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Dag Hammarskjölds saml.

Sec. Gen's trip to Burma 1956

Jan. 12

J. A. C. Robertson (Director of Personnel, UN)

— to Sec. Gen.

(concerning the case of Mr. J. F. Bulsara)

For Secretary-General's bag

UNITED NATIONS  NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

Date: 12 January 1956

THROUGH:

FILE NO.: SRS/56

FROM: J. A. C. Robertson
Director of Personnel *JACR*

Course (b) in para 10 approved, on strength of unanimous view reflected in para 11, by Sec Gen.

SUBJECT: Appeal of Mr. J. F. Bulsara

JACR 13/1/56

.....

1. The Joint Appeals Board has submitted the attached report in the case of Mr. Bulsara, until recently employed as a Social Service Expert in Burma, who appealed your decision to terminate his temporary-indefinite appointment, following the review of his case by the Review Board.

2. The unanimous recommendation of the Joint Appeals Board is that, while it can make no recommendation in favour of the appeal on legal grounds, the Board suggests that Mr. Bulsara might be granted a fixed-term appointment in the Secretariat, extending until the normal age of retirement, or, if such an appointment is not feasible, a project personnel appointment for the same period, "in a post where his valuable knowledge of Far Eastern conditions may be utilized."

3. This case has a very complicated administrative history, the high points of which are that, while the Technical Assistance Administration has been highly critical of Mr. Bulsara's handling of his assignment as Head of a Social Welfare Mission in Burma, he, on the other hand, has enjoyed the consistent support of the Burmese government, who not only accepted his recommendations, but insisted on having him assigned as an expert supervising the implementation of the recommendations.

4. His case came before the Review Board during the autumn of 1954 and the Board felt unable to recommend permanent appointment since it was not in a position to judge whether he possesses all the requirements for career service. The Board also suggested that only an assignment of a certain duration at Headquarters would furnish sufficient evidence on which to base a final appraisal.

5. In the light of this recommendation and in view of the adverse appraisal of TAA, you decided at that time, on recommendation of the Office of Personnel, not to grant Mr. Bulsara a permanent appointment, and consequently, to terminate his temporary-indefinite appointment. Since the continuation of his service during 1955 was requested by the Burmese government, the date of his termination was set for the end of 1955.

6. During the appeals procedure the TAB representative in Burma, whose opinions in the past contributed to some extent to the unfavourable appraisal of Mr. Bulsara's services by TAA, reversed completely his position and retracted most of the criticism he had expressed before. The Government of Burma again made a request for the continuation of Mr. Bulsara's mission in 1956. On recommendation both of the ESA Department and TAA, we offered Mr. Bulsara a one year continuation of his expert assignment, provided he accepted a conversion from the temporary-indefinite appointment he held heretofore to a "project personnel" appointment of a type which is usually given experts. Mr. Bulsara declined to accept this offer and has since left Burma.

7. I am not at all sure whether Mr. Balsara would be prepared to accept an offer of appointment modified in accordance with the suggestions of the Joint Appeals Board, to last till he attains retirement age, i.e. for the three-year, seven-month period until August 1959, when he becomes 60. There is no doubt that he has a deep feeling of grievance, and since he is obviously a person inclined to indulge in litigation, it is quite likely that he might pursue his case before the Administrative Tribunal.

8. While I consider that, in legal terms, our position before the Administrative Tribunal is a rather strong one, I think that other factors must be taken into account. It cannot be denied that the administrative handling of Mr. Balsara's case contains certain irregularities which, though they may not influence the outcome of the case, may redound to our disadvantage if they became publicized. There is also the general background of the case where a Far Eastern expert is strongly and consistently supported by the recipient government and yet fails to be appreciated by the central administration. This situation, though not attributable to any bias on racial grounds, (and none were found by the Joint Appeals Board) could probably be exploited against the United Nations in Far Eastern Public opinion,

9. There is no doubt in my mind that our basic position not to grant Mr. Balsara a permanent appointment is justified and sound. In the considered judgment of top TAA officials, supported by the opinion of higher officials in Social Affairs who knew of his work prior to his TAA assignment, and by the Office of Personnel (on all evidence), he is not suitable to fit into a permanent team.

10. I believe there are two possible courses of action at this stage, as follows:

a) To reaffirm the decision terminating his temporary-indefinite appointment, rejecting the suggestion of the Joint Appeals Board. Since this decision became effective on 31 December 1955, and since Mr. Balsara has refused a one-year continuation as an expert, this would confirm his separation from our service as of the first of this year. The chief arguments in favor of this course, are:

(1) Our considered judgment that he should not be granted a permanent appointment, and the firm legal basis of the termination decision.

