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## Privileges and Immunities of International Atomic Inspectors

### Cover Page Footnote

Chairman of the Graduate Program of the School of Law and Professor of Law, University of Mississippi School of Law. This article is the outgrowth of a study and on the spot survey sponsored by the American Society of International Law involving international procedures and techniques developed to control the peaceful uses of atomic energy. The author gratefully acknowledges the generous support and counsel of the Society and its Advisory Group as well as the assistance received from officials of the United States government and from officials of the international organizations concerned with the peaceful uses of atomic energy. The text of the article expresses the views of the author.

# PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ATOMIC INSPECTORS

STEPHEN GOROVE\*

THE establishment of international controls over the peaceful uses of atomic energy has become a cornerstone of post-war American and, in general, Western foreign policy.<sup>1</sup> As a result of such policy, a number of control systems have sprung into existence, such as the bilateral arrangements<sup>2</sup> and the multilateral systems administered by the International Atomic Energy Agency (IAEA),<sup>3</sup> the European Atomic Energy

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1. The most comprehensive discussion of American foreign policy in the field of atomic energy may be found in R. McKinney, *Review of the International Atomic Policies and Programs of the United States*, Report to the Joint Comm. on Atomic Energy, 86th Cong., 2d Sess. (1960). On more recent policy evaluation, see Report of the Advisory Comm. on United States Policy Toward the International Atomic Energy Agency, Hearing Before the Joint Comm. on Atomic Energy, 87th Cong., 2d Sess. 37 (1962). For an early appraisal of American policy, see Knorr, *American Foreign Policy and the Peaceful Uses of Atomic Energy*, in *Atoms for Power: United States Policy in Atomic Energy Development* 100 (P. Jessup ed. 1957). Detailed discussion and assessment of U.S. initiative involving international cooperation in the peaceful uses of atomic energy may be found in Gorove, *Controls Over Atoms-for-Peace: U.S. Bilateral Agreements with Other Nations*, 4 *Colum. J. Transnat'l L.* 181 (1966).

2. For analyses of the bilateral arrangements, see Gorove, *supra* note 1; Gorove, *Safeguarding Atoms-For-Peace: U.K. Bilateral Agreements With Other Nations*, 68 *W. Va. L. Rev.* 263 (1966); Gorove, *Controls Over Atoms-For-Peace Under Canadian Bilateral Agreements With Other Nations*, 42 *Denver L. Center J.* 41 (1965); Seaborg, *Existing Arrangements for International Control of Warlike Material-5: The United States Program of Bilateral Safeguards*, in 2 *Disarmament & Arms Control* 422 (1964).

The International Atomic Energy Agency [hereinafter cited as IAEA] is expected to assume new responsibilities in the field of international atomic inspection and verification following the entry into force of the Treaty on the Non-Proliferation of Nuclear Weapons. For a text of the treaty, see Annex, 59 *Dep't State Bull.* 9 (1968).

3. Informative accounts of the IAEA and its safeguards system are presented in Bechhoefer & Stein, *Atoms For Peace: The New International Atomic Energy Agency*, 55 *Mich. L. Rev.* 747 (1957); Gorove, *Maintaining Order Through On-Site Inspection: Focus on the IAEA*, 18 *W. Res. L. Rev.* 1525 (1967); Gorove, *Humanizing The Atom: Establishment of the International Atomic Energy Agency*, 3 *N.Y.L.F.* 245 (1957); Hall, *The Safeguards Role of the International Atomic Energy Agency*, in 2 *Disarmament & Arms Control* 170 (1964); Szass, *The Law of International Atomic Energy Agency Safeguards*, 3 *Revue Belge*

Community (Euratom),<sup>4</sup> and the European Nuclear Energy Agency (ENEA) of the Organization for Economic Cooperation and Development (OECD).<sup>5</sup> All of these organizations provide elaborate machinery to insure that designated materials, equipment and facilities will not be diverted from peaceful to military purposes.<sup>6</sup> The role of the inspectors in the implementation of these systems is crucial. They must both verify the uses to which the atom is put and make certain that no diversion goes undetected. In order to insure their integrity and effectiveness, inspectors are accorded certain privileges and immunities. The present article presents a detailed analysis of the rights of inspectors under the global system of the IAEA and discusses such rights under the regional schemes of Euratom and OECD's ENEA.

