

Distr.: General  
1 April 2024  
Arabic  
Original: English

## الجمعية العامة



الدورة الثامنة والسبعون

البند 161 من جدول الأعمال

تقرير لجنة العلاقات مع البلد المضيف

## رسالة مؤرخة 1 نيسان/أبريل 2024 موجهة إلى الأمين العام من الممثل الدائم للاتحاد الروسي لدى الأمم المتحدة

أكتب إليكم إحقاقاً برسالة وزير خارجية الاتحاد الروسي المؤرخة 29 شباط/فبراير 2024 ورسالتنا المؤرخة 8 شباط/فبراير 2024 (انظر المرفق الأول)\* وبالإشارة إلى الرسالة المؤرخة 19 آذار/مارس 2024 (انظر المرفق الثاني)\* الموجهة من ميغيل دي سيريا سواريس، وكيل الأمين العام للشؤون القانونية والمستشار القانوني للأمم المتحدة، فيما يتعلق بالمحاولات غير المقبولة التي يقوم بها البلد المضيف لاستخدام المادة 13 (ب) من اتفاق المقر ضد أندريه كوفالينكو، وهو مواطن روسي يعمل في الأمانة العامة للأمم المتحدة كرئيس لمكتب الإدارة والإعلام في المديرية التنفيذية للجنة مكافحة الإرهاب، استناداً إلى اتهامات سخيفة وشائنة.

ووفقاً للمادة 101 من ميثاق الأمم المتحدة، "يعين الأمين العام موظفي الأمانة طبقاً للوائح التي تضعها الجمعية العامة". وعملاً بالمادة الأولى من النظامين الأساسي والإداري لموظفي الأمم المتحدة، "يكفل الأمين العام احترام حقوق الموظفين وواجباتهم، على نحو ما هي مبينة في الميثاق والنظامين الأساسي والإداري للموظفين وفي قرارات الجمعية العامة ومقرراتها ذات الصلة". ولا ينطبق البند 13 (ب) من اتفاق المقر الذي يشير إليه البلد المضيف على موظفي الأمم المتحدة.

وعليه، فإن تدخل البلد المضيف في أداء واجبات موظف تحت أي ذريعة، ولا سيما على أساس اتهامات كاذبة ومهينة بشكل واضح، يمثل انتهاكاً واضحاً للصوصك القانونية المذكورة أعلاه.

ولذلك، فإن خطورة "الحالة التي تجد المنظمة نفسها فيها" تستدعي أكثر من "القلق الشديد" و "الأمل الصادق في ألا يتخذ البلد المضيف هذا الإجراء إلا كملأد أخير".

\* يعمّم باللغة التي قُدّم بها فقط.

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الرجاء إعادة استعمال الورق

ولا يسري مفعول اتفاق المقر من خلال "بوادر حسن النية" والإعلانات السياسية الغامضة. بل ينص على آليات قانونية محددة يتعين تفعيلها في حالة حدوث انتهاكات لأحكامه. ولم يتردد من سبقوكم في منصبكم أبدا في استخدامها لحماية مصالح المنظمة وموظفيها.

وتم وصف خطورة الانتهاكات التي ارتكبتها الولايات المتحدة في حالة السيد كوفالينكو في الرسالة المؤرخة 8 شباط/فبراير 2024. وعدم القيام بأي إجراء أمر غير مسموح به، لأنه ستكون له عواقب مباشرة على منظومة الأمم المتحدة بأسرها، مما يحول فعليا المادة 13 (ب) إلى أداة يستخدمها البلد المضيف لممارسة الضغط على جميع العاملين في الأمانة العامة.

وتتطلب الحالة ردم القانوني الفوري والمناسب وفقا للبند 21 من اتفاق المقر. وأخذا في الاعتبار أن قضية السيد كوفالينكو تضاف إلى عدد متزايد من المسائل الخطيرة التي تؤثر على وفود متعددة لعدة سنوات، فإن الحل الوحيد القابل للتطبيق هو الشروع فورا في التحكيم بين الأمم المتحدة والولايات المتحدة. ولن يؤدي المزيد من التأخير في البدء في ذلك إلا إلى تشجيع سلطات البلد المضيف على ارتكاب المزيد من الانتهاكات.

وأرجو ممتنا تعميم هذه الرسالة ومرفقيها باعتبارهما وثيقة من وثائق الجمعية العامة، في إطار البند 161 من جدول الأعمال.

(توقيع) فاسيلي نيبينزيا

المرفق الأول للرسالة المؤرخة 1 نيسان/أبريل 2024 الموجهة إلى الأمين العام من  
الممثل الدائم للاتحاد الروسي لدى الأمم المتحدة

Excellency,

I write to you with profound concern regarding a recent development that further exacerbates the ongoing violation by the United States of its international legal obligations under the 1947 UN Headquarters Agreement. This matter pertains to Mr. Andrey Kovalenko, a Russian national employed in the UN Secretariat as the Head of Administration and Information Office in the Counter-Terrorism Committee Executive Directorate (D-1).

As you are well aware, Mr. Kovalenko has been facing an unacceptable situation with the non-issuance of his entry visa to the US for the past two years. This issue has been consistently

raised in the Committee on Relations with the Host Country and in our previous communications with you.