(2) Our inability to guarantee him suitable work as an expert during the three-year, seven-month period ahead.

(3) His temperamental attitude and bitter criticism of the TAA top management -- which he has virtually accused of deliberately sabotaging the programme out of personal spite against him. Even if he has some basis for dis-appointment and criticism, one can seriously doubt whether it would be in the interests of the organization to have him serve for over 3 1/2 years under the officials against whom he has made such vigorous and intemperate charges.

b) To accept the suggestion of the Joint Appeals Board to offer Mr. Balsara a fixed-term appointment for a period extending until he reaches the age of 60. The implementation of such

an offer would involve a fixed-term "project personnel" appointment since I cannot recommend that we offer Mr. Bulsara a fixed-term appointment in the regular Secretariat. Such an offer may, however, meet with difficulties since the government of Burma made it known, subsequent to Mr. Bulsara's leaving the country, that they had decided to drop their request for the continuation of a Social Services expert, and since there is no immediate other vacancy in the social field in the Far Eastern region. In making the offer it would, therefore, be necessary to warn Mr. Bulsara of this situation and to inform him that, should an assignment prove impossible, he would become entitled to the termination indemnity provided in the Staff Regulations for breaking a fixed-term appointment before its expiration date; such an indemnity would amount, in his case, to approximately ten months' salary, i.e., five months more than he would receive upon termination of the temporary-indefinite appointment on 31 December 1955.

The advantage of this course of action is that we will have shown our good will and indicated our determination to distinguish between an appointment of a career nature for which Mr. Bulsara is, in our view, unsuitable, and an appointment for a limited duration for a type of duties in which he has proved, at least in the eyes of the Burmese government, his usefulness and effectiveness.

If, on the other hand Mr. Bulsara, as seems not unlikely, rejects the offer, we would have probably strengthened our position before the Administrative Tribunal.

11. On balance, I recommend alternative (b).

JACR

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JOINT APPEALS BOARD REPORT TO THE SECRETARY-GENERAL

Case No. 73
Copy No. 1

Case of Mr. J. F. Bulsara
(Termination)

Summary of relevant personnel actions concerning Appellant

- a) 24 June 1949, fixed-term appointment for two years as Social Welfare Adviser, Grade 16, in the Social Activities Division, stationed at Bangkok, Thailand.
- b) 24 June 1950, within-grade salary increase.
- c) 24 June 1951, conversion to temporary-indefinite appointment (personnel action form lists Appellant's functional title as Far Eastern Social Welfare Representative).
- d) 1 January 1952, within-grade salary increase.
- e) 1 January 1953, transfer to Technical Assistance Administration as Social Welfare Adviser, stationed at Bangkok.
- f) 1 January 1953, within-grade salary increase.
- g) 1 February 1954, detail to Technical Assistance Administration Mission in Burma as Social Services Expert.
- h) 1 January 1954, within-grade salary increase.
- i) 31 December 1955, termination.

Proceedings in submission and consideration of appeal

- a) 19 March 1955, Appellant's letter to Secretary-General, requesting reconsideration of the decision on termination as communicated by letter of 8 March 1955 from the Chief, Departmental and Staff Services, Office of Personnel.
- b) 14 April 1955, submission of appeal.
- c) 18 April 1955, reply to Appellant's letter of 19 March by letter from Director of Personnel.
- d) 11 May 1955, documentation forwarded to Director of Personnel.
- e) 27 July 1955, letter from Appellant enclosing documentation requested by Secretary.
- f) 24 August 1955, letter to Appellant from Deputy Director of Personnel regarding appeal.

- g) 21 September 1955, letter from Appellant to Deputy Director of Personnel replying to letter of 24 August.
- h) 4 November 1955, letter to Appellant informing him of composition of Board.
- i) 8 November 1955, received and forwarded to Appellant a Statement on behalf of the Secretary-General to the Joint Appeals Board, dated 21 October 1955.
- j) 8 November 1955, forwarded documentation to: Chairman - Dr. J. Lucas; Members - Messrs. B. Wood and V. Poveromo; Representative of Secretary-General - Mr. K. Kraczkiewicz; Representative of Appellant - Mr. H. Cornil.
- k) 16 November 1955, Board meeting at which Appellant's Representative and Representative of Secretary-General were present; Board received "Conclusions of Dr. Bulsara's Representative before the Joint Appeals Board" dated 16 November; copy had been forwarded to Appellant.
- l) 1 December 1955, memorandum from Secretary to Appellant's Representative enclosing, for transmission to Appellant, certain information requested.
- m) 2 December 1955, Board meeting at which Appellant's Representative and Representative of Secretary-General were present.
- n) 12 December 1955, received comments of 28 November of Appellant on Statement of 21 October on behalf of the Secretary-General.
- o) 15 December 1955, received "Final Conclusions before the Joint Appeals Board of Dr. Bulsara's Representative", dated 14 December 1955; copy forwarded to Appellant.
- p) 19 December 1955, received Addendum to Appellant's comments of 28 November, and additional documentation.
- q) 20 December 1955, Board meeting and adoption of this report.

