



Secretariat

ST/AI/299  
10 December 1982

ADMINISTRATIVE INSTRUCTION

To: Members of the staff

From: The Under-Secretary-General for Administration and Management

Subject: REPORTING OF ARREST OR DETENTION OF STAFF MEMBERS,  
OTHER AGENTS OF THE UNITED NATIONS AND MEMBERS OF  
THEIR FAMILIES

1. Pursuant to ST/SGB/198 of 10 December 1982, members of the staff are hereby apprised of procedures to be followed in reporting the arrest or detention of staff members, other agents of the United Nations and members of their families. The procedures were communicated to designated officials and other officials responsible for security matters in a memorandum dated 16 January 1980 from the Assistant Secretary-General for the Office of General Services.
2. To enable the United Nations to safeguard its legal rights in such situations and to discharge its obligations to the staff, other agents and family members concerned, it is essential that United Nations Headquarters be informed of such incidents immediately after they take place. The procedure for reporting to Headquarters and the applicable legal provisions are stated below. 1/
3. When there is evidence to suggest that any United Nations staff member - whether internationally or locally recruited - other agent of the United Nations 2/ or member of their immediate families has been arrested or detained by authorities of a Government, the designated official for security matters 3/ at the duty station concerned immediately shall report the incident by the fastest means of communication available (such as cable, radio or telephone) to the Assistant Secretary-General for General Services at United Nations Headquarters 4/ who is also the United Nations Security Co-ordinator for the Secretary-General.
4. The designated official at the duty station where the arrest or detention has taken place shall immediately contact the Foreign Ministry of the Government concerned and request:

(a) All relevant information about the arrest or detention;

(b) The Government's co-operation in arranging, as a matter of urgency, that representatives of the United Nations be given access to the individual arrested or detained.

5. The report to Headquarters shall convey all information readily available, including:

(a) The name and nationality of the person arrested or detained, his or her employment status with and official function for the United Nations; for family members the family relationship must be given;

(b) The time, place and other circumstances of the arrest or detention;

(c) The legal expression or term used by the applicable local law to describe the arrest or detention;

(d) The legal grounds for the arrest or detention, including any charges against the person concerned;

(e) The name of the governmental agency, such as a court or an administrative authority, under whose authority the measure was taken;

(f) Whether a representative of the United Nations has been or will be given access to the person arrested or detained; in the affirmative, any request or other reaction from the person concerned shall also be conveyed;

(g) Whether consular protection and/or legal counsel is or will be available to the person arrested or detained; in the affirmative, the identity of these services shall be conveyed.

6. If information on some of the items listed above is not available without delay, the available information should be forwarded immediately to Headquarters, and the missing items shall be communicated in a supplementary report or reports. Additional information relevant to the case also shall be reported as soon as possible. In this way, the availability centrally of accurate and up-to-date information on each staff member, other agent or member of their families who has been arrested or detained or who has disappeared or been killed may be ensured.

7. No statements concerning the incident should be made to the news media unless previously cleared by United Nations Headquarters.

8. The Assistant Secretary-General for General Services will inform the employing agency and, in cases involving United Nations staff, the Staff Committee, and will take up the matter with the Office of Legal Affairs and the Secretary-General to determine such further action as may be required.

9. If the arrest or detention is carried out by an unauthorized or unknown person or persons rather than by authorities of a Government, the incident shall also be

reported immediately, and the present procedure shall be followed, except in those respects where it is clearly inapplicable.

10. To ensure prompt reporting of all arrests and detentions, the reporting procedure should be followed by the appropriate senior officials in countries in which there either is no designated official or which are remote from the office of the designated official.

Notes

1/ These procedures should be applied mutatis mutandi in the case of staff members who have disappeared or have been killed.

2/ The categories of personnel to which this procedure is applicable are defined in annexes I and II. In case of doubt concerning whether a person is included or not, the designated official shall submit a report, including information on the person's status.

3/ A list of designated officials is contained in annex III.

4/ Cable address: UNATIONS NEW YORK TIMBRELL  
Telephone numbers: (212) 754-6198 (Assistant Secretary-General,  
Office of General Services).

