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## PRIVILEGES AND IMMUNITIES OF INTERNATIONAL PERSONNEL

### 1. Introduction

International personnel, in the first place officials of international organizations, enjoy a wide range of privileges and immunities, which basically stem from concerns of functional necessity (see the entry Immunities of persons from jurisdiction). They derive or are inspired by privileges and immunities accruing to diplomatic agents, but there are some relevant differences between the former and the latter, since privileges and immunities granted to international personnel are only for the benefit of the international organization and do not generally cover the official's private sphere. Privileges and immunities are usually granted to international personnel through bilateral or multilateral agreements and often also through the headquarters agreements concluded between an international organization and its host state. In addition, privileges and immunities of personnel (including military personnel) belonging to an international peacekeeping force or operation (PKO) are usually granted through a *status-of-forces agreement* (SOFA) signed between the international organization sending the PKO and the host state.

### 2. The Core Issue: Immunity from the Jurisdiction of Foreign States

The *Convention on the Privileges and Immunities of the United Nations*, adopted by the General Assembly in 1946, gives a comprehensive picture of privileges and immunities granted to international personnel, and many subsequent agreements are modelled on its provisions. According to Article V, Section 18, officials of the United Nations shall (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity; (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations; (c) be immune from national service obligations; (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration; (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of

diplomatic missions to the Government concerned; (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys; (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

One of the most important provisions is the rule providing international personnel with functional (or *ratione materiae*) immunity from the jurisdiction of foreign states, granted to allow them to perform their official functions in full independence. An analogous rule is inserted in practically every agreement signed between states and international organizations in this domain. Just to give a different example one may quote article XVIII, letter a) of the *Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff* (1951) providing that NATO Officials shall: “be immune from legal process in respect of words spoken or written and of acts done by them in their official capacity and within the limits of their authority”. Differently from what usually happens with state officials, for international personnel it may be very important to be protected and to enjoy immunity also against their own state of nationality, as shown by the case considered by the ICJ in its 1999 *Advisory Opinion concerning Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (see also *Advisory Opinion on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, 15 December 1989).

A few classes of senior international officials enjoy personal immunities (*ratione personae*), in particular they enjoy full immunity from criminal jurisdiction and personal inviolability. Referring again to the UN example, according to Article V, Section 19 of the 1946 Convention the Secretary-General and all Assistant Secretaries-General “shall be accorded (...) the privileges and immunities exemptions and facilities accorded to diplomatic envoys, in accordance with international law.”

Another category of international officials to be mentioned is that of experts sent on official mission by an international organization. According to the vast majority of agreements ruling the matter, these experts are granted immunity from jurisdiction of the host state for acts performed in their official capacity, as well as personal inviolability, that is to say immunity from arrest and detention, for the duration of their mission, including the time spent in journeys in connection with the mission.

As to the relationship between both functional and personal immunities and alleged suspects of international crimes, the same considerations formulated for state officials apply, *mutatis mutandis*, to international personnel (see Immunities of persons from jurisdiction).

### **3. Immunities accruing to military and civilian personnel taking part in international peacekeeping operations**

The best approach to describe immunities accruing to the various categories of officials taking part in a PKO is again to illustrate the UN example.

The most important component of PKOs is represented by members of national military contingents. According to the UN Model SOFA (*United Nations Model Status-of-Forces-Agreement for Peacekeeping Operations, Report of the Secretary General*, UN Doc. A/45/594, 9 October 1990) they are subject to the exclusive criminal and disciplinary jurisdiction of the sending State, in any case they enjoy absolute immunity from host state jurisdiction. Military observers and civilian police officers are usually recruited on an individual basis (not as members of a national contingent, like military officers) and, according to the UN Model SOFA, they enjoy immunity from the host state jurisdiction only with regard to their official acts. As to international civil servants employed in PKOs, different categories shall be distinguished. Very senior officials enjoy absolute immunity from criminal jurisdiction and personal inviolability. United Nations civil servants holding a UN laissez-passer are considered as “officials”, and are protected by functional immunity, including from the jurisdiction of their state of nationality. United Nations civilian staff members without the status of “officials” are usually protected by functional immunity only from the host state jurisdiction.

As a final note relating to the prosecution of international crimes, it’s worth mentioning UN Security Council Resolution 1422 (2002) adopted after the entry into force of the ICC Statute. Res. 1422 explicitly requested the ICC to refrain for a period of 12 months from investigations and prosecutions concerning personnel of UN authorized or established operations belonging to states not parties to the ICC Statute. This resolution has been strongly criticized because it suggests that some peacekeepers are more equal before the law than others. It was renewed once with Res. 1487 (2003).

### **Select Bibliography**

C. Wickremasinghe, Immunities enjoyed by officials of states and international organizations, in M.D. Evans (ed.) *International Law*, Oxford, 2003

C. Stahn, The Ambiguities of Security Council Resolution 1422 (2002), in *EJIL*, 2003, 85-104

S. Zappalà, The reaction of the US to the entry into force of the ICC Statute : comments on UN SC Resolution 1422 (2002) and Article 98 Agreements, in *JICJ*, 2003, 114-134

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