SUMMARY OF THE CASE

1. a) The Appellant was informed of the termination of his temporary-indefinite appointment by a letter of 8 March 1955 from the Office of Personnel which read in part as follows:

"The Secretary-General, after carefully considering your case in the light of the Review Board's report and of all the circumstances, has decided that he is unable to offer you a permanent appointment and has, therefore, with regret instructed that your temporary appointment be terminated upon the completion of your present assignment as an expert to the Government of Burma, i.e. with effect on 31 December 1955."

b) The report of the Review Board in Appellant's case is quoted herewith:

"Since June 1949 Dr. Bulsara has served as a social welfare expert, with assignments exclusively in the Far East. He has an adequate professional background and a good knowledge of local conditions in the Far East. Dr. Bulsara was head of United Nations Social Services in Burma and his work in this capacity was subject to criticism and reservations by superiors and colleagues. It must however be recognized that lack of adequate preparation and complicated local conditions made the work of this mission rather difficult and that the Burmese Government has full confidence in Dr. Bulsara."

"Up to the present time Dr. Bulsara has not served at Headquarters and serious doubts were expressed by his supervisors regarding his capacity of adaptation and integration into the work of the central administration."

"On the basis of the information at its disposal the Review Board is not in a position to judge whether Dr. Bulsara possesses all the requirements for career service in the Secretariat and is therefore unable to recommend a permanent appointment."

"The Board would like to add that probably only an assignment of a certain duration at Headquarters would furnish sufficient evidence on which to base a final appraisal."

c) The criticism and reservations regarding Appellant's performance as head of the United Nations Social Services Mission to Burma are reflected in a periodic report dated 19 October 1954, relevant portions of which are quoted herewith:

"Dr. Bulsara's handling of the Social Services Mission in Burma was not satisfactory. The Mission was composed, in addition to Dr. Bulsara as Chief, of the following appointed by the organisations named: -

Mr. Hardy Wickwar	- UNTAA (USA)
Dr. K. H. Cama	- UNTAA (India)
Dr. K.W.C. Sinclair-Loutit	- WHO (British)
Dr. Jakob Jacobsen	- ILO (Danish)
Dr. Peter Mamiche	- UNESCO (Danish)

"The Programme Division has reason to believe, from information received from members of the Mission in Burma, that Dr. Bulsara showed lack of leadership of the right kind and failed to use competently and effectively his professional colleagues in the team, frequently resisting their policy suggestions and otherwise adopting an unreasonable attitude toward them."

"Dr. Bulsara's own account of his handling of the Mission and his relations with them, which he gave to the Director of the Programme Division and to myself when in New York in January 1954, was at variance with the views expressed in the preceding paragraph. He was informed by the Director of the Division's dissatisfaction with his leadership of the Mission."

"Following the close of the Mission's work the Prime Minister of Burma personally requested the Technical Assistance Administration to make available Dr. Bulsara's services to help to carry out its recommendations. In consequence, and notwithstanding that TAA had proposed two alternative candidates, it was decided to acquiesce in the preference expressed by the Government of Burma for Dr. Bulsara."

2. Appellant's main contention is that the termination of his appointment was illegal and that the decision to terminate his appointment was based on erroneous information given to the Secretary-General by his subordinates. He maintains that his handling of the Social Services Mission to Burma was satisfactory and that charges to the contrary by his supervisors in the Technical Assistance Administration were not based on fact. Appellant further claims that the Technical Assistance Administration attempted to create difficulties for him during his service as Head of the Mission in an effort to harass him and have him ousted from the Organisation.

3. Elaboration of Appellant's main contentions, in the form of quotations from his Statement of Appeal and subsequent submissions, is given below. It should be noted these quotations are not represented as exposition of the various aspects of the case in full, in view of the fact that the documentation submitted by Appellant alone ran to well over one hundred pages. However, it is hoped to denote the primary issues, and the points to which the Board's consideration has mainly been directed.

a) "The Board hesitates to recommend me for a post at Headquarters because, it says, "serious doubts were expressed by his supervisors regarding his capacity of adaptation and integration into the work of the central administration". This is a very vaguely worded allegation and like all others made behind my back. It was not made in the Service and Conduct Report of 19 October 1954. What is more, it is completely belied by what has been stated by Mr. Goldschmidt in his letter of 5 February 1954 referred to above. Miss Hinder, who otherwise does not seem very pleased with me, in several of her letters has written appreciatively of my promptness of replies to various inquiries, speedy comments on proposals, and full cooperation in the work of the Division."

