

ARTICLES 104 AND 105

Table of Contents

	<u>Paragraphs</u>
Text of Article 104	
Text of Article 105	
Introductory Note	1 - 7
I. General Survey	8 - 27
A. Operation of Charter provisions	8
B. Implementation of Articles 104 and 105	9 - 27
1. By General Convention	9 - 11
2. By special agreements on privileges and immunities.	12 - 13
a. With non-member States	13 - 14
b. With Member States	15 - 18
i. Agreements complementary or supplementary to the General Convention	16
ii. Agreements applying the provisions of the General Convention in cases where Members had not yet acceded to the Convention	17
iii. Agreements specifying the nature of privileges and immunities to be enjoyed by certain United Nations organs in host countries	18
3. By provisions on privileges and immunities contained in other agreements concluded with Member or non-member States by United Nations principal or subsidiary organs within their competence	19 - 25
a. Agreements on the operation of the relief programme for Palestine refugees	20 - 22
b. Agreements concerning the activities of the United Nations International Children's Emergency Fund (UNICEF) in Member or non-member States	23
c. Agreements concerning technical assistance	24
d. Trusteeship Agreement	25
4. By other decisions and actions of United Nations organs . .	26 - 27
a. The General Assembly	26
b. The International Court of Justice	27
II. Analytical Summary of Practice	28 - 180
A. Article 104	28 - 49
1. Legal capacity of the Organization in the territory of Member or non-member States	28 - 38

Table of Contents
(continued)

	<u>Paragraphs</u>
a. Capacity to contract	31 - 32
b. Capacity to acquire and dispose of immovable and movable property	33 - 36
c. Capacity to institute legal proceedings	37 - 38
2. The question of international personality of the Organization	39 - 49
B. Article 105 (1)	50 - 79
1. Scope of the term "the Organization"	50
2. Privileges and immunities of the Organization	51 - 79
a. Property, funds and assets	53 - 72
i. Privileges and immunities under the General Convention	53 - 54
ii. Additional privileges and immunities under special agreements	55 - 72
(a) Exemption from taxation and customs duties.	56
(b) Favourable rates of exchange	57
(c) Exemption from inspection of property	58
(d) Control and authority of the United Nations over its premises	59 - 66
(e) Police protection of United Nations premises.	67 - 68
(f) Right of transit and freedom of access to the United Nations headquarters district or conference area	69 - 72
b. Facilities in respect of communications	73 - 79
C. Article 105 (2)	80 - 166
1. Privileges and immunities of representatives of Members	80 - 97
a. The expression "representatives" as used in the General Convention	80 - 81
b. The expression "resident representatives to the United Nations" as used in the Headquarters Agreement	82 - 84
c. Privileges and immunities	85 - 95
d. The question of the privileges and immunities of the members of the Advisory Council for Somaliland	96 - 97
2. Privileges and immunities of officials of the Organization.	98 - 139
a. Categories of officials	98 - 103
i. General	98 - 101
ii. Specialized personnel serving as consultants in the Secretariat	102
iii. Technical assistance experts	103
b. Privileges and immunities	104 - 134
i. General provisions	104 - 106
ii. Qualification or extension of specific privileges and immunities	107 - 117
(a) Exemption from national income taxation	108 - 110
(b) Immunity from national service obligations	111 - 112
(c) Exemption from customs duties	113 - 117
iii. Cases in which full diplomatic privileges and immunities are extended to certain categories of officials of the Organization	118 - 125

Table of Contents
(continued)

	<u>Paragraphs</u>
iv. The question of privileges and immunities of locally recruited personnel	126 - 132
v. Waiver of, and other obligations in connexion with, the privileges and immunities	133 - 134
c. United Nations <u>laissez-passer</u>	135 - 139
3. Privileges and immunities of experts on mission for the United Nations	140 - 144
a. Privileges and immunities	140
b. Application of the term "experts on missions for the United Nations" to members of the Permanent Central Opium Board	141 - 142
c. Travel facilities	143
d. Waiver of immunity	144
4. Privileges and immunities of members of the International Court of Justice, the Registrar, officials of the Registry, assessors, agents and counsel of the parties and of witnesses and experts	145 - 166
a. Privileges and immunities of the members or judges of the Court	152 - 154
b. Privileges and immunities of the Registrar and Deputy Registrar	155 - 156
c. Privileges and immunities of the officials of the Court	157 - 158
d. Privileges and immunities of the assessors of the Court and the agents, counsel and advocates of the parties	159 - 161
e. Privileges and immunities of witnesses and experts.	162 - 163
f. United Nations <u>laissez-passer</u>	164 - 165
g. Waiver of immunity	166
D. Article 105 (3)	167 - 180
1. Convention proposed by the General Assembly	167 - 175
2. Recommendations of the General Assembly	176 - 177
3. Other actions of the General Assembly	178 - 180
Annex. Member States which have acceded to the Convention on the Privileges and Immunities of the United Nations	

TEXT OF 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 fulfillment of its purposes.

TEXT OF ARTICLE 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment 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 connection 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.

INTRODUCTORY NOTE

1. This study covers Articles 104 and 105.

2. The General Survey provides a synoptic view of the range and type of decisions and actions taken by United Nations organs in application or implementation of the two Articles.

3. Certain decisions have sought to implement the two Articles in a single act, such as a general convention or a special agreement, which set forth in detail the incidents of the legal capacity, privileges and immunities of the United Nations. The general aspects of such decisions are included in the General Survey, while the details are presented under appropriate headings in the Analytical Summary of Practice. Decisions relating to particular points of the provisions of the two Articles are presented in the Analytical Summary while the General Survey gives a brief account of the type of decisions taken.

4. The Analytical Summary deals with Articles 104 and 105 separately and, in the case of Article 105, paragraph by paragraph. The headings and sub-headings employed in the Summary follow, as far as possible, the language of the Charter. They include, however, headings and sub-headings relating to additional questions which have arisen in practice and which bear upon Charter provisions. Under each of these headings or sub-headings, the decisions and actions referred to in the General Survey are summarized with a view to providing an analysis of practice under Charter provisions. The summary incorporates, where appropriate, historical or other material drawn from the proceedings of

United Nations organs, which would help to clarify the relations of the actions of those organs to Charter provisions.

5. Since this study is concerned with the practice of United Nations organs, it does not treat the enabling legislation of individual States relating to the privileges and immunities of the United Nations.

6. Furthermore, it does not include material on the privileges and immunities of the specialized agencies brought into relationship with the United Nations, since these agencies are not covered by the term "the Organization" used in Articles 104 and 105.

7. At the end of the present study, a list of Member States which have acceded to the General Convention, together with the texts of reservations which some of the Members had submitted at the time of accession, is included as an annex in order to show the extent of application of the General Convention.

I. GENERAL SURVEY

A. Operation of Charter provisions

8. The Preparatory Commission of the United Nations, in its recommendations concerning privileges and immunities, reported 1/ to the General Assembly

"that it has instructed the Executive Secretary to invite the attention of the Members of the United Nations to the fact that, under Article 105 of the Charter, the obligation of all members to accord to the United Nations, its officials and the representatives of its members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter and is therefore applicable even before the General Assembly has made the recommendations or proposed the conventions referred to in paragraph 3 of Article 105."

