, which described the international representative as a "agent." According to this draft, the term "agent" includes officials and other individuals or entities through whom the organization acts. This definition is explicitly stated in Article 2, Paragraph (c) of the draft articles.

According to the preamble of the United Nations Staff Regulations and Rules (2009), the terms "United Nations Secretariat," "United Nations staff," or "staff members" refer to all Secretariat personnel as defined by Article 97 of the UN Charter, whose employment and service

¹- This convention was adopted, made public, and opened for signature, ratification, and accession pursuant to United Nations General Assembly Resolution No. 59/49, dated December 9, 1994. It entered into force on January 15, 1999.

relationship is established through an appointment letter in compliance with General Assembly regulations.

It is clear from this description that a person must be appointed by a signed letter of appointment, either from the organization's secretary-general or from a designated representative.

Additionally, this definition does not impose a requirement for permanence or continuity in performing international functions.

The United Nations Convention Against Corruption (2003)² merely refers to an "official of an international organization" as any ICS or any individual authorized by the organization to act on its behalf.

Several specialized agencies of the United Nations have also adopted a description of the ICS. For instance, the World Health Organization (WHO) in its staff regulations applies this designation to all employees of the organization without distinction.

In a similar vein, all staff of the Food and Agriculture Organization (FAO) are granted the status of international public servants without distinction under the FAO Staff Regulations. Article 301.1.1 makes it clear that:

"The staff of the Organization are members of the international civil service. Their responsibilities are international rather than national. Upon accepting appointment, they undertake to discharge their functions and regulate their conduct solely in accordance with the interests of the Food and Agriculture Organization of the United Nations³."

Referring to the Statute of the Staff of the League of Arab States, it adopts a "subordination" criterion to determine an employee's status within the organization. It considers all individuals employed by the General Secretariat as ICSs, as affirmed in Article 3 of the statute.

The Second topic :The Definition of an International Civil Servant in International Jurisprudence:

In its April 11, 1949, Advisory Opinion, the International Court of Justice (ICJ) discussed the idea of an international worker or employee of international organizations, concerning compensation for injuries suffered by United Nations personnel. The Court stated that the term *ICS* refers to:

"Any person who works with or without remuneration, on a permanent or temporary basis, and has been assigned by one of the organization's bodies to perform one of its functions or assist in its execution. In short, it refers to any person through whom the organization carries out its activities⁴."

Examining this definition, it is clear that the ICJ adopted a broad interpretation of the term *ICS*. The definition encompasses various categories of personnel with differing legal statuses and

²- The General Assembly adopted this convention through Resolution No. 58/04, dated October 31, 2003. It entered into force on December 14, 2005.

³- Ibrahim Ibrahimi Mukhtar, *The Responsibility of International Civil Servants and Its Applications in the Jurisprudence of International Administrative Courts*, Doctoral Dissertation, Faculty of Law and Political Science, Abou Bekr Belkaid University, Tlemcen, 2016/2017, p. 11.

⁴- Amimer Naïma, *The Democratization of the United Nations*, Dar Houma, Algeria, 2007, p. 36.

roles, including those employed with or without remuneration, those serving on a permanent basis, and those engaged temporarily⁵.

The Court's broad interpretation of the term *ICS* was likely intended to prevent a denial of justice, affirming the legal connection between such personnel and the organization and ensuring that they could claim their rights from it.

However, some legal scholars argue that the ICJ's definition conflates the concepts of "ICS" (*fonctionnaire international*) and "international agent" (*agent international*). According to this perspective, the Court's definition is overly inclusive and does not adequately distinguish between these two categories:

An ICS is generally required to hold a permanent and continuous position within an international organization.

An international agent, on the other hand, is someone the organization engages for temporary assignments.

According to these scholars, the ICJ's definition is broad but lacks precision, as it does not effectively differentiate between these two categories, which serve international organizations in many ways.

In its ruling on November 18, 1978, the League of Arab States' Administrative Tribunal also discussed what constitutes an international civil worker. The Tribunal stated that an ICS is: *"Anyone who holds a permanent and essential position within the institution or body, meaning that the work assigned to them is neither incidental nor temporary by its nature. This remains true regardless of whether the position is held for a fixed term, in accordance with the regulations governing the institution or body."*

The Third topic :The Definition of an International Civil Servant in Legal Scholarship:

Legal experts have developed a number of definitions of the ICS, some of which are included below:

1. Definition by Professor Suzanne Basdevant (Madame Bastid):

She defines the ICS as: *"Any individual appointed by representatives of multiple states—or by a body acting on their behalf—under an agreement among states and under the supervision of those individuals and that body, to perform, on a full-time and continuous basis, functions governed by specific legal rules in the interest of the states concerned"*⁶.

