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We now turn to the other head dealt with by the Commission, namely, persons who are or who have been engaged in espionage or other subversive activities in the host country or who are or who have been members of a political party or other organization declared to be a subversive organization.

It is at this point that the Commission draws a distinction between acts which are criminal under the laws of the host country and those which are not criminal per se. In our opinion this distinction is invidious and extremely misleading. In the case of the first head, namely, conviction for a crime involving elements of disloyalty, it is not so much the fact that a crime has been committed which is important as the fact that the conviction is prima facie evidence that the person convicted is apt to be taking part in activities amounting to a breach of the oath of office and the staff regulations. This latter should be the only grounds under which a person should be dismissed. In this connexion you have asked us for our views on the commentary in the Times leader of 2 December 1952. This leader states "that the report...strays further afield when it attempts to lay down for the Secretary-General rules for the political screening of non-Americans on the secretariat and (recommends) ...that he should exclude...any person whom he has reasonable grounds for believing to be engaged in any activities regardless of laws of the host country." The leader then goes on to say that it can only assume that this means the exclusion of any Communist employee at United Nations headquarters.

If this assumption is correct it would seem that the report is based more on expediency than on logic. As we have stated above, it is not the "criminality" ... "disloyalty" under the national law which justifies dismissal but the failure of the person so charged to have fulfilled his or her obligations under the staff regulations.

We would report here the terms of staff regulation 1.5 :--

"Staff members shall conduct themselves at all times in a manner compatible with their status as international civil servants. They shall avoid any action and in particular any kind of public pronouncements which may adversely reflect on this status. While they are not expected to give up their political or religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of international status."

This rule emphasizes that mere membership in a political group is not grounds for dismissal on this fact alone. It would be necessary to prove without any shadow of doubt that the requirements placed upon membership of that group were such that the individual members were obliged to conduct activities not compatible with their status as international civil servants. As such decision would affect a class, not individuals, we would furthermore submit that such a decision could not be taken by the Executive Head of the international organization concerned but would have to be referred to the organization responsible for the approval of the staff regulations.

Relations between the Organization,
the Staff, and Countries other than
the "Host Country"

The Commission has not dealt expressly with this point although certain statements in its report touch on it. They appear to have the "host state" in mind. We shall therefore deal with this

Privileges and Immunities

Unfortunately we do not have the document on this subject referred to in the report.

The Commission states that in its opinion there is "no immunity or privilege enjoyed by any member of the United Nations staff behind which he could shelter"

Since the activities to which the report relates can only be considered as being exercised in the official capacity, the United States is clearly free to prosecute staff members for criminal offenses.

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