B. Implementation of Articles 104 and 105

1. *By General Convention*

9. Pursuant to Article 105 (3), the General Assembly approved 2/ a Convention on the Privileges and Immunities of the United Nations (referred to hereafter as "the General Convention") which elaborated on the legal capacity, privileges and immunities of the Organization and the privileges and immunities of the representatives of Members, the officials of the United Nations, and the experts on missions for the United Nations. (See paras. 167-175 below.)

10. The General Convention was not only a determination by the General Assembly of "the details of the application of paragraphs 1 and 2" of Article 105, but also contained specific provisions regarding the legal capacity of the United Nations. Moreover, the preamble of the General Convention reproduced the provisions of Article 104 and paragraphs 1 and 2 of Article 105. In approving the General Convention, therefore, the General Assembly had taken action to implement Article 104 as well as Article 105 of the Charter.

1/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VII, para. 1.

2/ G A resolution 22 A (I) to which the text of the General Convention was annexed.

11. As of 31 August 1954, forty-three Members have acceded to the General Convention, including six Members whose accessions were accompanied by reservations regarding certain provisions of the General Convention (see annex).

2. By special agreements 3/ on privileges and immunities

12. Special agreements with Member or non-member States acting as host countries to the United Nations or its organs have been (a) negotiated by the Secretary-General and approved by the General Assembly, 4/ or (b) concluded by the Secretary-General in his capacity as the chief administrative officer of the Organization. 5/ Most of these agreements reproduced the provisions of Article 104 and paragraphs 1 and 2 of Article 105 in their preambles.

a. WITH NON-MEMBER STATES

13. Articles 104 and 105 apply as between the Organization and its Members. The provisions of the General Convention apply as between the Organization and every Member which has deposited an instrument of accession. It has been found necessary, however, to conclude special agreements on behalf of the United Nations with certain non-member States for the purpose of defining the status of the United Nations (its offices or organs) and its personnel in their territory. Such agreements are:

The Interim Arrangement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations 6/ (referred to hereafter as "the Interim Arrangement with Switzerland"), as approved by the General Assembly;

The exchange of letters between the Secretary-General and the Republic of Korea on privileges and immunities to be accorded to the United Nations in Korea; 7/

-
- 3/ The term "special agreements", as used here, includes arrangements, exchange of letters and exchange of cablegrams.
- 4/ The Secretary-General was expressly authorized by the General Assembly to negotiate these agreements and was assisted, in each case, by a negotiating committee set up by the General Assembly.
- 5/ In most cases, the Secretary-General was instructed by the General Assembly, or by the competent organ of the United Nations, to make arrangements, or to provide facilities necessary for the discharge of functions of the subsidiary organs concerned, or for the holding of meetings of certain United Nations organs in host countries.
- 6/ G A (I/2), 6th Com., annex 17 (A/175), appendix I.
- 7/ ST/LEG/2, pp. 92-96. General Assembly resolution 376 (V), which established the United Nations Commission for the Unification and Rehabilitation of Korea, requested the Secretary-General to provide the Commission with adequate staff and facilities. General Assembly resolution 410 (V), which established the United Nations Korean Reconstruction Agency for the Relief and Rehabilitation of Korea (UNKRA), requested the Secretary-General to make available "such facilities, advice and services as the Agent General may request;".

The Agreement concluded between the Secretary-General and the Government of Japan on privileges and immunities of the United Nations in Japan; 8/

The exchange of letters between the Secretary-General and the Italian Observer to the United Nations on privileges and immunities of the Advisory Council for Somaliland; 9/

14. All of these agreements contained provisions on privileges, immunities and facilities derived from the provisions of the General Convention, with such variations or additions as the circumstances required.

b. WITH MEMBER STATES

15. Special agreements were also concluded with Member States in whose territory the Organization or its subsidiary organs had been established, or meetings of the principal or subsidiary organs of the United Nations had been held.

1. Agreements complementary or supplementary to the General Convention

16. Agreements belonging in this category are:

The Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations 10/ (referred to hereafter as "the Headquarters Agreement") [as approved by the General Assembly];

The Interim Headquarters Agreement [concluded] between the Secretary-General and the Government of the United States; 11/

The agreements concluded between the Secretary-General and the Government of France for the holding of the third and the sixth sessions of the General Assembly in Paris; 12/

-
- 8/ ST/LEG/2, pp. 97-103. This agreement was concluded because "the United Nations has found it essential to maintain offices in Japan, in particular for the purpose of servicing its missions in Korea, and it is necessary for United Nations representatives and officials to pass through Japan en route to and from their missions in Korea;"
- 9/ ST/LEG/2, pp. 127-137. General Assembly resolution 289 (IV) authorized the Secretary-General "to assign ... to the Advisory Council for Somaliland ... such staff and to provide such facilities as the Secretary-General may consider necessary to carry out the terms of the present resolution."
- 10/ General Assembly resolution 169 (II) to which the text of the Agreement is annexed. Although section 26 of the Headquarters Agreement stated that its provisions should be complementary to the General Convention, the United States has not yet acceded to the Convention.
- 11/ United Nations Treaty Series, vol. 11, 1947, I, No. 174, pp. 347-360. The Secretary-General was authorized by the General Assembly to negotiate and conclude arrangements with the appropriate authorities of the United States of America to determine on a provisional basis the privileges, immunities and facilities needed in connexion with the temporary headquarters of the United Nations (G A resolution 99 (I)).
- 12/ See ST/LEG/2, pp. 77-91. The General Assembly, having decided to convene its sixth regular session in Europe, instructed "the President of the General Assembly and the Secretary-General to select the city ... and to make the necessary arrangements" (G A resolution 497 (V)).

The agreement concluded between the Secretary-General and the Government of Chile for the holding of the twelfth session of the Economic and Social Council in Santiago; 13/

These agreements provided for such additional privileges, immunities and facilities as police protection of United Nations premises, freedom of entry into the host country et cetera (see paras. 59-72 below).

ii. Agreements applying the provisions of the General Convention in cases where Members had not yet acceded to the Convention

17. This category consists of the following agreements:

The exchange of letters on 19 October 1949 between the Secretary-General and the Government of Bolivia concerning the privileges and immunities of the Commission on the Coca Leaf; 14/

The exchange of letters dated 17 January and 15 February 1949 between the Secretary-General and the Government of Lebanon for the holding of the 1949 session of the Commission on the Status of Women in Beirut; 15/

The exchange of letters dated 19 April and 5 May 1950 between the Secretary-General and the Government of Uruguay concerning facilities to be granted to the Sub-Commission on Freedom of Information and of the Press and to the Economic Commission for Latin America during their sessions in Montevideo. 16/

The two last-mentioned agreements also provided for additional privileges and immunities similar to those contained in the agreements listed under "i" above.

iii. Agreements specifying the nature of privileges and immunities to be enjoyed by certain United Nations organs in host countries

18. These agreements are:

The exchange of letters between the President of the International Court of Justice and the Minister for Foreign Affairs of the Netherlands [relating to privileges and immunities of members of the International Court of Justice, the Registrar, the officials of the Registry, assessors, the agents and counsel of the parties and of witnesses and experts, as approved by the General Assembly 17/ (see paras. 145-166 below).]

The exchange of letters dated 12 and 20 January and 6 March 1950, between the Secretary-General and the Permanent Representatives of the United Kingdom and France concerning privileges and immunities of the United Nations Commissioner in Libya. 18/ (See para. 122 below.)

13/ ST/LEG/2, pp. 152-155.

