

**Inter-office memorandum to the Under-Secretary for Special Political Affairs,
concerning privileges and immunities of representatives of States Members of the
United Nations while in transit to and from United Nations meetings**

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—THE ORGANIZATION IS ENTITLED TO INVOKE THE 1946 CONVENTION AGAINST A STATE PARTY EVEN WHERE A VIOLATION RELATES TO A NATIONAL OF A MEMBER STATE THAT IS NOT PARTY THERETO—PRINCIPLE OF INVIOABILITY OF DIPLOMATIC AGENTS IS BINDING UPON STATES REGARDLESS OF WHETHER THEY ARE PARTIES TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961—REPRESENTATIVES OF MEMBER STATES ENJOY IMMUNITY FROM PERSONAL ARREST OR DETENTION WHILE EXERCISING THEIR FUNCTIONS AND DURING THEIR JOURNEY TO AND FROM THE PLACE OF MEETING UNDER THE 1946 CONVENTION—INVIOABILITY OF DIPLOMATIC AGENTS IN THE TERRITORY OF THIRD STATES UNDER THE VIENNA CONVENTION—THE ARREST OF DIPLOMATIC AGENTS OF ANOTHER MEMBER STATE CONSTITUTES A VIOLATION OF THE 1946 CONVENTION AND THE VIENNA CONVENTION—FOREIGN MINISTERS ENJOY THE SAME INVIOABILITY AS DIPLOMATIC AGENTS WHILE TRAVELLING ABROAD IN THE COURSE OF THEIR OFFICIAL DUTIES

1. In connection with the recent arrest and detention by [Member State A] of the Foreign Minister and of the Permanent Representative of [Member State B] to the United Nations, while they were in transit from United Nations meetings in New York, two international conventions are of particular relevance. These are the Convention on the Privileges and Immunities of the United Nations,^{*} adopted by the General Assembly on 13 February 1946, and the Vienna Convention on Diplomatic Relations,^{**} which entered into force on 24 April 1964. [Member State A] is a party to both of these conventions. [Member State B], however, is not a party. In this connexion it should be noted that the Convention on the Privileges and Immunities of the United Nations is a Convention “between the United Nations and every Member which has deposited an instrument of accession” (section 35). The United Nations is therefore juridically entitled to invoke the Convention in the case of a violation, even if that violation relates to individuals nationals of a State not a party to the Convention. Furthermore, so far as the Vienna Convention on Diplomatic Relations is concerned, it may be taken as an indication of general principles of modern international law on the inviolability of diplomatic agents, which principles are binding upon States, whether or not they are parties to the Convention.

2. Section 11 of the Convention on the Privileges and Immunities of the United Nations expressly provides that representatives of Members “shall, while exercising their functions and *during their journey to and from the place of meeting*, enjoy... immunity from personal arrest or detention.” (Emphasis added.) The arrest and detention by [Member State A] of the Minister for Foreign Affairs of [Member State B] and of the Permanent Representative of [Member State B] to the United Nations is therefore a clear violation of [Member State A]’s obligations under section 11 of the Convention on the Privileges and Immunities of the United Nations.

3. Article 40 of the Vienna Convention on Diplomatic Relations provides, in its paragraph 1, that “if a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him

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

^{**} United Nations, *Treaty Series*, vol. 500, p. 95.

inviolability...”. Paragraph 4 of the same article expressly lays down that this obligation of third States “shall also apply to...persons...whose presence in the territory of the third State is due to *force majeure*.” The principle thus established would seem directly in point in the case here involved. The Permanent Representative of [Member State B] to the United Nations clearly comes within the category of “diplomat agent”, and while the Minister for Foreign Affairs may not strictly be a “diplomatic agent”, modern international law has recognized the inviolability of Ministers for Foreign Affairs while travelling abroad in the course of their official duties.

4. In conclusion, therefore, it may be said that [Member State A] is in violation of the provisions of section 11 of the Convention on the Privileges and Immunities of the United Nations, and article 40 of the Vienna Convention on Diplomatic Relations, to both of which conventions it is a party. In the present context, it is immaterial that [Member State B] is not a party to these Conventions, in that the Convention on the Privileges and Immunities of the United Nations is a Convention between the United Nations and its Member States, entitling the Organization to protest and seek redress for any violations thereof, and in that article 40 of the Vienna Convention on Diplomatic Relations may be taken as a formulation of a general principle of international law which is independently binding on all States.

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