### I. THE IAEA SYSTEM

The IAEA statute recognizes that the Agency must be able to enjoy, in the territory of each member, such legal capacity and such privileges and immunities as are necessary for the exercise of its functions, and that the staff of the Agency must also be given such privileges and immunities as are necessary in the independent exercise of their official functions.<sup>7</sup> These rights have been defined in a separate Agreement on the Privileges and Immunities of the IAEA between the Agency and its members.<sup>8</sup> By terms of the Agreement, inspectors, as officials of the

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de Droit International 196 (1967); Willrich, Safeguarding Atoms for Peace, 60 *Am. J. Int'l L.* 34 (1966).

4. A thoroughgoing analysis and evaluation of the European Atomic Energy Community [hereinafter cited as Euratom] control procedures may be found in Gorove, *The First Multinational Atomic Inspection and Control System at Work: Euratom's Experience*, 18 *Stan. L. Rev.* 160 (1965). For brief appraisals, see Gorove, *Inspection and Control in Euratom*, 23 *Bull. Atomic Scientists*, Mar., 1967, at 41; Gorove, *Lessons from the Control of the Peaceful Uses of Atomic Energy in Euratom*, 58 *Proceedings of the Am. Soc'y Int'l L.* 136 (1964); Hahn, *Control under the Euratom Compact*, 7 *Am. J. Comp. L.* 23, 27-32, 39-41 (1958).

5. For a comprehensive account and appraisal of the European Nuclear Energy Agency [hereinafter cited as ENEA] security control machinery, see Gorove, *The Inspection and Control System of the European Nuclear Energy Agency*, 7 *Va. J. Int'l L.*, Apr., 1967, at 68. For a brief, informative discussion, see Huet, *the O.E.E.C. European Nuclear Energy Agency*, in 1 *Law and Administration* 180 (H. Marks ed. 1959); Vignes, *Le Système De Contrôle De Sécurité De l'Agence Européenne Pour l'Energie Nucléaire*, 7 *Annuaire Français de Droit International* 555 (1961).

6. On the problem of differentiating "peaceful" from "military" applications of nuclear power, see Gorove, *Distinguishing "Peaceful" from "Military" Uses of Atomic Energy: Some Facts and Considerations*, 30 *Ohio St. L.J.* 495 (1969).

7. Statute of the Int'l Atomic Energy Agency, art. XV (1956).

8. See Agreement on the Privileges and Immunities of the International Atomic Energy Agency, IAEA Doc. INFCIRC/9/Rev. 1 (1959), 374 *U.N.T.S.* 148 (1960) [hereinafter cited as Agreement].

Agency, enjoy both the regular privileges and immunities to which other Agency officials are entitled as well as certain additional rights insofar as necessary for the effective exercise of such activities. The usual rights include: Immunity from legal process with respect to "words spoken or written and all acts performed by them in their official capacity;"<sup>9</sup> the same exemptions from taxation with respect to "the salaries and emoluments paid to them by the Agency" and on the same conditions as are enjoyed by United Nations' officials;<sup>10</sup> immunity, together with their spouses and relatives dependent on them, "from immigration restrictions and alien registration,"<sup>11</sup> the same privileges with respect to "exchange

9. *Id.* at art. VI, § 18(a)(i). In commenting on an identical provision contained in the Convention on the Privileges and Immunities of the Specialized Agencies, art. VI, § 19(a), G.A. Res. 179 (II), U.N. Doc. A/503 at 1307-10 (1947), [hereinafter cited as Specialized Agencies Convention], Subcommittee I of the 6th Committee of the U.N. General Assembly indicated that officials should pursue their official duties feeling confident that they are protected from all personal liability in regard thereto before municipal tribunals (unless immunity is waived). It was felt necessary that this immunity should continue after the officials had ceased to be officials. United Nations, General Assembly, Sixth Comm., Final Report of Subcomm. I, Coordination of the Privileges and Immunities of the United Nations and the Specialized Agencies, G.A. Res. 179 (II), U.N. Doc. A./C.6/191 at 292 (1947) [hereinafter cited as Final Report]. "The purpose of the immunity clearly requires that it would always continue to be applicable in this manner, irrespective of whether or not it has been thought necessary to take the precaution of including a specific provision on the subject . . ." Further, it appears to be universally recognized that immunity from legal process with respect to official acts is applicable irrespective of nationality. C. Jenks, *International Immunities* 116 (1961).