14/ Ibid., p. 122; Bolivia acceded to the General Convention on 23 December 1949.

15/ Ibid., pp. 147-151; Lebanon acceded to the General Convention on 10 March 1949.

16/ Ibid., pp. 142-146.

17/ G A resolution 90 (I), annex.

18/ ST/LEG/2, pp. 123-125. General Assembly resolution 289 (IV) authorized the Secretary-General, in accordance with the established practices, "To assign to the United Nations Commissioner in Libya ... such staff and to provide such facilities as the Secretary-General may consider necessary to carry out the terms of the present resolution."

The exchange of letters dated 23 May 1950, between the Secretary-General and the Foreign Minister of Indonesia concerning privileges and immunities of the representatives on the United Nations Commission for Indonesia and the personnel attached to the Commission 19/ (see paras. 92 and 123 below).

3. By provisions on privileges and immunities contained in other agreements concluded with Member or non-member States by United Nations principal or subsidiary organs within their competence

19. These agreements are essentially administrative arrangements concerning the activities of certain United Nations organs in Member or non-member States. They include, however, provisions relating to the privileges, immunities and facilities of those organs and their personnel.

a. AGREEMENTS ON THE OPERATION OF THE RELIEF PROGRAMME FOR PALESTINE REFUGEES

20. Agreements concluded in 1948 with Egypt, Lebanon, Syria and the Hashemite Kingdom of the Jordan, respectively, by the United Nations Mediator in Palestine 20/ contained provisions on immunities and facilities in respect of relief goods and supplies and on privileges and immunities to be enjoyed by United Nations personnel affected to the service of the refugees in Palestine. Upon the termination of the Mediator's mission, Syria, Lebanon and Jordan undertook, by exchange of letters, to apply the terms of their 1948 agreements to the United Nations Relief for Palestine Refugees (UNRPR) and to co-operating voluntary agencies; Egypt negotiated a separate agreement with UNRPR. 21/ After the establishment of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) by General Assembly resolution 302 (IV), 22/ Egypt and Jordan concluded new agreements with UNRWA. 23/

21. Some of the special facilities provided for in these agreements because of the turbulent situation in Palestine included, for example, freedom of movement of persons and means of transportation and safe conduct of relief supplies.

22. By its agreement with UNRWA, the Hashemite Kingdom of the Jordan, a non-member State, undertook to apply certain provisions of the General Convention to the internationally recruited staff of UNRWA.

-
- 19/ ST/LEG/2, p. 126. The Secretary-General was authorized by Security Council resolution of 28 January 1949, which established the United Nations Commission for Indonesia, "to make available to the Commission such staff, funds and other facilities as are required by the Commission for the discharge of its functions" (S C, 4th yr., Suppl. for Feb., S/1234, p. 4).
- 20/ See ST/LEG/2, pp. 104-106, Model of Agreements. At the time these agreements were concluded, only Egypt had acceded to the General Convention.
- 21/ ST/LEG/2, pp. 106-108. UNRPR was established by G A resolution 212 (III).
- 22/ In paragraph 17 of this resolution, the General Assembly called upon the Governments concerned to accord to UNRWA "the privileges, immunities, exemptions and facilities which have been granted to the United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions;"
- 23/ ST/LEG/2, pp. 109-112 and 113-117. See also Annual Report of the Director of UNRWA (G A (VII), Suppl. No. 13 (A/2171), p. 44).

b. AGREEMENTS CONCERNING THE ACTIVITIES OF THE UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND (UNICEF) IN MEMBER OR NON-MEMBER STATES

23. The agreements concluded 24/ between UNICEF and forty-six States in connexion with the Fund's assistance programme were based on a model text which contained an article on "immunity from taxation" and another article on "privileges and immunities". (See para. 163 below.)

c. AGREEMENTS CONCERNING TECHNICAL ASSISTANCE

24. Basic agreements for the provision of technical assistance were concluded with a number of the Governments of Member or non-member States by the Technical Assistance Administration (TAA) 25/ on behalf of the United Nations or by the Technical Assistance Board (TAB) 26/ on behalf of both the United Nations and the specialized agencies participating in the technical assistance programmes. Each of these agreements contained a provision concerning the privileges and immunities of the United Nations or the specialized agencies concerned and of the technical assistance personnel. (See paras. 172-175 below.)

d. TRUSTEESHIP AGREEMENT

25. In view of the fact that Italy is not a Member of the United Nations, the Trusteeship Agreement for the Territory of Somaliland under Italian administration contained a provision concerning the privileges and immunities of the members and staff of the Advisory Council for Somaliland. (See paras. 96 and 97 below.)

4. *By other decisions and actions of United Nations organs*

a. THE GENERAL ASSEMBLY

26. In addition to approving the General Convention, the Headquarters Agreement, the Interim Arrangement, and the agreement between the International Court of Justice and the Government of the Netherlands, referred to above, the General Assembly has adopted a number of resolutions dealing in whole or in part with the privileges and immunities of the Organization and its personnel. These resolutions range from all-inclusive recommendations on the privileges and immunities of an organ of the United Nations, for instance, resolution 90 (I), entitled "Privileges and immunities of members of the International Court of Justice, the Registrar, Officials of the Registry, Assessors, the Agents and Counsel of the parties and of Witnesses and Experts", to recommendations on a specific aspect of the subject, such as resolution 76 (I) which defined the term "officials" within the meaning of the General Convention. These resolutions are treated under the appropriate headings in the Analytical Summary of Practice below.

-
- 24/ By its resolution 57 (I), the General Assembly authorized UNICEF "generally, to acquire, hold or transfer property, and to take any other legal action necessary or useful in the performance of its objects and purposes;".
- 25/ The Technical Assistance Administration was established in 1950 as a part of the United Nations Secretariat to carry out the functions entrusted to the Secretary-General by the resolutions of the General Assembly and of the Economic and Social Council on technical assistance programmes.
- 26/ The Technical Assistance Board was set up under Economic and Social Council resolution 222 (IX) of 15 August 1949, consisting of representatives of the United Nations and of the specialized agencies which participated in the expanded programme of technical assistance.

b. THE INTERNATIONAL COURT OF JUSTICE

27. The International Court of Justice has delivered an advisory opinion entitled "Reparation for injuries suffered in the service of the United Nations" which dealt at length with the question of the international personality of the United Nations. (See paras. 42-48 below.)

II. ANALYTICAL SUMMARY OF PRACTICE

A. Article 104

1. Legal capacity of the Organization in the territory of Member or non-member States

28. Article 104 has been implemented by article I, section 1 of the General Convention which defines the legal capacity of the United Nations as the capacity (a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to institute legal proceedings.

29. Although Article 104 speaks only of the legal capacity of the Organization "in the territory of each of its Members", the foregoing provisions of the General Convention were made applicable in Japan and Korea by special agreements concluded between the Secretary-General and the two Governments, respectively. The Interim Arrangement with Switzerland provided in general terms that the Swiss Federal Council recognized the legal capacity of the United Nations. By an exchange of letters between the Secretary-General and the Italian Observer to the United Nations, the Italian Government recognized, in the Territory of Italian Somaliland, the juridical capacity of the Organization. The legal incidents of that capacity were the same as those defined in the General Convention.