This description closely resembles the national definition of a public servant, transposing it to the international sphere. Consequently, it does not extend to independent officials, such as judges, or individuals who are accountable to the international organization in a different capacity, such as heads of organizations.

⁵- Fathallah Mohammed Hassan Al-Siriri, *The Legal Status of International Civil Servants*, Dar Al-Fikr Al-Jamii, Egypt, 2013, p. 28.

⁶- Basdevant, S. (M. Bastid). "International Civil Servants." In *Directory of International Law*, Vol. 2, 1969, p. 46.

2. Definition by Dr. Gamal Taha Nada:

He defines the ICS as: *"Anyone who works in the service of an international organization on a continuous and permanent basis, in accordance with the provisions of its charter and regulations, with the objective of advancing the organization's interests and fulfilling its objectives⁷."*

This definition is further explained by stating that the term "ICSs" applies exclusively to individuals who work within an international organization on a permanent and continuous basis to achieve an international objective that serves the interests of the global community as a whole. These individuals operate under a distinct legal framework established by the organization they serve, which defines their rights, protections, duties, and obligations.

The continuous nature of the international functions performed by ICSs differentiates them from other auxiliary personnel working within an international organization on an ad hoc or temporary basis for a specific mission—such as experts and arbitrators. It also distinguishes them from support staff such as messengers and domestic workers, who are appointed under the national laws of the country where the organization is headquartered⁸.

3. Definition by Dr. Ibrahim Ahmed Shalaby:

Dr. Shalaby defines an ICS as: *"Any individual who holds a public position that is officially recognized and regularly funded as such⁹."*

According to his perspective, an ICS occupies an international post on a continuous basis, which necessitates full-time dedication, regardless of whether their contract with the organization is temporary. The organizational link between the ICS and the international organization to which they are assigned is reflected in this routine public duty.

He further argues that this organizational relationship closely resembles the employment relationship between a civil servant and their national government, albeit governed by two fundamental principles:

The principle of function and the principle of loyalty. However, while national public service relationships are governed by both principles, the international organizational relationship primarily adheres to the principle of function, meaning it is a purely functional relationship (*fonctionnel*) that does not necessarily require loyalty—at least not in the same sense as in domestic law, since the employee remains legally affiliated with their country of nationality.

4. Definition by Dr. Ahmed Abou El-Wafa Mohamed:

Dr. Abou El-Wafa defines an ICS as: *"A person who works for a specific organization under the terms set forth in a contract concluded with that organization, as well as in accordance with its charter or staff regulations¹⁰."*

⁷- Jamal Taha Nada, *The International Civil Servant*, Egyptian General Authority for Books, 1986, p. 57.

⁸- *Ibid.*, p. 58.

⁹- Ibrahim Ahmed Shalabi, *International Organization*, University Press, Beirut, 1984, p. 87.

¹⁰- Mohamed Abu Al-Wafa Mohamed, *The Intermediary in the Law of International Organizations*, Dar Al-Nahda Al-Arabia, Egypt, 1985–1986, p. 132.

According to him, two fundamental conditions must be met for an individual to qualify as an ICS:

- The person must devote all of their time and energy to accomplishing the organization's goals while working only for it.
- A contract with the company that is made in accordance with the rules and laws of the company must establish the employee's legal position.

5. Definition by Professor Paul Reuter:

An ICS, according to Professor Paul Reuter, is: *"An employee of an international organization who is governed by a special legal framework, is not subject to any national law, and performs international functions on a continuous and permanent basis"¹¹.*

Some legal scholars consider Reuter's definition superior to others, as it is clear, concise, and comprehensive. Despite its brevity, it encapsulates all the essential elements found in other definitions.

His definition highlights two fundamental components:

- Temporal Element: This refers to the fact that the position held by the employee is permanent and continuous, meaning their role in serving the organization is ongoing rather than temporary or incidental.
- Legal Element: This relates to the legal framework that the company itself constructed to regulate the employee's relationship with the company. Regardless of their place of nationality or the nation where the company's headquarters are situated, the employee is solely bound by this legal framework and not by the laws of any particular state¹².

One significant finding from the definitions given above is that the majority of legal experts refer to foreign people as "international agents" (agents internationaux).

Some academics do, however, see a distinction between "international agent" and "ICS." They argue that an international organization's engagement of individuals for specific tasks does not automatically grant them the status of ICSs. Conversely, every ICS is necessarily an international agent.

According to this perspective, an international agent is any individual performing an international mission on behalf of an international authority—meaning an entity that represents more than one state. In contrast, a person executing an international task for a specific state does not qualify as an international agent.

For example, a police officer working for Interpol carries out an international mission on a global scale. However, since they act under the direct mandate of their home country, they do not qualify as an international agent in the true sense.

The following requirements must be met in order to be designated as an ICS, thus the terms "international agent" and "ICS" should not be confused:

- The presence of a public purpose, meaning a position that holds this official status and is funded accordingly.