10. Agreement at art. VI, § 18(a)(ii). Regarding an identical subsection in the Specialized Agencies Convention, the Subcommittee said that the effect of such a provision is to make whatever system is in force in respect of officials of the United Nations become automatically applicable to officials of the specialized agency. The General Convention on Privileges and Immunities of the United Nations, art. V, § 18(b) (1946) in [1946/1947] Y.B.U.N. 102, provides that officials are to be exempt from taxation on the salaries and emoluments paid to them by the United Nations. Some countries, however, have a reservation to this provision. The United States, for example, has declared that such an exemption was a prerogative of the U.S. Congress alone. However, as Jenks points out, fundamental ideas "underlying the principle of exemption, namely that equality in conditions of service irrespective of nationality is essential to the morale and cohesiveness of an international service and that no country should derive any national financial advantage from the presence of international staffs the burden of which falls on its fellow members, continue to be fully applicable." C. Jenks, *supra* note 9, at 123. It should also be noted that the Subcommittee felt the immunity from taxation, like the immunity from legal process, should continue after the officials had ceased to be officials. Final Report at 292.

11. Agreement at art. VI, § 18(a)(iii). Regarding an identical subsection in the Specialized Agencies Convention, art. VI, § 19(c) the Subcommittee stated that the expression "exemption . . . from immigration restrictions" means freedom of entry. It is to be noted that the expression is "immigration restrictions" not "immigration laws" and, therefore, relates to all restrictions, whether they result from legislative or administrative action. Final Report at 291.

facilities as are accorded to officials of comparable rank of diplomatic missions;"<sup>12</sup> "the same repatriation facilities," together with their spouses and relatives dependent on them, "in time of international crises as officials of comparable rank of diplomatic missions;"<sup>13</sup> "the right to import free of duty their furniture and effects" upon arrival at their post;<sup>14</sup> the right to be exempt under certain conditions from national service obligations;<sup>15</sup> the right "to use the United Nations' *laissez-passer* in conformity with administrative arrangements concluded between the Director General of the Agency and the Secretary-General of the United Nations."<sup>16</sup>

There are additional privileges and immunities enjoyed by inspectors in their capacity as Agency officials while they exercise their functions and travel in their official capacity en route to and from the performance of these functions.<sup>17</sup> These rights are also accorded to experts (other than officials) serving on committees of the Agency or performing missions for the Agency including missions as inspectors. These rights are granted as is necessary for the effective exercise of their functions, in-

12. Agreement at art. VI, § 18(a)(iv).

13. *Id.* at art. VI, § 18(a)(v). According to Jenks there are three essential points with respect to such immunity: "[A]n unqualified immunity from detention as an enemy alien or prisoner of war, the right to an appropriate standard of treatment pending repatriation, and the right to depart freely and with dignity to an international headquarters, another duty station or the home country when appropriate repatriation facilities can be arranged." It is essential to these rights that they must apply fully to countries of transit as well as to duty stations. C. Jenks, *supra* note 9, at 130.

14. Agreement at art. VI, § 18(a)(vi). Officials have the right to import their furniture and effects free of duty at the time they assume their post. Commenting on an identical provision of Specialized Agencies Convention, the Subcommittee reported that a similar exemption should be given if an official returns to the country in question after a long absence because of official duties elsewhere. Consequently, if this point were not specifically covered by § 18(a)(vi), governments should adopt a liberal interpretation of this provision. Final Report at 293-94.

15. Agreement at art. VI, § 19. National service obligation exemptions are granted officials of the Agency whose names have been compiled by the Director General of the Agency and approved by their state of nationality. Should other officials of the Agency be called up for national service, the state will, at the request of the Agency, grant temporary deferments in order to prevent interruption of essential work. It is to be noted that the provision concerning national service is conceived in very different terms from the absolute exemption provided in the General Convention on Privileges and Immunities of the United Nations, art. V, § 18(c) [1946/1947] Y.B.U.N. 102, to which several countries have made reservations. Reporting on an identical provision in the Specialized Agencies Convention, art. VI, § 20, the Subcommittee noted that this immunity creates no legal obligation to exempt any given official from national service obligations, but it does provide for consultation between the Agency and any government to prevent disruption of Agency operation because of national service requirements. The Norwegian delegate stressed the necessity for the exemption of at least higher officials to insure independence from their government. See Final Report at 294.

