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Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter VI. Selected legal opinions of the Secretariat of the United Nations and related intergovernmental organizations



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(c) Note verbale to the Permanent Representative of Austria to the United Nations, regarding the arrest of a member of one delegation to a meeting of the Committee on the Peaceful Uses of Outer Space, held in Austria from 6 to 15 June 2007

PRIVILEGES AND IMMUNITIES OF MEMBERS OF STATE DELEGATION TO A UNITED NATIONS MEETING—NOTION OF OFFICIAL DUTY—IMMUNITY FROM PERSONAL ARREST OR DETENTION—DUTY OF MEMBER STATE TO WAIVE THE IMMUNITY OF ITS REPRESENTATIVE IN ANY CASE WHERE IT WOULD IMPEDE THE COURSE OF JUSTICE

19 June 2007

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of Austria to the United Nations and has the honour to refer to the case concerning a representative of [State], [Name], to the fiftieth Meeting of the Committee on the Peaceful Uses of Outer Space, held from 6 to 15 June 2007 at the United Nations Office in Vienna, Vienna International Centre, Austria.

The United Nations Office in Vienna was informed by the Ministry of International and European Affairs of Austria by an email dated 15 June 2007 that “[Name] [...] entered Austria on Sunday, June 10th [2007] through Vienna Airport in Schwechat (according to his companion, they spent the day sight-seeing and shopping). On June 11th, both [[Name] and his companion] then travelled to Salzburg by train where [Name] was caught *in flagranti* upon committing delicts indictable according to Austrian penal laws (StGB, §§ 256 und 319, ‘Geheimer Nachrichtendienst zum Nachteil Österreichs’ and ‘Militärischer Nachrichtendienst für einen fremden Staat’)”.

The Ministry has requested the United Nations for “a statement, whether [it] considers the described incident as being committed by [Name] while exercising his functions and during the journey to and from the place of meeting” and noted that “[i]n case of affirmation, immunity would apply, [Name] would then be asked to leave the country. The United Nations would be requested to confirm that future nominations of [Name] as members of delegations to United Nations conferences would not be accepted.” The Ministry also provided a copy of a Note Verbale of 15 June 2007 by the Embassy of [State] to Austria taking issue with the facts as alleged above.

The Legal Counsel wishes to offer the following in response to the Ministry’s request.

At the outset, the United Nations Office in Vienna has confirmed that [Name] was on the list of representatives of [State] to the fiftieth Meeting of the Committee on the Peaceful Uses of Outer Space held from 6 to 15 June 2007, and that he was personally issued with a United Nations pass for the meeting in the morning of 11 June 2007.

Pursuant to the 1995 Agreement between the United Nations and the Government of Austria regarding the Seat of the United Nations in Vienna (hereinafter the “Seat Agreement”),* [Name] enjoys as a governmental representative to a United Nations conference in Vienna, the privileges and immunities set forth in article IV, section 11 of the 1946 Convention on the Privileges and Immunities of the United Nations.”

* United Nations, *Treaty Series*, vol. 2023, p. 253.

** United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

Article XI, section 33 of the Seat Agreement stipulates that “[r]epresentatives of States and of intergovernmental organizations to meetings of, or convened by, the United Nations and those who have official business with the United Nations in Vienna, shall, while exercising their functions and during their journeys to and from Austria, enjoy the privileges and immunities provided in article IV of the [1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the “General Convention”)]”.

Article IV, section 11 of the General Convention provides in relevant part that “[R]epresentatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities: (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind; . . .”.

In this connection, it is recalled that pursuant to section 14 of the General Convention “[p]rivileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.”