30. The practice in regard to the legal capacity of the Organization may be briefly summarized as follows.

a. CAPACITY TO CONTRACT

31. The United Nations has entered into a variety of contracts of a private law character. At the Headquarters of the United Nations, these include, for example, contracts for maintenance, for the purchase of office equipment, for the lease of premises, for printing, et cetera. Contracts have also been concluded by subsidiary organs of the United Nations with private parties in various countries. UNICEF and UNRWA, for example, have concluded contracts for the procurement of supplies; and UNKRA has entered into charter-parties.

32. Section 29 of the General Convention provides that the United Nations shall make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party. The practice has been to include a clause on arbitration in the contracts made by the United Nations with private parties. The procedure of arbitration has been invoked by UNICEF in an action for breach of contract. ^{27/} UNRWA has also resorted to arbitration in disputes of a private law character. In April 1954, for instance, UNRWA agreed to

^{27/} G A (VII), Suppl. No. 1 (A/2141), p. 165.

refer to arbitration a claim arising out of a loan agreement concluded with a private company. 28/

b. CAPACITY TO ACQUIRE AND DISPOSE OF IMMOVABLE AND MOVABLE PROPERTY

33. The United Nations exercised its capacity to acquire immovable property by acquiring a tract of land in New York City for its permanent Headquarters. Section 22 of the Headquarters Agreement between the United Nations and the United States provides 29/ for the manner in which the United Nations may dispose of all or any part of the land acquired and owned by it in the headquarters district.

34. As to the acquisition of immovable and movable property by the United Nations elsewhere than at its permanent Headquarters, the General Assembly approved, 30/ on 7 December 1946, an "Agreement concerning the execution of the transfer to the United Nations of certain Assets of the League of Nations, signed on 19 July 1946" which provided for the transfer to the United Nations of rights in respect of the immovable and movable property of the League of Nations. The immovable property included such items as the Ariana site in Geneva and the buildings erected by the League on that site, ownership of other properties held by the League and the servitudes constituted in favour of the League. The movable property included such items as the fittings, furniture, office equipment, books, the stock of supplies and all other corporeal property belonging to the League of Nations.

35. In addition, an agreement concerning the Ariana site concluded 31/ between the United Nations and the Swiss Federal Council provided for the properties and rights of the United Nations in Geneva as follows: The United Nations is the owner of the buildings of the League of Nations on the Ariana site and of any other buildings it may erect on that site. It has a transferable and exclusive right of user of the surface of the land on which these buildings are, or may be, erected, and it has a non-transferable and exclusive right of user over the remainder of the site. The property in the soil, however, remains with the Town of Geneva.

36. In regard to the premises formerly placed at the disposal of the Permanent Court of International Justice, the General Assembly approved 32/ an "Agreement between the United Nations and the Carnegie Foundation concerning the use of the premises of the Peace Palace at The Hague" which provided for the permanent and exclusive use by the International Court of Justice of a number of rooms in the said premises and which stipulated that "Furniture and other objects bought by the League of Nations on behalf of the Permanent Court of International Justice, and now intended for the use of the International Court of Justice, shall be the property of the United Nations".

c. CAPACITY TO INSTITUTE LEGAL PROCEEDINGS

37. Under the authority of Article 104, as implemented by article I of the General Convention, the United Nations has brought a number of legal actions of a private law character in the courts of the following countries: Belgium, Canada, France, Lebanon,

28/ G A (IX), Suppl. No. 1 (A/2663), p. 106.

29/ G A resolution 169 (II).

30/ G A resolution 79 (I). The text of the Agreement was produced as annex I to the resolution.

31/ Approved by G A resolution 98 (I). For text of the Agreement, see G A (I/2), 6th Com., annex 17 (A/175), appendix II.

32/ G A resolution 84 (I). The text of the Agreement was produced as annex A to the resolution.

Syria, the United Kingdom and the United States. ^{33/} The capacity of the United Nations to sue has, in all cases, been upheld by national courts.

38. Legal proceedings which have been instituted by the United Nations on its own behalf, or on behalf of its subsidiary organs such as UNICEF or UNRWA, and by UNRWA in its own name, covered the following types of action; ^{34/} prosecution of claims assigned by the United Nations Relief and Rehabilitation Administration (UNRRA) to the United Nations for the benefit of UNICEF; action in connexion with traffic accidents involving United Nations vehicles; petition in connexion with the distribution of an estate; action in connexion with shortage in, and damage to, a UNICEF cargo; action for recovery of overpayment made by the United Nations et cetera. There was also a complaint brought by UNICEF before a French court for criminal fraud. In several instances, UNRWA, as plaintiff, has instituted proceedings under loan agreements with Palestine refugees for the recovery of instalments overdue or for violation of the terms of these agreements.

2. The question of international personality of the Organization

39. Article 104 does not refer to the question of the international personality of the Organization. ^{35/} Article I, section 1 of the General Convention states that the United Nations "shall possess juridical personality". The Interim Arrangement with Switzerland contained explicit recognition by the Swiss Government of the international personality of the United Nations. ^{36/}

40. The question of the international personality of the United Nations arose at the third session of the General Assembly. On 7 October 1948, the Secretary-General, prompted by the death or serious injury of United Nations agents and the assassination of the United Nations Mediator in Palestine, submitted a memorandum ^{37/} on the reparation of injuries incurred in the service of the United Nations for the consideration of the General Assembly. Upon the recommendation of the Sixth Committee to which the item was referred, the General Assembly decided ^{38/} to request the International Court of Justice for an advisory opinion on two legal questions, the first of which read:

"I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international

^{33/} Although the United States has not yet acceded to the General Convention, it has, by national legislation, accorded to the United Nations the same legal capacity as was provided for in the Convention. See Section 2 (a) of the International Organizations Immunities Act of 1945 (U.S. Public Law 291, 79th Congress; 59 Stat. 669) and Executive Order 9698 of 19 February 1946.

^{34/} See G A (VI), Suppl. No. 1 (A/1844), pp. 189 and 190; G A (VII), Suppl. No. 1 (A/2141), p. 165; G A (VIII), Suppl. No. 1 (A/2404), pp. 148 and 149; G A (IX), Suppl. No. 1 (A/2663), pp. 105-107.

^{35/} For consideration of the question of the international juridical personality of the Organization at the San Francisco Conference, see Documents of the United Nations Conference on International Organization, vol. 13, p. 710, doc. 933, IV/2/42 (2).

^{36/} This provision followed that of the modus vivendi of 1926 between the League of Nations and the Swiss Government (See Official Journal of the League of Nations 1926, p. 1422. See also the report of the Secretary-General on negotiations with the Swiss authorities, G A (I/2), 6th Com., annex 17 (A/175)).

^{37/} G A (III/1), Plen., Annexes, p. 219, A/674.

^{38/} G A resolution 258 (III).

claim against the responsible de jure or de facto Government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?"

41. During the discussion in the Sixth Committee, one of the legal questions raised was whether the Organization possessed international juridical personality which would enable it to bring an action on the international plane. The views expressed in the Committee on this question may be summarized as follows: ^{39/} A group of representatives either maintained that the Organization possessed international personality under international law, or considered that, by virtue of Articles 100, 104 and 105 of the Charter and article I of the General Convention, the international capacity of the Organization to defend the interests of its agents was implicitly recognized. The second group of representatives felt that there was room for doubt as to the exact position of the United Nations and its right to make a claim on the international as opposed to the municipal plane, or considered it uncertain whether the authors of the Charter had omitted a provision with respect to the international juridical personality of the United Nations in order to exclude such personality or had merely refrained from mentioning it. A third group of representatives held that the United Nations did not possess the legal capacity to take action at an international level in defence of its agents.