16. Agreement at art. IX, § 28.

17. *Id.* at art. VI, § 18(b).

cluding the time spent on journeys in connection with service on such committees or missions.<sup>18</sup> The additional privileges and immunities include: "Immunity from personal arrest or detention and from seizure of their personal baggage;" immunity from legal process of every kind with respect "to words spoken or written or acts done by them in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Agency;" "[i]nviolability for all papers and documents;" for the purpose "of their communications with the Agency, the right to use codes and to receive papers or correspondence by courier or in sealed bags;" the same facilities with respect to "currency and exchange restrictions as are accorded to representatives of foreign [g]overnments on temporary official missions;" the same immunities and facilities with respect to "their personal baggage as are accorded to members of comparable rank of diplomatic missions."<sup>19</sup>

To avoid any misunderstanding as to who is entitled to immunity, the Agency periodically makes known to the governments of all states which are parties to the Agreement the names of the officials to whom these immunities apply.<sup>20</sup> The Agreement itself provides that the term "officials of the Agency" means the Director General and all members of the Agency staff, except those who are locally recruited and assigned to hourly rates.<sup>21</sup>

The Agency's so-called "Inspector's Document"<sup>22</sup> requires inclusion

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18. Id. at art. VII, § 23.

19. Id.

20. Id. at art. VI, § 17.

21. Id. at art. I, § 1(v). It should be noted that a United States decision, in discussing the problem of extending immunity to a personal chauffeur of the Secretary-General, held that the United Nations Charter should be interpreted "as being limited in the application of the principle of immunity to those personnel whose activities are such as to be necessary to the actual execution of the purposes and deliberations of the United Nations as distinguished from those household servants and personnel who merely serve the personal comfort, convenience or luxury of the delegates and Secretariat who actually perform the true functions of the organization." *Westchester County v. Ranollo*, 187 Misc. 777, 781, 67 N.Y.S.2d 31, 35 (New Rochelle City Ct. 1946).

22. IAEA Doc. GCV/INF/39, Annex, at 3 (1962). Provisions referring to the application of the Agreement on Privileges and Immunities of the IAEA have been included, for instance, in the Agency Agreements with the Congo, IAEA Doc. INFCIRC/37, art. VII, § 8 (1963); Pakistan, IAEA Doc. INFCIRC/34, art. VII, § 9 (1962); Norway, IAEA Doc. INFCIRC/29, art. X, § 22 (1961); and Yugoslavia, IAEA Doc. INFCIRC/32, Annex A, para. C.10 (1961). See IAEA Docs. INFCIRC/37 (1963); INFCIRC/34 (1962); INFCIRC/29 (1961); INFCIRC/32 (1961).

Art. III, §§ 16, 17 of the tripartite Agreement Between the International Atomic Energy Agency, The Government of Japan and the Government of the United States of America for the Application of Safeguards by the Agency to the Bilateral Agreement Between those

of suitable provisions in each project or safeguards agreement for the application, insofar as relevant to the execution of that agreement, of the pertinent stipulations of the Agreement on the Privileges and Immunities of the IAEA. This is, of course, provided that all parties to the project or safeguards agreement so agree. In the course of the discussions before the Ad Hoc Committee on the Agency's Inspectors, the Soviet Union favored such inclusion only if the state concerned was a party to the Agreement on the Privileges and Immunities. Under such limitations, Agency inspectors would have enjoyed no privileges and immunities in any IAEA member state that had not yet accepted the Agreement. In effect, therefore, it would not have been possible to conduct any inspections in such states.<sup>23</sup> The provision incorporated in the "Inspector's Document" in its present form is designed to apply principally to states that have not yet accepted the Agreement on Privileges and Immunities, for those that have done so would already be bound by virtue of its provisions applicable to inspectors.