"...I submit that besides being nebulous, the above is, therefore, a baseless allegation, and is made de novo, when the other equally nebulous allegation about my Mission work being unsatisfactory, made in the Service and Conduct Report, could not be substantiated before the Review Board. If there was any doubt about my adaptability to a central or regional administration, it would have been brought out long ago in the course of five years of work both at HQ and in the region. In fact, the very vagueness of allegations, the shifting of grounds for termination, the complete absence of evidence to substantiate them, the manner of making them, and their timing raise very serious doubts as to their veracity or genuineness. The Review Board in fact has been left completely unconvinced by a single allegation of my supervisors, as its very delicately balanced and non-committal report clearly indicates. It had obviously a difficult task to perform and it is to be complimented on having discharged its function so adroitly."

"I may mention here that on my arrival at the T.A.A. office, Miss Hinder, Dr. Keenleyside and Mr. Goldschmidt had severally seen me and talked to me. None of them, however, told me about their intended recommendation to the Board. I would leave it to you to judge the reasons of their reticence. If such pre-information of the staff member is customary, or required by rules, this deliberate omission on the part of the Administration becomes significant."

"The Board speaks of the Head of the Mission retaining the confidence of the host government, in spite of the difficulties created by others. In fact, the Board points out that there was lack of adequate preparation. Whom was this lack of preparation due to, and who complicated the local conditions? This is a matter which, I submit, needs careful and thorough investigation, because the truth will turn out to be in the interest of the United Nations itself by way of better service to the requesting governments in future."

"In my remarks on the service and conduct report of my supervisors of 19 October 1954, to which your attention is particularly invited, I have pointed out how an omnibus report is made on my service from January 1952 to October 1954 on the eve of my appearance before the Review Board, contrary to Staff Rule 112.6, which requires such reports to be made periodically. Unfounded allegations were made in that report about my handling of the Mission fifteen months after the Mission had been completed, whereas to my repeated requests to Miss Hinder at Bangkok and New York to let me know what was

amiss and to hold an inquiry to find out the truth, she had turned a deaf ear and replied that I should forget all about an inquiry, they will not hold one. To my questions on the subject she said she would not like to be 'cross-examined'. Thus she has so far not shown me or spoken to me about what reports or complaints she had received from the members of the Mission, if any."

"The fact, however, as hinted at by the Review Board, is that as Chief of Asia and the Far East Division, Miss Hinder had failed to play her part in the proper preparation of the Mission. She has been therefore continuously trying to cover it up by finding a scapegoat. She sends Mr. Wickwar, discredited and retrenched at HQ, and refused twice by the host Government, to help in the work of the Mission, and appoints him Deputy Head against the advice of the Mission Chief. Mr. Wickwar makes an early start by reporting prejudicially on the work of the Mission and its individual members over the head of the Mission Chief 'according to his terms of reference and as per oral instructions given at HQ.' Mr. Wickwar gangs up with others to obstruct the Mission's work and creates considerable trouble. In spite of his being reported as having lost the confidence of the host Government as well as of the Mission Chief, Miss Hinder acts on some reports sent to her, without any warning, and suddenly asks the Mission Chief to wind up the Mission work prematurely by the first week of June 1953 and deliver papers to Mr. Wickwar to be taken to New York. Two days later, she advises the Director-General to follow up her letter and cable by another peremptory order asking the Mission Chief to leave Rangoon by 8 June 1953, handing over papers to Mr. Wickwar. In their ill-conceived zeal to insult and demean the Mission Chief, who enjoys the confidence of the Government, the T.A.A. even completely ignores the host government, not caring as much as to consult their wishes about the completion of the Report and the withdrawal of the Mission. On the violent reaction of the host Government to these preposterous moves, T.A.A. at last retraces its ill-advised steps and permits the Mission Chief to complete the report by the date originally fixed by itself, viz. 30 June 1953."