Annex IMEMORANDUM ON THE UNITED NATIONS LEGAL RIGHTS WHEN A STAFF MEMBER OR OTHER AGENT a/ OF THE UNITED NATIONS, OR A MEMBER OF THEIR FAMILY, IS ARRESTED OR DETAINED

1. All United Nations officials and experts on mission for the United Nations b/ are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. This immunity - which is also known as functional immunity or immunity for official acts - extends to all stages of civil and criminal judicial proceedings, such as subpoena to appear as defendant or as a witness, judgement or execution. It also covers administrative proceedings of a quasi-judicial nature and administrative enforcement measures as well as personal arrest or detention. Experts on mission for the United Nations also enjoy immunity from personal arrest or detention for non-official acts and, in this respect, their rights are similar to those of the highest-ranking United Nations officials - Assistant Secretaries-General and above - who have diplomatic status. Under certain conditions, the Secretary-General can waive the immunity of any of the persons referred to above, with the exception of his own immunity, which can be waived by the Security Council.

2. The immunity provisions above are summarized from the pertinent provisions of the Charter of the United Nations (Article 105) and the Convention on the Privileges and Immunities of the United Nations (articles V and VI). c/ These provisions do not stand alone, however, but must be construed in the context of other applicable principles and rules of the Charter and of international law. Based on such wider analysis, it is evident that when a governmental authority arrests or detains a United Nations staff member - whether internationally or locally recruited - or other agent of the United Nations, the United Nations has the right:

- (a) To visit the staff member or agent;
- (b) To converse with the staff member or agent;
- (c) To be apprised of the grounds for the arrest or detention, including the main facts and formal charges;
- (d) To assist the staff member or agent in arranging legal counsel for his or her defence;
- (e) To appear in legal proceedings to defend any United Nations interest affected by the arrest or detention.

The specific measures outlined above must be considered the minimum initial steps required in order for the United Nations to safeguard and maintain its interests and legal rights. This assertion is fully justified by the reasoning which follows.

3. The distinction between acts performed in an official capacity and those performed in any private capacity is a question of fact, which depends on the circumstances of the particular case. In this connection, the position of the United Nations is that it is exclusively for the Secretary-General to determine the extent of the duties and functions of United Nations officials and of experts on mission for the United Nations. To allow authorities of national Governments to determine whether a given act was official, or not, would lead to conflicting decisions owing to the large number of countries in which the Organization operates, and, in many cases, it would be tantamount to denial of immunity.

4. It is established by the Advisory Opinion of the International Court of Justice of 11 April 1949 on reparation for injuries suffered in the service of the United Nations (I.C.J. Reports, 1949, p. 174) that in the event an agent of the United Nations in the performance of his duties should suffer injury in circumstances involving the responsibility of a State, the United Nations has the legal capacity to bring an international claim against the responsible State with a view to obtaining the reparation due in respect of the damage caused both to the United Nations and to the victim or persons entitled through him. The Court states that this is true whether the State is a Member State or not, and whether or not the State is that of the agent's (or staff member's) nationality. It was emphasized that any such claim brought by the United Nations must be based on a breach of obligations due to the Organization, and the claim thus is distinct from any rights that the agent's (or staff member's) national State may possess. It follows that the United Nations has a right of functional protection of those of its staff members or other agents in respect of whom a State possibly may have violated its international obligations.

5. To enable the Secretary-General to make the determination whether an act was done in the course of official functions and, in the affirmative, to decide whether to waive the immunity of the official or expert on mission, as well as to enable the Organization to exercise its right of functional protection, there must be an adequate opportunity to learn the facts of the case. Where the staff member, agent or family member in question has been arrested, or is in detention or custody, the only such opportunity is through access to him or her, and it is the practice at Headquarters, and elsewhere as appropriate, that one or more representatives of the United Nations visit and converse with staff members or agents and, when required, family members who have been arrested or are otherwise kept in the custody of local authorities.