42. At the public sitting of the International Court of Justice on 7 March 1949, counsel for the Secretary-General summarized the position of the latter as follows: ^{40/}

"First: that the United Nations possesses international juridical personality conferred upon it by the States which created it; that incidental to such personality the United Nations possesses the procedural capacity to present an international claim; and that as a consequence of its personality the United Nations possesses certain substantive rights under international law.

"Second: that among these substantive rights possessed by the United Nations is the right of protection of its agents from unlawful injury while engaged in its service.

"Third: that by virtue of the foregoing the United Nations may bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of damage caused either to the United Nations, or to the victim or to persons entitled through him."

^{39/} For texts of relevant statements, see: G A (III/1), 6th Com.; 112th mtg.: Greece, p. 530; United Kingdom, pp. 521 and 522; 113th mtg.: Czechoslovakia, p. 539; Iran, p. 542; Netherlands, p. 537; 114th mtg.: France, p. 547; Turkey, p. 544; Venezuela, p. 545; 115th mtg.: Belgium, p. 551; United States, p. 559; 116th mtg.: Iran, p. 559; 117th mtg.: Canada, p. 570; Egypt, p. 568; Peru, p. 571; Syria, p. 567; 124th mtg.: Dominican Republic, p. 618.

^{40/} Reparations for injuries suffered in the service of the United Nations, I C J, Pleadings 1949, p. 70; for the statement in support of this position, ibid., pp. 70-90.

43. Six Governments participated in the proceedings before the Court. ^{41/} In neither the written nor the oral proceedings was the international personality of the Organization or its capacity to claim reparation for damage suffered by itself questioned by any of these Governments, and only in the written statement of one Government was the capacity of the Organization to claim reparation for injuries suffered by its agents disputed. The views expressed by those Governments in favour of the international capacity of the United Nations were generally along the following line: ^{42/} (1) The international juridical capacity of the Organization resulted explicitly or implicitly from the provisions of the Charter by virtue of the principle that function implies capacity -- a principle recognized by Articles 104 and 105. (2) The United Nations was invested with international rights and obligations under the Charter and under other related international instruments; the fact that Article 104 did not deal with international legal status should not be held to rule out the possession of international personality by the Organization if such personality appeared to be established by, or to result from, the other provisions of the Charter.

44. On 11 April 1949, the Court delivered its advisory opinion which stated in part: ^{43/}

"It [the Charter] has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5), and to accept and carry out the decisions of the Security Council; by authorizing the General Assembly to make recommendations to the Members; by giving the Organization legal capacity and privileges and immunities in the territory of each of its Members; and by providing for the conclusion of agreements between the Organization and its Members... The 'Convention on the Privileges and Immunities of the United Nations' of 1946 creates rights and duties between each of the signatories and the Organization (see, in particular, Section 35). It is difficult to see how such a convention could operate except upon the international plane and as between parties possessing international personality."

45. Accordingly, the Court came to the conclusion that the Organization is an international person, which means that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

46. By unanimous vote, the Court answered question I (a) in the affirmative on the ground that, since the claim was based on the breach of an international obligation on the part of the Member held responsible by the Organization, the Member could not contend that this obligation was governed by municipal law, and the Organization was justified in giving its claim the character of an international claim.

47. By eleven votes to four, the Court also gave an affirmative answer to question I (b). Under international law, said the Court, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, were

^{41/} The Governments of China, India and the United States submitted written observations; the Governments of France and the United Kingdom presented both written and oral statements; and the Government of Belgium participated in the oral hearings. *Ibid.*, pp. 12-42 and 94-130.

^{42/} *Ibid.*, see especially pp. 32, 98, 114 and 117.

^{43/} Reparation for injuries suffered in the service of the United Nations, I C J, Reports 1949, pp. 178 and 179.

conferred upon it by necessary implication as being essential to the performance of its duties. If an agent of the Organization had to rely on his own State for protection, his independence might well be compromised contrary to the principle of Article 100. The Court said further that upon examination of the character of the functions entrusted to the Organization and of the nature of the missions of its agents, it became clear that the capacity of the Organization to exercise a measure of protection of its agents arose by necessary intendment of the Charter.

48. Moreover, the Court was of the opinion that fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective personality, and not merely personality recognized by them alone, together with capacity to bring international claims. The answer of the Court to question I, therefore, applied not only to Members of the United Nations, but also to non-member States held responsible by the Organization.

49. On 1 December 1949, the General Assembly adopted a resolution 44/ which, having regard to the advisory opinion of the Court, authorized the Secretary-General, in accordance with his proposals, 45/ "to bring an international claim against the Government of a State, Member or non-member of the United Nations, alleged to be responsible, with a view to obtaining reparation due in respect of the damage caused to the United Nations and in respect of the damage caused to the victim or to persons entitled through him...", and requested the Secretary-General to submit an annual report to the General Assembly at subsequent sessions on the status of such claims and proceedings in connexion with them. In accordance with this resolution, the Secretary-General has presented international claims of the nature referred to above to the Governments of Israel, Jordan and Egypt, respectively, in respect of injuries suffered by United Nations agents in Palestine and has submitted annual reports on the status of these claims and on proceedings in connexion with them. 46/

B. Article 105 (1)

1. Scope of the term "the Organization"

50. The term "the Organization", used in Article 105 (1) was considered as a distinct entity and was intended to cover all the organs established by the Charter and all other bodies or organs which might subsequently be established by virtue of the powers conferred by the Charter. 47/ The scope of the term "Organization" as used in Article 105 (1) is not further defined in the General Convention, the first three articles of which define the privileges and immunities of "the United Nations". Some of the special agreements concluded by the United Nations with Members which have not acceded to the General Convention and with non-members refer to "the Organization" or

44/ G A resolution 365 (IV).

45/ See the report of the Secretary-General which outlined the procedure of the presentation of international claims by the Organization (G A (IV), 6th Com., Annex, a.i. 51, A/955).

46/ See G A (V), Suppl. No. 1 (A/1287), p. 124; G A (VI), Suppl. No. 1 (A/1844), p. 188; G A (VII), Suppl. No. 1 (A/2148), p. 160; G A (VIII), Suppl. No. 1 (A/2404), p. 144; G A (IX), Suppl. No. 1 (A/2663), p. 101. See also G A (V), Annexes, vol. II, a.i. 50, p. 1, A/1347, G A (VII), Annexes, a.i. 57, p. 1, A/2180.

47/ See Documents of the United Nations Conference on International Organization, vol. 13, p. 704, doc. 933, IV/2/42 (2).

"the United Nations" or to both. Most of them, however, concern the principal or subsidiary organ whose functions are being exercised in the territory of the State concerned. In some of these agreements (see especially paragraphs 170-174 below) the contracting States have undertaken to apply the provisions of the General Convention to the United Nations organs concerned.

2. *Privileges and immunities of the Organization*

51. Article 105 (1) provides for the enjoyment by the Organization of privileges and immunities "in the territory of each of its Members". As in the case of Article 104, the practice has developed that under special agreements the Organization also enjoys privileges and immunities, similar to those contained in the General Convention, in the territory of certain non-member States.