"In spite of these difficulties and deliberate and mischievous obstructions of Miss Hinder, the Mission Chief duly delivers the unanimous Mission Report, which is publicly acclaimed by the recipient government and enthusiastically acted upon by them. They are so satisfied with the work that, unknown to the Mission Chief, they request T.A.A. for his services for implementation. The participating agencies approve of the report and inform the Mission Chief accordingly. It seems all principal parties concerned are satisfied with the work of the Mission. But poor Miss Hinder has some reservations and her own plans. She seems to harbour some unknown grievances in her bosom and would like to avenge herself. "

"Besides continuously harassing the Mission Chief on matters of salary, travel claims, leave and field assignments, thinking perhaps he might give up the post, thoroughly disgusted, Miss Hinder plans to exclude the Mission Chief from associating with the Report."

"She (Miss Hinder) bases her allegations on 'reports received from members of the Mission', which not only had she never shown me before, but which she had never spoken to me about earlier, in spite of my asking her pointedly about the distressing treatment she had been giving me in the course of our work in Burma and thereafter."

"I would leave it to impartial authorities to judge whether it was due to my mistakes and mishandling of the Mission that it so signally succeeded in the difficult task entrusted to it, or whether it succeeded because of my patience, forbearance, hard work and cooperative spirit in spite of the wrecking machinations of others. These machinations would have proved disastrous to the Mission's work and to the reputation of the T.A.A. and the Specialised Agencies if I had not kept my head cool and risen above the pettinesses that prompted them. How often I retrieved the Mission and pooled it together will be seen from a few incidents narrated in a letter of 31 May 1953 (copy attached), which I had occasion to write to my friend, Mr. Charles Alspach, when I was harassed by a continuous cold war waged from Headquarters and Miss Hinder's associates in Rangoon."

"The above two accounts ^{and} a report of 4 June 1953 by the Social Planning Commission of Burma and a letter of 26 June 1953 from Mr. Barnabas to Mr. Alspach⁷ will show how independent observers have felt and interpreted T.A.A. action and the work of Mr. Wickwar who enjoyed their confidence. I will not say more except to request that for the sake of the good name of the organisation and its clean working, this matter should be thoroughly investigated. I sincerely regret to have to note that Miss Hinder persisted in her machinations until the time of her retirement, and has done things wholly unwarranted."

b) "The Statement of the S.G.'s Representative mentions in the 'Introduction' that "the Appellant claims that the termination is vitiated by an improper motive connected with the circumstances of a Technical Assistance Social Services Mission to Burma between October 1952 and June 1953 of which the Appellant was Chief." The Appellant has not claimed this nor used the apt words now coming from the mouth of the Administration such as 'improper motive', 'arbitrary or capricious misuse of power', etc. The Appellant had given a straightforward account of strange happenings and claimed that a proper impartial inquiry be held into the whole Mission affair, and the Administration be called upon to prove the one-sided allegations it has been making all along behind the Appellant's back, without caring a bit to produce dependable supporting evidence to sustain its grave charges."

"The reference to 'improper motive' attributed to the Appellant is rather interesting. Not once has the Appellant used these words in his Appeal or the accompanying statement. The Administration infers it from the bare factual presentation of the events as they occurred. The letters and documents, written and forwarded by their authors under dubious circumstances, which, some prayed, be 'destroyed' or 'removed from the files', and some of which were submitted or got produced by devious and dishonest ways - these letters and documents, the Appellant submits to the Board, do not merely reveal 'an improper motive', as inferred by the Administration. Nolens volens, they expose something much more ugly - perhaps a deep-rooted plot fomented and supported by TAA HQ. - which, it is now the duty of the Board to lay bare in the interests of the United Nations and the Specialised Agencies concerned!"

"The true fact is that TAA was too much in a hurry to destroy the achievements of the Mission and discredit the Mission Chief by hook or by crook, as planned

with their two confidantes Dr. Sinclair-Loutit and Mr. Wickwar (vide their timely letters of 28 April and 4 May 1953 respectively)."

"My Representative, Mr. Cornil, will have a good deal to say about the deliberate encouragement of insubordination of Mission members by the TAA HQ. The Appellant would say it is much more than that and needs to be investigated thoroughly."

"For the moment let us try to unravel, as best we can, a well-designed conspiracy to paint the Appellant black before the august company at TAA HQ, who seek and are avid to listen to and act on any plausible misrepresentation that could be obtained from the field."

"The Administration had originally 'devised various measures' to remove the Mission Chief from doing his job, relying chiefly on their representative in Burma, Mr. A.J. Wakefield's representations. But Mr. Wakefield upset their apple cart at an awkward moment by a frank confession. They could therefore no longer call Mr. Wakefield's first-hand knowledge of the situation to their aid. So they now call it into question What is most surprising is that the TAA have so far never taken the initiative to ask the Appellant's explanation as to his alleged mishandling of the Mission affairs, nor ever taken up the challenge to disprove him when he narrated facts as they happened to Miss Hinder, Mr. Goldschmidt and Dr. Keenleyside at Bangkok, Sydney, and New York several times."