Privileges and immunities are granted to officials and experts "in the interest of the Agency only and not for the personal benefit of the individuals themselves." The Agency has the right and duty "to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice" to its interests. If the immunity is waived, the official may be sued or prosecuted in local courts.<sup>24</sup>

In using its discretion regarding the waiver of immunity, the Agency is required to cooperate "at all times with the appropriate authorities of Member States to facilitate the proper administration of justice, secure

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Governments Concerning Civil Uses of Atomic Energy, Sept. 23, 1963, [1963] 14 U.S.T. 1265, T.I.A.S. No. 5429, 488 U.N.T.S. 99 stipulates that Japan shall apply the provisions of the Agreement on Privileges and Immunities of the International Atomic Energy Agency, whereas the provisions of the International Organizations Immunities Act of 1945, 22 U.S.C. §§ 288-288(g) (1964), shall apply to Agency inspectors performing functions in the United States. It should be noted that the Soviet Union found the application of American legislation objectionable on the ground that the Agency's inspectors would not enjoy the privileges and immunities set forth in the Inspector's Document, but would be subject instead to an internal United States law, the International Organizations Immunities Act of 1945. Cf. art. III, § 15 of the Agreement Between the International Atomic Energy Agency and the Government of the United States for the Application of Safeguards to United States Reactor Facilities, June 15, 1964, 15 U.S.T. 1456, T.I.A.S. No. 5621; art III, § 10 of the Agreement Between the International Atomic Energy Agency and the Government of the United States of America for the Application of Agency Safeguards to Four United States Reactor Facilities, Mar. 30, 1962, 13 U.S.T. 415, T.I.A.S. No. 5002.

23. The Soviet Union also favored the inclusion of a provision in every project or safeguard agreement to the effect that the privileges and immunities of inspectors would not exceed those granted to diplomats. IAEA Doc. GC (IV) COM. 2/OR 19, at 10 (1960).

24. Agreement at art. VI §§ 21, 22, art. VII, § 25.



the observance of police regulations and prevent the occurrence of any abuses in [connection] with the privileges, immunities and facilities" made available under the Agreement.<sup>25</sup>

Should there be any disputes arising out of the interpretation or application of the Agreement on the Privileges and Immunities by the Agency, they must be referred to the International Court of Justice, unless the parties agree to another mode of settlement. Absent such an agreement, if a difference arises between the Agency and a member, the International Court is requested to give an advisory opinion on any legal question involved. This opinion is final.<sup>26</sup>

Regarding disputes involving an Agency official or expert (inspector) who enjoys immunity by reason of his official position, the organization is required to make a provision for an appropriate mode of settlement if immunity has not been waived.<sup>27</sup> This should not occur too frequently since the Agency is required to waive immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the Agency's interests. Furthermore, officials have immunity only with respect to their official acts, and even in such cases immunity is normally waived with regard to matters of a private law character if such waiver is possible without prejudicing the interests of the organization.<sup>28</sup>

Should any state which is a party to the Agreement on the Privileges and Immunities of the Agency consider that there has been an abuse of a privilege or immunity, consultations are to be held between that state and the Agency to determine whether any such abuse has, in fact, occurred and, if so, to attempt to insure against repetition. If such consultations fail to achieve a result satisfactory to the state and the Agency, the question whether an abuse has occurred is to be determined by the same procedure required for the settlement of differences arising out of the interpretation of the application of the Agreement on the Privileges and Immunities of the IAEA. If it is found that such an abuse has occurred, the state affected by the abuse has the right, after notification to the Agency, to withhold from the Agency the benefits of the privileges or immunities so abused. However, the withholding of privileges or immunities must not interfere with the Agency's principal activities or prevent the Agency from performing its main functions.<sup>29</sup>

The Agreement on the Privileges and Immunities of the IAEA also

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25. *Id.* at art. VI, § 22.

26. *Id.* at art. X, § 34.

27. *Id.* at § 33(b).

28. *Id.* at art. VI, § 21; art. VII, § 25; cf. Final Report at 295.

29. Agreement at art. VIII, § 26.

provides that no official of the Agency is to be required by the territorial authorities to leave the country in which he is performing any of his official duties. In the case of an abuse caused by activities outside his official function, however, he may be required to leave by the government of that country. If such a person, on the other hand, is entitled to the immunities of the Director General of the Agency as provided by the Agreement on the Privileges and Immunities, he is not to be required to leave the state except in accordance with the procedure applicable to diplomatic envoys accredited to that country. In the case of other officials not entitled to the immunities of the Director General, no order to leave the country may be issued by territorial authorities unless the foreign minister of the country has approved, and such approval is to be given only after consultation with the Director General of the Agency. If expulsion proceedings are taken against an official, the Director General of the Agency has the right to appear in these proceedings on behalf of the official.<sup>30</sup>

