Chapter III (C)

The Right of the Host State
To Expel the Officials

One central issue connected with privileges and immunities of international officials relates to the abuse of such privileges and immunities by these officials. Only some headquarters agreements and relevant legal instruments contain provisions on this subject. Thus, Section 25 (I) of the Specialized Agencies Convention provides that officials within the meaning of Section 18 of the Convention shall not be required by the territorial authorities to leave the country in which they are performing their functions, due to any activities undertaken by them in their official capacity. In case of abuse of privileges of residence committed by such officials in their private capacity, they may be required to leave by the Government of that country. According to Section 25 2.(II), “no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the executive head of the specialized agency concerned.” In that eventuality, the executive head of the agency is granted the right to appear on behalf of the international official who has been thus charged. According to Section 25 2. (I), the officials who enjoy diplomatic immunities under Section 21 of the Specialized Agencies Convention, can be required to leave only in accordance with diplomatic procedure applied to diplomatic envoys accredited to the country concerned. Referring to Section 25 of the Specialized Agencies Convention, Sub-Committee I of the Sixth Committee of the General Assembly of the United Nations, on Coordination of the Privileges and Immunities of the United Nations and of the Specialized Agencies, stated that

the Sub-Committee adopted a new provision which is based on the provisions of section 13 of the Headquarters Agreement of the United Nations... without
such provision, the position with regard to this matter would be indefinite and might possibly lead to dispute because, according to one interpretation of... section 19 (c), there is no power for the local Government to expel them in any circumstances and, according to another interpretation, these persons have no safeguards in the matter of expulsion at all. Like the Headquarters Agreement, the provision now adopted permits expulsion but subject to strong safeguards.

Section 19 (c) of the Specialized Agencies Convention exempts the officials, their spouses, and relatives dependent on them, from immigration restrictions and alien registration. Section 13 of the Headquarters Agreement between the United Nations and the United States on which Section 25 of the Specialized Agencies Convention is based, provides, *inter alia*, that in case of abuse of privileges of residence by officials, resulting from activities undertaken by them in their private capacity, the privileges referred to in Section 11 regarding continued residence shall not apply. It then goes on to describe the safeguards under which expulsion proceedings can be instituted against them. These safeguards are *mutatis mutandis* the same as the ones outlined in Section 25 2. (II) and 25 2. (I) of the Specialized Agencies Convention stated above.

Section 22 (e) of the FAO Headquarters Agreement, Section 29 of the ICAO Headquarters Agreement, Section 27 (e) of the IAEA Headquarters Agreement, and Article 9 of the UNESCO Headquarters Agreement, are the same in substance as Section 25 of the Specialized Agencies Convention except that Article 9 of the UNESCO Headquarters Agreement does not specifically refer to the right of the executive head of the UNESCO to appear on behalf of its official against whom expulsion proceedings are being instituted. This is not of much consequence because the executive head of an international organization does have a right to appear on behalf of its official when some proceedings are instituted against him.

As far as U.S. Public Law 291 is concerned, it does not use the term "abuse" of privileges by international officials. However, it stipulates that if the Secretary of State determines that the continued presence of a person enjoying benefits under the Act has become "undesirable," he shall inform the foreign government or the international organization in question, whatever the case may be. He can require the departure of such a person whereupon he is no longer entitled to receive the benefits of the Act. The power granted to the Secretary of State to declare a representative, an officer or an employee *persona non grata* has been widely criticized on the ground that it is

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