"True to its nature, the Administration wrongly assumes that the Appellant is only begging U.N. to reconsider. It ignores the essential import of the Appeal, which approaches the properly constituted U.N. authority, requesting it for justice in a case which smacks of open injustice, based on a carefully conceived plot, which has ultimately exploded on the heads of the highest in the Administration."

"But not one of them [Appellant's supervisors] shows the honesty, courage or conscience to clear the subject dissatisfaction with the Appellant's services as Mission Chief nor to inform him that they have recommended or have decided to recommend his termination."

- c) "The Appellant can only say at this juncture that the inquiry [requested by him] will bring out who are responsible for the inordinate, inexplicable and unwarranted delay in publishing and presenting to Government the Mission Report. Briefly, the facts are that the presentation of the Provisional Report to the host Government was partly delayed by the Headquarters' sudden, ill-conceived, and unscrupulous barrage of hustling cables and letters deliberately trying to upset the Mission Chief at the critical period of drafting the final portions of the Report, in league with their colleagues on the Mission at Rangoon."

"The Appellant submits the Administration has not advised the S.G. properly nor in the interests of the United Nations."the Appellant has furnished what he in his humble judgment considers overwhelming evidence to show that the Administration, contrary to its laboured and unconvincing protestations, has been anything but fair, honest and conscientious, not only in impartially weighing the evidence it may have against the Appellant, if any, but also in its entire dealings and constant pinpricks to drive the Appellant out of the organisation."

4. Relief requested by Appellant is as follows:

- a) "..... revert the Appellant to his substantive post of the Far Eastern Regional Social Welfare Adviser, which still exists and which the Appellant had filled with such distinction and to the satisfaction of all the parties concerned including the TAA."
- b) "..... the holding of a proper inquiry at a sufficiently high level to investigate the dark affair, which smacks of a nefarious intrigue to oust from his work as Mission Chief and from U.N. service a loyal and conscientious member of the Secretariat staff, without the TAA giving him the slightest chance to prove the allegations made against him by some of the members of the Mission, at his back and under conditions and circumstances that point to a deep-rooted plot; and, as a consequence of the inquiry, recommending suitable treatment to all those proved to be implicated in fostering this sordid affair;"
- c) ".....redress due to the Appellant in cash compensation and otherwise for the irreparable harm done to him so far for over two and a half years by the Administration by making false representations to discredit the Appellant's loyal career and achievements, so highly spoken of by various impartial members of the United Nations organisation and the Specialised Agencies, as the records amply show; and recommending to the Secretary-General to accord to the Appellant such other redress as the Joint Appeals Board considers is due to him in view of the grave harm done to the Appellant by the Administration by arbitrarily and unfairly terminating his six and a half years' loyal service."

5. The basic position of the Secretary-General in this case is that his decision to terminate Appellant's temporary-indefinite appointment, to a large extent on the basis of Appellant's handling of the Social Services Mission to Burma in 1952 and 1953, was a reasonable exercise of the Secretary-General's discretionary authority under Article 9.1(c) of the Staff Regulations to terminate temporary appointments. It is argued by the Secretary-General that his decision not to offer Appellant a permanent appointment made some change in his appointment status necessary, to bring it into line with the new appointment policy instituted in March 1954, and that the logical and necessary corollary of the decision not to offer permanent appointment was the decision to terminate Appellant's temporary-indefinite appointment. The latter decision, however, is held by the Secretary-General not to reflect adversely on Appellant's suitability for other types of appointment which do not carry expectancy of permanent appointment, since the criteria for granting permanent appointments are different than those for granting non-career appointments.

6. The following quotations, taken from the Statement of 21 October 1955 on behalf of the Secretary-General, indicates the position of the Secretary-General in this case. For reasons of space, the summary of the history of the Social Services Mission to Burma, and of certain subsequent events, mentioned in the quotations given below, has been omitted.

"This is a termination in the exercise of the Secretary-General's discretionary authority under Staff Regulation 9.1(c). The procedural requirements of the Staff Regulations and Rules have been complied with; in particular, although Staff Rule 109.3 requires only 30 days' written notice of termination, the Appellant has received nearly ten months' notice. The Appellant claims, however, that the termination is vitiated by an improper motive, which is alleged to be connected with the circumstances of a Technical Assistance Social Services Mission to Burma between October 1952 and June 1953, of which the Appellant was Chief. The Appellant's allegations make it desirable to summarize the history of the latter days of the Mission and of certain subsequent events as shown by documents in the files, copies of which are annexed hereto. After the discussion of the facts, the legal issues will be examined. The documents show that there is no evidence of improper motive in connexion with the termination."