If different provisions are included in the specific project or safeguards agreement, the disputes between the state and the Agency arising out of abuse of privilege by the Agency inspectors would have to be settled in accordance with such stipulations.<sup>31</sup>

If his immunity is waived, an Agency official (inspector) may be sued in national courts for damages to the injured party, including the Agency, and may also be prosecuted. In case the Agency decides not to waive the official's immunity, it is required to provide for other appropriate modes of settlement, such as arbitration.<sup>32</sup>

## II. EURATOM AND OECD'S ENEA

The privileges and immunities granted to Euratom inspectors are governed by the Euratom Treaty Protocol on the Privileges and Immu-

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30. *Id.* at art. VI, § 20; art. VII, § 27.

31. The Ad Hoc Committee on the Agency's Inspectors was unable to reach agreement on the inclusion into the Inspector's Document of a provision to cover the situation where an inspector was alleged to have abused his privileges and immunities. Some representatives considered that such a situation should be dealt with under the provisions of the Agreement on Privileges and Immunities of the Agency as eventually incorporated in the relevant project or safeguard features of the agreement. The Soviet representative, however, proposed inclusion of a provision stating the unconditional right of the receiving states to require any inspector acting outside the limits of his prescribed functions or abusing his privileges and immunities to leave the country. India supported the Soviet position on the ground that if a state refused to cooperate with an inspector the inspector could not do his work and would have no alternative but to leave. The Soviet proposal, however, failed to receive sufficient support in view of strong opposition from the Western powers and their allies. IAEA Doc. GC(IV)/COM. 2/OR. 19, at 10 (1960).

32. *Cf.* text accompanying note 26 *supra*.

nities of the Community.<sup>33</sup> The inspectors, as Community officials, are given immunity from legal process for acts performed by them in their official capacity, including their words spoken or written. They are accorded this immunity in the territory of each member state, irrespective of their nationality. Moreover, they continue to benefit from such immunity after their functions have ceased.<sup>34</sup> It should be pointed out, however, that despite such immunity, the Court of Justice of the European Communities is competent to decide any case between Euratom and its employees, within the limits and under the conditions laid down by relevant statute of service or conditions of employment. Personal liability of employees toward the Community is to be determined in accordance with the provisions establishing the statute of service or the relevant conditions of employment.<sup>35</sup>

Community inspectors, their spouses and the members of their families dependent on them are not subject to immigration restrictions or to formalities for the registration of foreign persons. With respect to currency or exchange regulations they are to be accorded the same facilities as are granted by custom to the officials of international organizations.<sup>36</sup>

Inspectors, like other officials, have the right to import, free of duty, any furniture and effects they possess when they first take up their post in the country concerned. Upon the termination of their functions they have the right to export, free of duty, such furniture and effects subject, in both cases, to the conditions laid down by the country in which this right is exercised. This right also extends to automobiles purchased for personal use in the country of their last residence or nationality.<sup>37</sup>

Community officials are liable to the Community for a tax on the salaries and wages paid to them by the Community. They are, however, exempt from national income taxes.<sup>38</sup> With respect to income tax, capital tax, death duties, and the application of conventions on the avoidance of double taxation agreements between member states of the Community, the officials and other employees of the Community who, solely by reason of the exercise of their functions in the service of the Community, estab-

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33. For texts of the Euratom Treaty and its protocol on the Privileges and Immunities of the Community, see Treaty Establishing the European Atomic Energy Community (EURATOM), Jan. 1, 1958, 298 U.N.T.S. 169 [hereinafter cited as Treaty]. A substantial portion of the treaty is reproduced in 51 Am. J. Int'l L. 955 (1957). Protocol on the Privileges and Immunities of the European Atomic Energy Community, Jan. 1, 1958, 298 U.N.T.S. 250 [hereinafter cited as Protocol].