6. During such visits and consultations the representatives of the United Nations must have the right to pursue any line of discussion which will clarify the questions both whether the arrest or detention is connected with the official status or function of the person involved and whether an injury may have occurred to the United Nations through a violation of any obligation of a State towards the United Nations and the person concerned. The mere fact that there is no apparent connection between the reason for the arrest or detention given by the authorities of the State and the duties, functions and status of the official or expert on mission in question, or of members of their families, is insufficient to nullify the right of the United Nations to visit and converse with the person in custody. If that were so, the right would be made entirely dependent upon the reasons given

by the authorities of the State, and that would make the right practically ineffective.

7. The United Nations is not confined to the arrested or detained person as a source of information. Rather, in accordance with the fifth principle in Article 2 of the Charter that "all Members shall give the United Nations every assistance in any action it takes", it is incumbent on the State authorities to inform the United Nations of the main reasons and grounds for the step taken. In the event that formal charges are made, it is clear that the Organization has a right to be apprised thereof without delay.

8. With respect to the assistance of legal counsel, the United Nations is entitled to provide or retain an attorney or lawyer and to appear and participate in any legal proceeding, in so far as an interest of the United Nations is affected. If only a private interest of the individual is affected, the right of protection of the State of the nationality of the individual concerned shall be given priority over that of the United Nations. However, the United Nations may in either case assist the arrested or detained individual to retain his or her own attorney or lawyer, when so requested by the individual concerned.

#### Notes

a/ The term "agent of the United Nations" includes but is not necessarily limited to United Nations officials (staff members) and experts on mission for the United Nations.

b/ By its resolution 76 (I), adopted 7 December 1946, the General Assembly approved that "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates", should be included among the officials who are granted privileges and immunities under article V of the Convention. Accordingly, all staff employed under the 100 and 200 series of the Staff Regulations and Rules are officials. Experts on missions for the United Nations are persons who are performing functions or assignments for the United Nations without being members of the staff. Examples of experts on mission for the United Nations are military observers on peace-keeping missions and persons serving in their individual capacity on certain subsidiary bodies of the United Nations without being either officials (staff members) or representatives of Member States; under certain conditions participants in United Nations seminars or symposia are considered experts on mission for the United Nations.

c/ At certain duty stations, officials are also granted additional immunities, such as immunity from arrest or detention, in respect of non-official acts, in accordance with agreements with the host Governments concerned.

Annex II

APPLICABLE LEGAL PROVISIONS RELATING TO THE SECURITY AND INDEPENDENCE  
OF INTERNATIONAL CIVIL SERVANTS, EXTRACTED FROM THE CHARTER OF THE  
UNITED NATIONS, THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF  
THE UNITED NATIONS, AND THE STAFF REGULATIONS AND RULES

1. Charter of the United Nations

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. 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.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

2. Convention on the Privileges and Immunities of the United Nations a/

Article V

Officials

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

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.

Section 19. In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connexion with the privileges, immunities and facilities mentioned in this article.

#### Article VI

##### Experts on missions for the United Nations

Section 22. Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connexion with their missions. In particular, they shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind.



This immunity from legal process shall continue to be accorded, notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) Inviolability for all papers and documents;

(d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the United Nations.

### 3. Staff Regulations

Regulation 1.1. Members of the Secretariat are international civil servants. Their responsibilities are not national but exclusively international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the United Nations only in view.

Regulation 1.3. In the performance of their duties members of the Secretariat shall neither seek nor accept instructions from any Government or from any other authority external to the Organization.

Regulation 1.4. Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement which may adversely reflect on their status or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status.

Regulation 1.7. Staff members may exercise the right to vote but shall not engage in any political activity which is inconsistent with or might reflect upon the independence and impartiality required by their status as international civil servants.

Regulation 1.8. The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations. In any case where these privileges and immunities arise, the staff member shall immediately report to the Secretary-General, with whom alone it rests to decide whether they shall be waived.

Regulation 1.9. Members of the Secretariat shall subscribe to the following oath or declaration:

"I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other authority external to the Organization."

#### 4. Staff Rules

##### 101.6

(e) Staff members shall not, except in the normal course of official duties or with the prior approval of the Secretary-General, perform any one of the following acts, if such act relates to the purpose, activities, or interests of the United Nations.