52. The specific privileges and immunities of the Organization, as laid down in the General Convention, the special agreements and other decisions of United Nations organs, are summarized below.

a. PROPERTY, FUNDS AND ASSETS

1. Privileges and immunities under the General Convention

53. Article II of the General Convention provides that: the United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process. ^{48/} Such property and assets are immune from search, requisition, confiscation, expropriation and every other form of interference, whether by executive, administrative or legislative action. The premises and the archives of the United Nations, as well as all documents belonging to it or held by it, are inviolable. Without being restricted by financial controls, regulations and moratoria of any kind, the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency and the United Nations is free to transfer its funds, gold or currency from one country to another, or within any country and to convert any currency held by it into any other currency. The United Nations, its assets, income and other property are exempt from all direct taxes, custom duties and prohibitions and restrictions on imports and exports in respect of articles needed for its official use and in respect of its publications.

54. The United Nations has claimed immunity from legal process in cases brought before the national courts ^{49/} of Argentina, Egypt, Jordan, Lebanon, Mexico and the United States. In most cases, actions were brought by former employees of certain United Nations organs for payment of termination and other indemnities allegedly due them under various local laws and regulations. Except in one case brought before the court of Jordan, immunity of the United Nations from legal process was either expressly or implicitly recognized by national courts.

^{48/} Article II further provides that the United Nations may, in any particular case, waive its immunity. However, "no waiver of immunity shall extend to any measure of execution."

^{49/} See G A (VII), Suppl. No. 1 (A/2404), p. 149, and G A (IX), Suppl. No. 1 (A/2663), pp. 106 and 107. Argentina, Mexico and the United States had not acceded to the General Convention and Jordan is a non-member State.

ii. Additional privileges and immunities under special agreements

55. The privileges and immunities in respect of the Organization, its property, funds, and assets provided for in special agreements are set forth below. Where decisions of United Nations organs are concerned with a provision of such an agreement, they are discussed together with that provision.

(a) Exemption from taxation and customs duties

56. Under article II, section 5, of the Interim Arrangement with Switzerland, the United Nations, its assets, income and other property are exempt from all direct and indirect taxes, whether federal, cantonal or communal; this section also provides for a special exemption from the Swiss droit de timbre on coupons and the impôt anticipé. The agreement between the United Nations and Italy provides for the exemption from excise duties and from taxes on the sale of movable and immovable property purchased by the United Nations for its official use in the Territory of Italian Somaliland. ^{50/} By the Agreement between the United Nations and the Hashemite Kingdom of the Jordan, the goods, stores, produce and equipment, including petroleum products, destined for the refugees in Jordan were admitted exempt of all customs duty, taxes or import duties collected for the profit of the Kingdom or any administration or society whatsoever. ^{51/} Extensive exemption in this connexion has been granted to UNICEF under the agreements between UNICEF and Member or non-member States, the model text of which reads: ^{52/}

"The Fund, its assets, property, income and its operations and transactions, of whatsoever nature, shall be immune from all taxes, fees, tolls, or duties imposed by the Government or by any political sub-division thereof or by any other public authority in... The Fund shall also be immune from liability for the collection or payment of any tax, fee, toll, or duty imposed by the Government or any political sub-division thereof or by any other public authority."

(b) Favourable rates of exchange

57. The most favourable rates of exchange were accorded to the United Nations funds in the Territory of Somaliland and also in Chile ^{53/} in connexion with the holding of the twelfth session of the Economic and Social Council in Santiago. Under the basic agreements with Colombia ^{54/} and Iran ^{55/} for the provision of technical assistance, the United Nations and the participating specialized agencies, as well as the technical assistance personnel were allowed to convert other currencies into local (Colombian or Iranian) currency at the most favourable legal rate of exchange prevailing at the time of the conversion as long as such conversion was made in carrying out the functions provided for in the agreements and supplementary agreements; this benefit applied also to the conversion of any part of the salaries of the technical assistance personnel. By the agreement between UNRWA and Jordan, ^{56/} the latter agreed that any funds which were the property of UNRWA at the end of its relief programme and which were on deposit or current account within Jordan as the result of an official transfer, might, at the request of UNRWA, be reconverted into the original foreign currency at the official rates obtaining at the time of the reconversion.

^{50/} ST/LEG/2, p. 131.

^{51/} Ibid., p. 116.

^{52/} United Nations Treaty Series, vol. 65, 1950, I, p. 12.

^{53/} ST/LEG/2, p. 153.

^{54/} United Nations Treaty Series, vol. 81, 1951, I, No. 1072, p. 214.

^{55/} Ibid., No. 1073, p. 240.

^{56/} ST/LEG/2, p. 117.

(c) Exemption from inspection of property

58. Some of the Arab States 57/ renounced their right of inspection of the equipment, stores, produce and goods which were the property of the United Nations until their distribution to the individual beneficiaries for relief in the Near East; such property was also exempted from the requirement to obtain import or export permits.

(d) Control and authority of the United Nations over its premises

59. Article II, section 7 of the Headquarters Agreement provides that the appropriate American authorities shall take whatever action is necessary to assure that the United Nations shall not be dispossessed of its property in the headquarters district. According to article III of the Headquarters Agreement, the headquarters district is under the control and authority of the United Nations (section 7 (a)) and the United Nations has the power to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions (section 8). The General Assembly, in its resolution 169 A (II) approving the Headquarters Agreement, authorized the Secretary-General "to perform on behalf of the United Nations such acts or functions as may be required by that Agreement". The Secretary-General, in his report 58/ to the General Assembly stated that since the adoption of formal regulations in the name of the United Nations would have important legal consequences, he would prefer to receive an express authorization from the General Assembly for the promulgation of such regulations. The General Assembly, having considered the report of the Secretary-General, prescribed, in its resolution 481 (V) of 12 December 1950, the procedure for giving effect to article III, section 8 of the Headquarters Agreement. On 1 February 1952, regulation No. 1, promulgated by the Secretary-General with immediate effect, was confirmed, and regulations No. 2 and No. 3 submitted by the Secretary-General, were approved by the General Assembly in resolution 604 (VI).

60. These regulations are mainly administrative in character. In view of the fact that section 7 (d) of the Headquarters Agreement provides that "the federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or transactions taking place in the headquarters district, shall take into account the regulations enacted by the United Nations under section 8" and section 8 further provides that "No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district.", the regulations 59/ approved by the General Assembly are briefly summarized below, with indication as to their relationship with domestic legislation.

57/ Ibid., p. 104, Model of Agreements, article 2. Ibid., Agreement between the Government of the Kingdom of Egypt; the Director, United Nations Relief for Palestine Refugees and The American Friends Service Committee, article 3, p. 108; Agreement between the Government of the Kingdom of Egypt and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, article 3, p. 111; Agreement between the Government of the Hashemite Kingdom of the Jordan and the United Nations Relief and Works Agency for Palestine Refugees, article 5, p. 116.

58/ G A (V), Annexes, vol. II, a.i. 55, p. 1, A/1409.

59/ For text of these regulations, see G A resolution 604 (VI), annex. These regulations should be read in conjunction with sections 7 (b) and 7 (c) which provide for the applicability of federal, state and local laws of the United States within the headquarters district and the jurisdiction of the federal, state and local courts of the United States over acts done and transactions taking place in the headquarters district.