On February 6, Mr. Kovalenko informed us that the UN Secretariat received a note from the US authorities invoking section 13(b) of the Headquarters Agreement. The note claimed that he conducted activities outside his official capacity, a claim vehemently rejected by Mr. Kovalenko. The absurdity of these accusations becomes evident when considering his decades of service in the US (first in our Permanent Mission, then – in the UN Secretariat), during which his official capacity was never questioned, and his visa was routinely extended.

It is perplexing that the US authorities chose to bring forth these charges now, particularly after keeping Mr. Kovalenko outside his duty station since 2020, while he worked remotely and awaited the processing of his visa request. This new development appears to coincide with recent negotiations of your team in Washington D.C. regarding violations mentioned in the recommendations of the Committee on Relations with the Host Country and General Assembly resolutions. It may look like the US aims to stifle any further debate on the matter by misusing section 13(b) of the Headquarters Agreement. In reality, however, this new violation goes beyond the fate of one staff member; it significantly impacts the entire Organization, serving as a tool to exert pressure on all who work in the Secretariat.

The message to your employees from the US is clear – comply with our demands and wishes or risk being declared *persona non-grata* or, put it simply, be labeled a spy. If the US can successfully apply section 13(b) on manifestly false charges to a staff member already

outside his duty station and just one year from his mandatory retirement, then they would do so even more easily with others whom they find “inconvenient” based on their nationality or firm adherence to Article 100 of the UN Charter.

We believe that this blatant violation of legal obligations by the US must not be tolerated by the UN Secretary-General and deserves swift and unequivocal reaction.

On the legal front, we expect you to fully adhere to the so-called “*modus vivendi*” between the UN and the United States dated July 27, 1953. It explicitly states that if section 13(b) of the Headquarters Agreement is invoked, the case “*would have to be mutually studied on the basis of all the evidence supplied by the United States authorities to the Secretary-General, and if agreement were not reached, the problem would have to be solved under the Agreement, that was to say by arbitration*”.

We urge you to demand that the US provides valid and detailed evidence to support their claims. The customary approach of the US authorities, referring to classified character of information, sensitive sources, or investigative interests without sharing concrete evidence, can in no way be considered sufficient. Without valid and detailed evidence, there can be no agreement as per the “*modus vivendi*”. And a mere fact that consultations between the host country and the Secretary-General took place cannot be used by the US authorities to justify arbitral denial of visa to UN staff member.

The “*modus vivendi*” is clear – absence of an agreement means there is a dispute that shall be submitted to arbitration. It is now absolutely clear that the protracted delay in the launch of the arbitration on a number of serious issues affecting multiple

delegations for several years has only emboldened the US authorities to commit further violations. Lack of accountability has resulted in the unacceptable practice of visa denials for delegates, and now this approach extends to your own staff. The US has effectively usurped the right to decide who can be part of a Member State delegation or serve as an international civil servant at the UN Headquarters in New York, committing a clear and severe violation of the Headquarters Agreement and the UN Charter.

Considering the growing number of serious violations affecting delegations and UN staff members, it is imperative that you initiate the legal procedures outlined in Section 21 of the Headquarters Agreement. We strongly urge you to act in accordance with the "*modus vivendi*", recommendations of the Committee on Relations with the Host Country and provisions of the relevant General Assembly resolutions, including 78/116, by promptly initiating arbitration with the US.

Inaction in this case cannot be an option, otherwise staff members and ultimately the Organization itself will be under imminent threat of losing its independence and becoming *de facto* subjugated by the host country.

Please accept, Excellency, the assurances of my highest consideration.



Dmitry Polyanskiy  
Chargé d'Affaires a.i.

المرفق الثاني للرسالة المؤرخة 1 نيسان/أبريل 2024 الموجهة إلى الأمين العام من  
الممثل الدائم للاتحاد الروسي لدى الأمم المتحدة

Excellency,

I have the honour to refer to your letter to the Secretary-General dated 8 February 2024 and to that of the Minister of Foreign Affairs of the Russian Federation dated 29 February 2024, about steps taken by the United States Government under the United Nations Headquarters Agreement concerning a member of staff of the Secretariat of Russian nationality.

In my statement to the Committee on Relations with the Host Country at its 312th meeting on 27 February 2024, I informed the Committee that the United States Mission to the United Nations informed the Secretariat on 5 February 2024 of its decision to act under Section 13(b)(1) of the United Nations Headquarters Agreement with respect to a staff member of the Secretariat. The Secretary-General and I, along with the Assistant Secretary-General for Legal Affairs and other members of my office, engaged in consultations with the host country in line with the process identified in Section 13(b)(1) of the Agreement, and we continue to discuss this matter with the United States Mission. The Secretary-General has conveyed his serious concerns about the situation the Organization finds itself in with respect to this matter and his sincere hope that the host country would only take such action as a last resort. In this regard, in my statement I also recalled the position of the Committee on the consultations contemplated under Section 13(b), which is reflected in paragraph 146(g) of the Committee's last report (A/78/26).

I wish to assure you that the Secretary-General and I continue to engage with the host country to address the serious issues that your Government has raised concerning the implementation of the Headquarters Agreement with a view towards ensuring its proper implementation.

Please accept, Excellency, the assurances of my highest consideration

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a series of loops and a long horizontal stroke.

Miguel de Serpa Soares  
Under-Secretary-General for Legal Affairs  
and United Nations Legal Counsel