

Note to the Assistant Secretary-General for Political Affairs, concerning the legal status of the United Nations premises and the handing-over of political leaders to the competent authorities of a Member State

LEGAL STATUS OF UNITED NATIONS PREMISES—ARTICLE 105 OF THE CHARTER OF THE UNITED NATIONS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—INVIOIABILITY OF UNITED NATIONS PREMISES—NO LEGAL RIGHT FOR THE ORGANIZATION TO USE ITS PREMISES AS A PLACE OF REFUGE FOR PERSONS EVADING JUSTICE OR OF DIPLOMATIC ASYLUM—TEMPORARY REFUGE MAY BE GIVEN ON HUMANITARIAN GROUNDS IF THERE IS IMMINENT DANGER TO INDIVIDUAL'S LIFE—THREAT OF ARREST BY THE CONSTITUTIONAL AUTHORITIES OF THE TERRITORIAL STATE OF PERSONS ACCUSED OR SENTENCED FOR COMMON CRIMINAL OFFENSES CANNOT CONSTITUTE A THREAT OF IMMINENT DANGER

1. This is with reference to your inquiry concerning the presence of [Name] within the premises of the Office of the Secretary-General's Personal Representative in [Member State] (the "premises"). This note, in particular, addresses the legal status of the premises and how to handle a possible hand over request from authorities in [Member State]. While formulating legal responses to these issues in such highly charged political circumstances may be somewhat precarious, I would like to stress that the views expressed below are firmly grounded in both law and practice.

2. The legal status of the United Nations premises is governed by Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations (the "Convention")^{*} as well as numerous bilateral agreements dealing with the establishment of United Nations offices away from Headquarters. Article 105, paragraph 1, of the Charter provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. Under the provisions of section 3 of the Convention, to which [Member State] has been a party since [date], the "premises of the United Nations shall be inviolable" and the property and assets of the Organization, wherever located, "shall be immune from search, requisitions, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action".

3. It is clear from the foregoing that, legally speaking, the United Nations alone is competent to exercise control over its premises and the activities conducted therein. It follows, therefore, that no local officer or official may enter these premises without the consent of, and under the conditions agreed to, by the United Nations.

4. The inviolability of United Nations premises is clearly established under international law and has been universally accepted for more than 50 years. However, a distinction must be drawn between the inviolability of the premises which is legally founded and the use of such premises as a place of refuge for persons evading justice or of diplomatic asylum. There is no legal basis for the United Nations to assert such a right. On the contrary, law and practice points to a contrary conclusion.

5. However, a practice has developed in recent years in a variety of circumstances in which the United Nations has become a temporary refuge and in which, as a matter of humanitarian action, the United Nations has asserted a right to provide assistance to individuals in imminent danger. The granting of "temporary refuge" goes back to elementary

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

humanitarian considerations: inviolable premises should be permitted to protect a person who is in acute danger of being killed or wounded until the danger has passed. A threat of arrest by the constitutional authorities of the territorial State of persons accused or sentenced for common criminal offenses, however, can never constitute such a threat.

6. [...]

7. The handing over of [Name] to the competent authorities in [Member State] is not, primarily, a legal question but a matter of policy and would necessitate, in any event, close consultations with the Office of the Secretary-General and the Department of Political Affairs. From a legal standpoint, the chief concern would be to determine that the conditions which justified the humanitarian action of sheltering [Name] have ceased to exist. Politically, the United Nations could also seek to ascertain whether the guarantees given by [Member State officials], which were noted appreciatively by the Security Council, would be respected with respect to [Name].

11 September 1998