"This is a termination under Staff Regulation 9.1(c), where reasons have been given why the action is considered to be "in the interest of the United Nations". The reason given the Appellant in a letter of 8 March 1955 (See Annex 24) was that the Secretary-General had decided he was unable to offer the Appellant a permanent appointment. This ground of termination is in accordance with the policy set out by the Secretary-General in his Bulletin of 8 March 1954 (ST/SGB/94/Amend.1), which provided that, as a transitional measure, staff members who on 15 March 1954 were holders of temporary indefinite appointments should be considered for Permanent or Regular Appointment after the completion of two years of service, and that

"They shall be either granted Permanent or Regular Appointments, as appropriate, or be separated from the service; in exceptional circumstances the period of probationary service may be extended for not more than one additional year."

The decision not to offer a permanent appointment to the Appellant but to terminate his services with the United Nations was taken by the Secretary-General on his own initiative, and was not recommended by the Review Board, which found only that it was not in a position to judge whether the Appellant possessed all the requirements for career service in the Secretariat. Consequently the Review Board proceedings have no causal connexion with the termination, and are not relevant here."

"There are no special circumstances which remove this case from the ordinary type of exercise of the Secretary-General's discretionary power under Staff Regulation 9.1(c). The Appellant was informed, by a letter of

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22 January 1954 from the Bureau of Personnel (copy annexed to the Appeal), that -

"...When the Technical Assistance Administration decides that your assignment in Burma is completed, you will be returned, in accordance with your temporary-indefinite appointment status, to any vacant post of equal level and salary which may be suitable for you within the United Nations Technical Assistance Administration or the Secretariat as a whole. If at that time no suitable opening exists, you will be subject to the reduction in force procedure prescribed in Staff Rule 109.1 for Staff Members holding temporary appointments".

"This letter, however, did not and could not derogate from the Secretary-General's power of termination under Staff Regulation 9.1(c). Moreover, the rights described in the letter are only the ordinary rights under the Regulations and Rules of temporary staff whose posts cease to exist, and who are not terminated on other grounds. Thus they were subject to change by the adoption of the policy set out in the Secretary-General's Bulletin of 8 March 1954, under which staff holding temporary indefinite appointments were to be considered for permanent status and in normal circumstances would either be offered permanent appointments or terminated."

"The Appellant in this case has raised an issue of improper motive. The Joint Appeals Board is therefore called on to determine whether, on all the evidence, there is such an improper motive: that is, whether the termination resulted from some motive unconnected with the interest of the United Nations, such as personal animosity. The issue is not whether the determination was right or wrong; that is a matter for the Secretary-General, and the Joint Appeals Board and the Administrative Tribunal have always declined to consider."

"In the present case the Appellant's superiors in TAA considered that the Appellant's services as Chief of the Social Services Mission in Burma were unsatisfactory because of lack of leadership and failure to use his professional colleagues effectively, and made a periodic report to that effect (Annex 21). This report was written after the Appellant's supervisors had twice discussed the history of the Mission with him, had made it clear that they did not regard his services as satisfactory and had heard his point of view on the matter. (Annexes 15 and 18)."

"The evidence shows that the conclusions of the periodic report about the Appellant's leadership and handling of professional colleagues, and about the unsatisfactoriness of his services, were not vitiated by any improper motive. These conclusions were not simply invented out of personal dislike, but rather were firmly based on written evidence which, after all due allowances have been made for the intense feelings of some of its authors, still makes the conclusions of the Administration reasonable. Some, though not all, of those who wrote the letters undoubtedly dislike the Appellant; but the TAA had to decide whether the Appellant had given them any valid cause for their dislike. On the basis of all the evidence, including conversations with the Appellant, the TAA had to evaluate the Appellant's performance. It is clear that the TAA made this evaluation honestly and conscientiously."

"In view of the conclusions of the periodic report, it was obviously reasonable to decide not to offer the Appellant a permanent appointment and, as the alternative under the policy announced by the Secretary-General, to terminate his temporary-indefinite appointment; that type of appointment had ceased to be mentioned in the Staff Regulations or Rules and, while it could continue for a time as a transitional measure, some change in his status was necessary. The issue was not necessarily whether the Appellant would leave the service of the Organisation. The files as they now stand would offer reasonable basis for a determination that his performance as a Technical Assistance Expert (rather than as Chief of Mission) was entirely satisfactory, and such a determination might make it possible to offer him a further appointment as an Expert. The question before the Administration in early 1955, however, was quite different; namely, whether to offer the Appellant a permanent appointment. The quality of leadership and the ability to handle subordinates are obviously very important in a staff member of the Appellant's senior grade, and evidence of their absence would reasonably be expected to have a large bearing on the decision whether he would be taken into the career service. That decision having been taken in a negative sense, it was reasonable to terminate the temporary-indefinite appointment".