34. Protocol at art. 11(a).

35. Treaty at arts. 152, 188.

36. Protocol at art. 11(a)-(c).

37. Id. at art. 11(d), (e).

38. Id. at art. 12.

lish their residence in the territory of a member state other than the country where they have their residence for tax purposes at the time of their entry into the service of the Community, are to be considered both in the country of their actual residence and in the country of residence for tax purposes as having maintained their residence in the latter country rather than the former, provided that it is a member of the Community. This provision is also applicable to a spouse, to the extent that the spouse is not exercising his or her own professional activities, and to children dependent on and in the care of the persons referred to in this article.<sup>39</sup>

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country of actual residence is exempt from death duties in that country. For the assessment of such duty, such property is to be considered as being in the country of residence for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any residence acquired solely by reason of the exercise of functions in the service of other international organizations is not to be taken into consideration in applying the provisions of this article.<sup>40</sup>

The officials<sup>41</sup> (including inspectors) of the Organization for European Economic Cooperation (OEEC), now known as the Organization for Economic Cooperation and Development (OECD), are entitled to a number of privileges and immunities. Thus, for instance, they enjoy immunity from legal process with respect to things done by them in their official capacity. They continue to enjoy such immunity after completion of their functions as officials of the organization. They also enjoy the same exemption from taxation with respect to the salary and emoluments paid to them as is enjoyed by officials of the principal international organizations and on the same conditions. In addition, they are immune, together with their spouses and dependent relatives, from immigration restrictions and alien registration and are accorded the same privileges relating to exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions. They are given, together with their spouses and dependent relatives, the same repatriation facilities in

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39. *Id.* at art. 13.

40. *Id.*

41. The Secretary-General of the Organization specifies the categories of officials who are entitled to privileges and immunities. He submits a list of these categories to the Council of the Organization and communicates it to all members of the organization. "The names of the officials included in these categories [are] from time to time made known to [m]embers" of the organization. See Supplementary Protocol No. 1 to the Convention for European Economic Co-operation on the Legal Capacity, Privileges and Immunities of the Organization, art. 13 (1948). For text of this Protocol see 43 *Am. J. Int'l L.* 102 (Supp. 1949).

time of international crisis as members of diplomatic missions. Also, they have the right to import duty free their furniture and effects when they assume their post.<sup>42</sup>

As in the case of IAEA and Euratom officials, the "privileges, immunities and facilities are granted to [ENEA] officials in the interests of the Organization and not for the personal benefit of the individuals concerned." The Secretary-General of the OECD has "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 organization.<sup>43</sup>

The OECD is required to cooperate at all times with the appropriate authorities of member states "to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in [connection] with the privileges, immunities, exemptions and facilities" accorded to its officials.<sup>44</sup>

### III. CONCLUDING OBSERVATIONS

The foregoing survey of the privileges and immunities of international atomic inspectors reveals an elaborate network of safeguards designed to insure that the vital functions associated with international atomic inspection and verification can be carried out smoothly and without fear of interference or reprisals on the part of the inspected state. Such fear, if real, may constitute a serious psychological impediment and may adversely affect the general climate in which the inspection takes place. The provision according immunity from legal process with regard to words spoken or written or acts performed in an official capacity constitutes an important safeguard designed to assure the unfettered exercise of inspectorial functions. An additional guarantee that such immunity will not become illusory is the assurance that the immunity will continue even after the inspector's functions have ceased. At the same time, the provision which enables the international agency to waive the inspector's immunity in case of his abuse of the privilege makes it abundantly clear that the privileges and immunities are granted in the interest of the international agency and not for the individual benefit of the inspector. The provision regarding waiver of an immunity is an essential counterpart to the immunity from legal process. Its aim is to insure that the inspectors will not act capriciously or contrary to their given assignments or directives.

In the balance, the immunities and privileges accorded to international

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42. *Id.* at art. 14.

43. *Id.* at art. 16.

44. *Id.* at art. 17.

atomic inspectors have worked well, protecting—on the one hand—the integrity of the inspection staff from abuse and interference by the inspected state and reducing—on the other hand—the chances of any wanton exercise of inspectorial power. No reports of any significant problems have been encountered and if there have been minor misunderstandings, they have most likely been settled under the cloak of routine diplomacy.

The future of international (IAEA) atomic inspection appears brighter today than at any previous time during its relatively brief history. The eventual policing of the recently concluded Non-Proliferation Treaty by IAEA inspectors in order to reduce the chances of the further spread of nuclear weapons will constitute a significant milestone in the development and practice of international atomic inspection procedures. The enhanced role of international atomic inspection may also provide an invaluable testing ground for the techniques and experiences necessary to police any future partial or general disarmament agreements.