61. Regulation No. 1 deals with the United Nations social security system, which has been established for the purpose of affording protection against all reasonable risks arising out of or incurred during service with the United Nations. The provisions of that system were made to constitute the only obligations of the United Nations in respect of such risks and the sole provisions under which persons in the service of the United Nations should be entitled to claim against the United Nations. This regulation was necessary in order to establish clearly that the United States and New York State social security and workmen's compensation legislation would not be applicable concurrently with the United Nations social security system. 60/

62. Regulation No. 2 states that the qualifications and requirements necessary for the performance of professional or other special occupational services within the headquarters district shall be determined by the Secretary-General, in order to avail the United Nations of the professional or special services of persons recruited on as wide a geographical basis as possible. The regulation would remove the restrictions on qualified doctors, nurses and persons of other professions and occupations who otherwise would have to be licensed under the laws of the State of New York before practising their profession or trade within the headquarters district. 61/

63. Regulation No. 3, which was made for the purpose of ensuring uninterrupted services necessary to the proper functioning of the principal and subsidiary organs of the United Nations, provides that the times and hours of operation of any services and facilities or retail establishment authorized within the headquarters district shall be in compliance with schedules fixed by the Secretary-General. The main reason for this regulation was that the public purpose served by a limited number of local laws or regulations was of a local or political nature, and that their application to the headquarters district might be unsuitable. 62/

64. Section 9 (a) of the Headquarters Agreement provides as follows: 63/

"The headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General."

65. According to section 10 of the Headquarters Agreement, "the United Nations may expel or exclude persons from the headquarters district for violation of its regulations adopted under section 8" of the Agreement. The United Nations has, moreover, "the exclusive right to authorize or prohibit entry of persons and property into the

60/ G A (VI), Annexes, a.i. 52, p. 1, A/1914, paras. 12-15.

61/ Ibid., paras. 5-8.

62/ Ibid., paras. 9-11.

63/ Section 9 (b), however, provides that

"Without prejudice to the provisions of the General Convention or article IV [on communications and transit] of this Agreement, the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavouring to avoid service of legal process."

headquarters district and to prescribe the conditions under which persons may remain or reside there" (section 13 (f) of the Agreement).

66. The agreements concluded by the Secretary-General with Chile, ^{64/} France, ^{65/} Lebanon ^{66/} and Uruguay, ^{67/} respectively, also provided, in respect of the control and authority of the United Nations over its premises or the conference area placed at its disposal by those countries, that the United Nations had the sole right to authorize or prohibit the entry of any person to the premises or conference area, or to expel any person therefrom. ^{68/}

(e) Police protection of United Nations premises

67. Under the Headquarters Agreement, the appropriate American authorities were to "exercise due diligence to ensure that the tranquility of the headquarters district is not disturbed by the unauthorized entry of groups of persons from outside or by disturbance in its immediate vicinity", and were to cause to be provided on the boundaries of the headquarters district such police protection as was required for these purposes; if so requested by the Secretary-General, the appropriate American authorities were to "provide a sufficient number of police for the preservation of law and order in the headquarters district, and for the removal therefrom of persons as requested under the authority of the United Nations" (section 16). The appropriate American authorities were also to "take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity" of the district (section 18).

68. Similar provisions were contained in the agreements concluded by the Secretary-General with Chile, France, Lebanon and Uruguay, respectively. ^{69/}

(f) Right of transit and freedom of access to the United Nations headquarters district or conference area

69. The Headquarters Agreement contains the following provisions regarding the right of transit to or from the headquarters district:

"Section 11. The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of: (1) Representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials; (2) Experts performing missions for the United Nations or for such specialized agencies; (3) Representatives of the Press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States; (4) Representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter; or (5) Other persons invited to the headquarters district by the United Nations or by such specialized

^{64/} Article XIII of the agreement (ST/LEG/2, p. 153).

^{65/} Article XVI (A), section I, of the agreement (*ibid.*, p. 86).

^{66/} Part A, section I of the agreement (*ibid.*, p. 149).

^{67/} *Ibid.*, p. 143.

^{68/} The agreement with Chile provided further for such right of the United Nations not only in respect of any person, but also in respect of any property.

^{69/} ST/LEG/2, pp. 86, 143, 149 and 152.

agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district ..."

"Section 13. (a) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in section 11. When visas are required for persons referred in that section, they shall be granted without charge and as promptly as possible. (b) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in section 11 and, specifically, shall not be applied in such manner as to require any such person to leave the United States on account of any activities performed by him in his official capacity ...". 70/

70. The application of the provisions of the Headquarters Agreement quoted above to representatives of non-governmental organizations had been the subject of extensive discussion both in the Economic and Social Council and in the General Assembly. The first phase of the discussion centred on the question of access to the United Nations headquarters of representatives of non-governmental organizations in consultative status for the purpose of attending the meetings of the General Assembly while their right of access for the purpose of attending the sessions of the Economic and Social Council was not disputed. 71/ The discussion resulted in the adoption by the General Assembly of resolution 606 (VI), 72/ the operative part of which reads as follows:

"1. Authorizes the Secretary-General, upon the request of the Economic and Social Council or its Committee on Non-Governmental Organizations, to make arrangements to enable the representative designated by any non-governmental organization having consultative status to attend public meetings of the General Assembly whenever economic and social matters are discussed which are within the competence of the Council and of the organization concerned;

"2. Requests the Secretary-General to continue to give assistance to representatives of such non-governmental organizations in facilitating transit to or from sessions of the General Assembly and its Committees."

71. The question of the admission of representatives of non-governmental organizations to the United Nations Headquarters again arose when the United States, in denying visas to certain representatives of non-governmental organizations, invoked section 6 of its Public Law 357 73/ as assertedly constituting reservations to the Headquarters

70/ In case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity, it is understood that the privileges referred to in section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens.

71/ For details of the discussion see E S C (XI), 416th, 417th and 421st mtgs.; E S C (XI) (Resumed), Annexes, NGO, p. 1, E/L. 123; E S C resolutions 340 A and B (XI); E/1921; E S C (XIII), 561st mtg.; G A (VI), 6th Com., 301st mtg.

72/ See also E S C resolution 455 (XIV).

73/ Section 6 of U.S. Public Law 357 provides that nothing in the Headquarters Agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity.

Agreement. The Secretary-General, having conducted a series of negotiations with the representatives of the United States, submitted a progress report 74/ to the Economic and Social Council in which he enumerated the rights of the United Nations and the United States under the Headquarters Agreement as follows: (1) It had been recognized from the outset that the Headquarters Agreement should not be permitted to serve as a cover to enable persons in the United States to engage in activities outside the scope of their official functions; (2) subject to the purpose of the Headquarters Agreement, the United States could grant visas valid only for transit to and from the headquarters district and sojourn in its immediate vicinity; it could make any reasonable definition of the "immediate vicinity" of the headquarters district, of the necessary routes of transit, and of the time and manner of expiration of the visa following the completion of official business; and it could carry out deportation proceedings against persons who abused the privilege of residence by engaging in activities in the United States outside their official capacity; (3) in the case of aliens in transit to the headquarters district exclusively on official business of, or before the United Nations, the rights of the United States were limited by the Headquarters Agreement to those mentioned. The Secretary-General also made a statement 75/ before the Economic and Social Council on the understanding reached concerning the procedure to be used in all controversial cases. On 1 August 1953, the Council adopted resolution 509 (XVI) in which it noted the reports of the Secretary-General and expressed the hope that any remaining questions would be satisfactorily and expeditiously resolved within the provisions of the Headquarters Agreement.