- (i) Issue statements to the press, radio or other agencies of public information;
- (ii) Accept speaking engagements;
- (iii) Take part in film, theatre, radio or television productions;
- (iv) Submit articles, books or other material for publication.

##### 101.8

(a) Membership in a political party is permitted provided that such membership does not entail action, or obligation to action, contrary to staff regulation 1.7. The payment of normal financial contribution shall not be construed as an activity contrary to staff regulation 1.7.

(b) In any case of doubt as to the interpretation or application of staff regulation 1.7 and the present rule, the staff member concerned shall request a ruling from the Secretary-General.

104.4

(d) A staff member who is arrested, charged with an offence other than a minor traffic violation or summoned before a Court as a defendant in a criminal proceeding, or convicted, fined or imprisoned for any offence other than a minor traffic violation shall immediately report the fact to the Secretary-General.

(e) A staff member may at any time be required by the Secretary-General to supply information concerning facts anterior to his or her appointment and relevant to his or her suitability, or concerning facts relevant to his or her integrity, conduct and service as a staff member.

201.1

Project personnel shall exercise particular discretion in issuing statements to the press, radio or other agencies of public information, releasing any visual information for publication, or taking part in mass communication activities such as film, radio or television productions which are in any way related to their project activities or to the aims, activities or interests of the United Nations.

201.2

The oath or declaration administered under regulation 1.9 shall not prevent the close collaboration of project personnel with a Government pursuant to an agreement between that Government and the United Nations.

Notes

a/ By its resolution 76 (I), adopted 7 December 1946, the General Assembly approved that "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates" should be included among the officials who are granted privileges and immunities under articles V and VI of the Convention. Accordingly, all staff employed under the 100 and 200 series of the Staff Regulations and Rules are officials. Experts on missions for the United Nations are persons who are performing functions or assignments for the United Nations without being members of the staff. Examples of experts on missions for the United Nations are military observers on peace-keeping missions and persons serving in their individual capacity on certain subsidiary bodies of the United Nations without being either officials (staff members) or representatives of Member States; under certain conditions, participants in United Nations seminars or symposia are considered experts on mission for the United Nations.

Annex III

DESIGNATED OFFICIALS

1. The following officials have been designated to undertake special responsibilities for the security and protection of the organization's personnel and property.

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|---|---|
| 2. Chile .....                            | Executive Secretary, Economic Commission for Latin American (ECLA)                                      |
| Cyprus .....                              | Special Representative of the Secretary-General, United Nations Peace-keeping Force in Cyprus (UNFICYP) |
| Ethiopia .....                            | Executive Secretary, Economic Commission for Africa (ECA)   |
| Israel .....                              | Chief of Staff, United Nations Truce Supervision Organization in Palestine (UNTSO)                      |
| Kenya .....                               | Executive Director, United Nations Environment Programme (UNEP)   |
| Lebanon .....                             | Co-ordinator, United Nations Assistance for the Reconstruction and Development of Lebanon (UNARDOL)     |
| Syrian Arab Republic ....                 | Force Commander, United Nations Disengagement Observer Force (UNDOF)                                    |
| Thailand .....                            | Executive Secretary, Economic and Social Commission for Asia and the Pacific (ESCAP)                    |
| All other countries and territories ..... | Resident or regional representative, United Nations Development Programme (UNDP)                        |

3. The Chief of Staff of UNTSO has been given overall responsibility for planning the security and protection of personnel and property of the United Nations organizations in the Middle East.

4. The Force Commander of the United Nations Interim Force in Lebanon (UNIFIL), who is designated official for UNIFIL staff, will co-ordinate their security arrangements with the Co-ordinator of UNARDOL - Beirut and/or the Chief of Staff of UNTSO, as appropriate.

5. The Chief Military Observer of the United Nations Military Observer Group in India and Pakistan (UNMOGIP), who is the designated official for UNMOGIP staff, will co-ordinate security arrangements with the UNDP resident representatives in the area, as appropriate.

6. In the absence of a designated official, his responsibilities will be assumed by the officer-in-charge or as designated by the United Nations Security Co-ordinator for the Secretary-General.

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