The Legal Counsel of the United Nations has previously held that the phrase “while exercising their functions and during their journey to and from the place of meeting” must be broadly interpreted in order to avoid results clearly not intended by the drafters of the General Convention. This interpretation was contained in a legal opinion provided by the Legal Counsel in 1961 and which was reproduced in a study entitled “the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities” prepared by the Secretariat and published in the 1967 Yearbook of the International Law Commission (vol. II, p. 176).^{*} In relevant part, the opinion noted that:

“Nevertheless, I have no hesitation in believing that it was the ‘broad’ interpretation that was intended by the authors of the [General] Convention. This must follow from the fact that the expression ‘while exercising their functions’ is contained in the opening paragraph and qualified each and all of the privileges and immunities provided in the sub-paragraphs, (a) through (g), that follow.

A glance at those sub-paragraphs will clearly show that the privileges and immunities provided by any of them would become meaningless if it is applicable only when the representative is ‘actually doing something as a part of his functions’, ‘e.g., is present in the room or building where the meeting . . . is being held’. Such an interpretation would lead to the absurd conclusion that, a representative, immediately after having performed an official function, or after having left the meeting room may, under paragraph (a) for example, be arrested, or detained, or have his personal baggage seized. By the same narrow interpretation, he may, the moment he left the meeting room, have his papers confiscated, or his right to use codes suspended, or his courier seized, or be conscripted into national service, etc. Should such a narrow interpretation prevail, the basic purpose of

^{*} *Yearbook of the International Law Commission, 1967*, vol. II (United Nations Publication, Sales No. E.68.V.2).

the Convention, which is to assure the representatives the independent exercise of their functions, would clearly be totally defeated.

The broader interpretation is also borne out by the fact that the phrase ‘while exercising their functions’ is immediately accompanied and complemented by the phrase “and during their journey to and from the place of meeting’. In other words, ‘while exercising’ means during the entire period of presence in the State (not city) for reasons of the conference in question. This is logical because the ‘journey’ necessarily is that to and from the State, not the conference hall. Only this interpretation avoids absurdity and only this is consistent with the immediately following reference in sub-section (a) to ‘personal baggage’. Therefore, in accordance with the general principle that a treaty must be interpreted to effectuate its purpose and not to lead to absurdity, it seems to me, without, reference to other criteria of interpretation, that only the ‘broad interpretation’ should have been intended by the phrase in question.”

The facts as known to us—which are contested—do not appear to warrant a change in the above position. Thus, in our view, the immunity provisions appear to apply. That being the case, section 14 of the General Convention quoted above also applies.

(d) Interoffice memorandum to the Officer-in-Charge, Travel and Transport Section, Office of Central Support Services, regarding media travelling with the Secretary-General

PRIVILEGES AND IMMUNITIES OF UNITED NATIONS OFFICIALS TRAVELLING FOR OFFICIAL BUSINESS—JOURNALISTS TRAVELLING WITH THE SECRETARY-GENERAL OR THE SECURITY COUNCIL “AS PART OF OFFICIAL UNITED NATIONS DELEGATIONS” REMAIN INDEPENDENT OF THE ORGANIZATION—JOURNALISTS’ TRAVEL CANNOT BE CONSIDERED AS “OFFICIAL TRAVEL” WITH THE PERTAINING PRIVILEGES AND IMMUNITIES

23 July 2007

1. This is with reference to your memorandum dated 29 June 2007 addressed to [Name] of this Office by which you informed us that the Department of Management has recently been instructed by the Chef de Cabinet that “the media traveling with the Secretary-General and the Security Council are to be extended the same services as United Nations staff travelling with the Secretary-General and the Security Council”. We note that the Chef de Cabinet in his Note of 22 June 2007 stipulates that “[j]ournalists will be responsible for the full cost of commercial flights and hotels which the travel office will book”.

2. In this regard you seek our advice as to whether the travel of these journalists can be considered official travel on behalf of the Organization and whether the Travel and Transportation Section could approach Consulates and Embassies by way of a Note Verbale to seek their assistance in issuing these visas.

3. Pursuant to article VII, section 26, of the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the “General Convention”)* facilities for speedy travel and processing of visa applications are to be accorded to “experts and other persons who [. . .] have a certificate that they are travelling on the business of the United Nations”.

* United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).