



**FOREIGN
AFFAIRS AND
TRADE**

International Organisations and

Legal Division

22 May 2002

Mr Paul McMahon
Secretary
Joint Standing Committee on Treaties
R1 Suite 116
Parliament House
CANBERRA ACT 2600

12 March 2002

Submission No. ...22.....

Dear Mr McMahon,

During the Committee's hearing into the Status of Forces Agreement with the Kyrgyz Republic on 13 May 2002, two questions from Mr Adams MP were taken on notice by witnesses from the Department of Foreign Affairs and Trade. Written answers to each are attached for the information of the Committee. I would be grateful if you would pass them on.

Please do not hesitate to contact me if the Committee has any further enquiries of DFAT in relation to the Agreement.

Yours sincerely

Dominic Trindade
Legal Adviser

QUESTION

JSCOT PROOF HANSARD 13 MAY 2002, TR13

Mr Trindade [DFAT]: ...I understand the agreement intends to apply similar privileges and immunities to those enjoyed by administrative and technical staff in diplomatic missions overseas. In those situations, there are provisions for waiver of immunity in minor traffic offences and matters of that kind. In fact, it is quite common for the government to waive the immunity of administrative and technical staff at foreign missions to allow them to appear before local courts and to be fined for traffic offences and things like that.

Mr Adams [JSCOT]: But do you know if this is the case under this treaty... are you going to find out and let us know?

DFAT RESPONSE

In relation to Australian visiting forces personnel in the Kyrgyz Republic, the SOFA provides that

such personnel [are] accorded a status equivalent to that accorded to the administrative and technical staff of the Embassy of Australia under the Vienna Convention on Diplomatic Relations of April 18, 1961...

The Vienna Convention provides certain specified immunities to administrative and technical staff at diplomatic missions; these were set out at paragraph 12 of the National Interest Analysis provided to the Committee, and include immunity from any form of arrest or detention, criminal jurisdiction of the receiving State, and also civil jurisdiction in some circumstances.

In relation to the immunities from jurisdiction, Article 32 of the Vienna Convention provides that the sending State may expressly waive such immunity. If the Government of Australia chose to waive immunity in any particular case, the person would be subject to the normal criminal or civil jurisdiction of the Kyrgyz Republic.

Any decision about a waiver of immunity for Australian personnel under the SOFA would depend on the circumstances of the particular case. Such personnel are subject to the Defence Force Discipline Act, which allows action to be taken against them for offences under Australia's jurisdiction, and in most cases under Status of Forces Agreements, action in their own jurisdiction is an acceptable way of dealing with visiting forces personnel.

QUESTION

JSCOT PROOF HANSARD 13 MAY 2002, TR16

Mr Adams [JSCOT]: What other treaties do we have with this republic?

Ms Spillane [DFAT]: ... We can look into that and let you know.

DFAT RESPONSE

Australia has no bilateral treaties currently in force with the Kyrgyz Republic, and none under negotiation.

Since its independence in 1991 the Kyrgyz Republic has become a Party to a number of major multilateral treaties to which Australia is also a Party, in areas such as human rights, environment, disarmament and laws of war. The Kyrgyz Republic has also joined the UN and many other international organisations of which Australia is also a member.