"It remains to discuss the communications of April 1955 from Mr. Wakefield, TARR in Burma, in which he reversed his previous views and repented his previous actions concerning the Appellant. Mr. Wakefield's letters were subsequent to the notice of termination. Should those letters have led to the rescission of the decision to terminate."

"This, like the other questions involved in the case, is a matter of administrative discretion, where a decision that has no improper motive and is not arbitrary or capricious is valid. It is desirable, therefore, to examine whether it was reasonable to maintain the termination in the face of Mr. Wakefield's letters".

"There was a large amount of other evidence than Mr. Wakefield's about the Appellant's performance during the Mission to Burma, and it was first-hand evidence, while many of the statements in Mr. Wakefield's letters of 1953 were based not on personal observations but on information supplied him by others. The other evidence remained quite unaffected by Mr. Wakefield's change of attitude. Moreover, Mr. Wakefield's letters of 1953 contained both statements of fact and statements of opinion and judgment. The letters of April 1955 did without doubt make it impossible to attach much weight to Mr. Wakefield's earlier statements on matters of judgment, but his 1953 statements of fact retained the weight they had originally possessed."

"The decision of TAA that Mr. Wakefield's letters of 1955 did not require the rescinding of the decision was therefore a reasonable one, from which no inference of improper motive can be drawn. In fact, there is no evidence of improper motive or arbitrariness anywhere in the case, and consequently the decision contested is valid."

CONCLUSIONS AND RECOMMENDATIONS

The Joint Appeals Board notes that the circumstances which led to the termination of Appellant's temporary-indefinite appointment began with his appointment as Head of the Social Services Mission to Burma in April 1952. He had served first as Far Eastern Representative of the Division of Social Activities and later as Regional Social Welfare Adviser for the Far East from June 1949 until that time, to the entire satisfaction of his superiors.

So far as the Social Services Mission to Burma is concerned, the Board notes that evidence regarding the mission has been contradictory, including -- in the instance -- a reversal of view by a responsible official who was directly concerned. However, it has not been shown to the Board that prejudice or any other extraneous factor within the meaning of Staff Rule 111.1 motivated the Secretary-General's decision to terminate Appellant's temporary-indefinite appointment.

In attempting to formulate its conclusions regarding this case, the Board has tried to strike a balance between two factors. On the one hand, the Secretary-General has the right to prescribe, in accordance with Staff Regulation 4.5 (b), which staff members shall be eligible for permanent appointment. On the other hand, there was Appellant's expectancy of further employment with the United Nations at the end of his detailment as a Social Services Expert to advise the Government of Burma, which was strengthened by the letter of 22 January 1954 to him from the Office of Personnel reading, in part, as follows:

"I wish, however, to make clear to you that when the Technical Assistance Administration decides that your assignment in Burma is completed, you will be returned, in accordance with your temporary-indefinite appointment status, to any vacant post of equal level and salary which may be suitable for you within the United Nations Technical Assistance Administration or the Secretariat as a whole".

The Secretary-General has already recognised the value of Appellant's services under his temporary-indefinite appointment by offering him, the Board understands, a one-year project personnel appointment immediately following the termination of that appointment.

Although the Board can make no recommendation in favour of this appeal on legal grounds, nevertheless in view of Appellant's valuable service to the United Nations as Regional Social Welfare Adviser, his knowledge of Far Eastern conditions, his academic background and experience in the social sciences field, and the contradictory evidence regarding the Social Services Mission to Burma -- the Board suggests that Appellant might be granted a fixed-term appointment in the Secretariat extending until the normal retirement age and carrying financial benefits at least equal to those attaching to a permanent appointment

or, if such an appointment is not feasible, a project personnel appointment on the same basis in a post where his valuable knowledge of Far Eastern conditions may be utilized.

Report unanimously adopted by the Joint Appeals Board composed of Mr. Jean Lucas, Chairman; Mr. Byron Wood, Member appointed by the Secretary-General; Mr. Vincent Poveromo, Member elected by the Staff.
Secretary of the Board: Mr. Peter H. Crane

Jean A. Lucas

J. A. Lucas

Byron Wood

B. Wood

Vincent Poveromo

Vincent Poveromo

Peter H. Crane

Peter H. Crane

22 December 1955

Copy of this Report to the Secretary-General delivered to Mr. J.A.C. Robertson
Director of Personnel.