¹¹- Jamal Taha Nada, op. cit., p. 58.

¹²- Ibid., p. 58.

-The appointment to the position must be conducted regularly by the competent international authority.

It is clear from the many definitions given that a number of prerequisites must be met in order to be designated as an international public servant, including:

-The existence of a collective charter establishing permanent or temporary administrative bodies, which stipulates the appointment of officials and outlines the procedures for their appointment, their functions, and the manner in which they exercise their duties.

-The person's job must be done for an international organization or one of its bodies. An individual employed by a state or an international organization that is not an international organization is not regarded as an ICS. International public servants, for instance, do not include workers for international non-governmental organizations (INGOs), such as the International Committee of the Red Cross (ICRC).

Since the 19th century, activities that extended beyond national frameworks and operated on an international scale began to emerge¹³. This period saw the establishment of international public services that served multiple countries, such as:

-Established in 1815, the Central Commission for Navigation on the Rhine.

-In 1856, the Commission for the Navigation of the Danube was founded.

However, at that time, employees of these commissions were nationals of the host state and performed their duties on a temporary basis rather than as permanent ICSs¹⁴.

At the time of its founding in Rome, the International Institute of Agriculture functioned independently of the host country. Its employees were granted a certain degree of privileges and immunities, including the requirement that they not be nationals of the host state¹⁵.

Thus, an individual cannot be considered an ICS if they work for the service of a specific state or for an international entity that does not meet the criteria of an international organization.

-Even if the employee is a citizen of a state, their job must serve the interests of the international organization rather than those of that state.

- The fact that an employee may perform their duties inside a state's borders or within a regional framework does not eliminate this need, provided that their work is done for the benefit of the international organization.
- Employees of multinational organizations' regional offices, like those of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), are an example of this¹⁶.

-The employee must work on a permanent and continuous basis.

- They have to fully commit to carrying out the duties that the international organization has given them.

¹³- G. Langrod, *The Fundamental Problems of the International Civil Service, R.I.S.A.*, 1955, p. 9.

¹⁴- G. Langrod, *International Civil Servants*, published by the International Faculty of Comparative Law, Luxembourg, 1959, p. 1.

¹⁵- C. Vitta, *International Cooperation in the Field of Agriculture, R.C.A.D.I.*, 1936, p. 350.

¹⁶- Abdel Razzaq Al-Maqtouf Al-Qamoudi Suleiman, "International Civil Servants within the Framework of the International Legal System," *Journal of Global Legal and Sharia Sciences*, Issue 13, p. 124.

- What sets an ICS apart from other international agents hired by the organization on a temporary or ad hoc basis, such technical experts or members of arbitration or conciliation panels, is the need for permanency and continuity.
 - This is why most scholarly definitions of an ICS emphasize the necessity of permanence and continuity as fundamental criteria.
- The employee must perform their duties under the supervision of the organization's bodies, in accordance with its charter, regulations, and internal directives.
- They must act solely under the instructions of their superiors within the organization.
 - Consequently, an individual cannot be considered an ICS if their work is subject to the laws or directives of their home country.
- The legal framework governing the employee must be established through an international instrument, such as a treaty or formal agreement.
- This requirement sets foreign government servants apart from other types of employees who work for a multinational corporation but do not have a permanent, steady job abroad.
 - As previously mentioned, international organizations often engage temporary personnel, such as technical experts, members of arbitration and investigative committees, or manual workers (e.g., servi

Conclusion

Through this important study that addressed the problem of controlling the concept of the international employee, we reached a set of results, through which we have before us a set of suggestions that we summarize as follows :

Study Findings:

-International organizations rely on a large workforce to carry out their daily operations and achieve their founding objectives. This workforce includes various categories of personnel, such as international employees, workers, and staff members.

– Permanence and continuity are the cornerstones of the concept of an international public servant. This criterion is used to characterize an employee working within an international organization, meaning that anyone engaged in permanent and continuous work within such an organization is considered an ICS.

– The legal definition of an international public worker must take into account fundamental legal requirements, such working for the organization and being totally independent from their home country.

– An ICS is defined by the legal framework governing their employment within the international organization, with no influence from any external legal system.

– ICSs are distinguished from other similar categories, such as national employees, international staff, and representatives of member states. Their location of employment, the laws controlling it, and the benefits and immunities they enjoy all play a role in this difference.

Study Recommendations:

Based on the foregoing analysis, several recommendations should be considered:

– A precise and unambiguous definition of an ICS should be established, ensuring that it avoids confusion with other categories of personnel working within the United Nations. However, this should not lead to discrimination between different categories or deprive other staff members of their right to access international administrative justice.

– A unified definition of the ICS should be adopted, one that remains consistent across all international organizations.

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