72. Under special agreements with the United Nations, 76/ France, Uruguay, Lebanon and Chile also granted to the same categories of persons as those provided in the Headquarters Agreement, freedom of access to and sojourn in their territory for the purpose of attending certain sessions of the principal or subsidiary organs of the United Nations.

b. FACILITIES IN RESPECT OF COMMUNICATIONS

73. Article III of the General Convention provides:

"Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, 77/ cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

"Section 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags."

74/ E/2492. For a legal opinion submitted by the Secretariat on this question, see E S C (XV), Annexes, a.i. 34, p. 2, E/2397. For discussions in the Economic and Social Council, see E S C (XVI), 743rd and 745th mtgs.

75/ E/2501.

76/ ST/LEG/2, pp. 87, 88, 144, 149, 150 and 153.

77/ The Sixth Committee, in its report to the General Assembly on privileges and immunities of the United Nations, placed on record that the words "rates and taxes on mails" did not cover free postage (G A (I/1), Plen., p. 642, annex 22 (A/43/Rev.1)).

With regard to telecommunications, Government telegrams and telephone calls have been defined in an annex to the International Telecommunication Convention to include those originating with the Secretary-General and the heads of the principal and subsidiary organs of the United Nations. 78/ They may thus be given the priority afforded such telegrams and telephone calls under the regulations of the International Telecommunications Union.

74. The Interim Arrangement with Switzerland contained provisions identical with those of article III of the General Convention.

75. Article II, section 4, of the Headquarters Agreement defined the scope of facilities granted by the United States to the United Nations in the field of telecommunications. The United Nations might establish and operate in the headquarters district its own short-wave sending and receiving radio broadcasting facilities for radiotelegraph, radioteletype, radiotelephone, radiotelephoto and similar services; 79/ it might establish a point-to-point circuit between the headquarters district and the Geneva office; it might establish low power micro-wave, low or medium frequency facilities for communication within its premises, as well as facilities for certain point-to-point communication under amateur conditions. Moreover, the facilities referred to in section 4 might be established outside the headquarters district by arrangements with the appropriate American authorities. Under sections 5 and 6 of the Headquarters Agreement, the United Nations might, by supplemental agreements with the United States, establish and operate an aerodrome or organize its own postal service. Under authority of General Assembly resolution 454 (V) and in conformity with the terms of the Headquarters Agreement, a Postal Agreement was concluded by the Secretary-General with the Government of the United States, and the United Nations Postal Administration was established on 1 January 1951.

76. The Agreement between the United Nations and the International Telecommunications Union, approved by General Assembly resolution 124 (II) of 15 November 1947, provides for the United Nations telecommunications services in article XVI which reads: 80/

"1. The Union recognizes that it is important that the United Nations shall benefit by the same rights as the members of the Union for operating telecommunication services.

"2. The United Nations undertakes to operate the telecommunication services under its control in accordance with the terms of the International Telecommunication Convention and the regulations annexed thereto.

"3. The precise arrangements for implementing this article shall be dealt with separately."

77. Under the agreement between the Secretary-General and the Government of the Republic of Korea, 81/ the United Nations might establish and operate in Korea its own sending and receiving radio broadcasting facilities, in addition to the enjoyment of

78/ See ST/LEG/2, p. 30.

79/ The report by the Secretary-General stated that henceforth "the United Nations may use its radio broadcasting facilities for radio telegraph, radiotelephone and similar services without being subject to the requirement of exceptional circumstances." (G A (II), 6th Com., annex 11 (A/371), p. 329).

80/ United Nations Publications, Sales No.: 1951.X.1, p. 111.

81/ ST/LEG/2, p. 93.

the privileges under article III of the General Convention which the agreement recognized.

78. The agreement between the United Nations and Japan on privileges and immunities of the United Nations, in addition to providing for the application of article III of the General Convention to the United Nations in Japan, contained a clause which reads: 82/

"ARTICLE VI. The United Nations shall be accorded every facility for the use of commercial radio and wire services, including the right to direct wires from the United Nations offices to the International Telegraph Office in Tokyo, and the Government of Japan shall accord to the United Nations for its official communications a priority in accordance with the regulations annexed to the International Telecommunication Convention."

79. In the exchange of letters between the Secretary-General and the Permanent Representative of Uruguay to the United Nations concerning privileges and immunities to be accorded to the Sub-Commission on Freedom of Information and of the Press and the Economic Commission for Latin America during their sessions in Montevideo, it was stated 83/ that, in addition to the privileges accorded in regard to telecommunications under the General Convention, the Government of Uruguay would assume the responsibility for all necessary internal and external telephone installations, and would not demand any sum as payment for the rent of telephone and telegraph equipment. The Government of France also provided 84/ for telephone, telegraph and radio services, including free technical installations to the General Assembly in Paris during its sixth session.

C. Article 105 (2)

1. Privileges and immunities of representatives of Members

a. THE EXPRESSION "REPRESENTATIVES" AS USED IN THE GENERAL CONVENTION

80. Article IV of the General Convention provides for the privileges and immunities of the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations. Article IV, section 16, of the Convention defines the expression "representatives" as including "all delegates, deputy delegates, advisers, technical experts and secretaries 85/ of delegations".

81. The same provision is contained in the Interim Arrangement between the United Nations and Switzerland.

b. THE EXPRESSION "RESIDENT REPRESENTATIVES TO THE UNITED NATIONS" AS USED IN THE HEADQUARTERS AGREEMENT

82. Article V of the Headquarters Agreement provides for the privileges and immunities of "resident representatives to the United Nations". Under this article, section 15 lists the following categories of persons as well as resident representatives to the specialized agencies:

82/ ST/LEG/2, p. 99.

83/ Ibid., p. 144.

84/ Ibid., pp. 79 and 80.

85/ The expression "secretaries" of delegations refers to the secretaries of diplomatic rank and not to the service personnel of delegations.

"(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,

"(2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,"

83. At the second session of the General Assembly, when the Headquarters Agreement previously signed by the Secretary-General on behalf of the Organization was submitted for approval by the Assembly, the Sub-Committee on Privileges and Immunities set up by the Sixth Committee studied the text of the Agreement and, in its report, made the following observations relating to section 15:

"In view of the fact that in sub-section (1) of section 15 [of the Headquarters Agreement] the words "principal resident representative to the United Nations" are not qualified by, but are alternative to the words "resident representative with the rank of ambassador or minister plenipotentiary", the sub-committee was of the opinion that the position of a person who was designated by a Member as chargé d'Affaires ad interim of its permanent delegation to the United Nations was satisfactorily covered by sub-section (1) if he is not a person on the list under sub-section (2)."

The report of the Sub-Committee as a whole was approved unanimously by the Sixth Committee and incorporated in its report. ^{86/} During the discussion of the report of the Sub-Committee on Privileges and Immunities, the Sixth Committee adopted a separate draft resolution ^{87/} proposing that the designation of resident representatives under section 15 of the Headquarters Agreement should be guided by section 16 of the General Convention.

84. The General Assembly, by its resolution 169 (II), endorsed the opinions expressed in the report of the Sixth Committee and, upon the recommendation of the Sixth Committee, decided

"to recommend to the Secretary-General and to the appropriate authorities of the United States of America to use section 16 of the General Convention on the Privileges and Immunities of the United Nations as a guide in considering -- under sub-sections 2 and the last sentence of section 15 of the above-mentioned Agreement regarding the Headquarters -- what classes of persons on the staff of delegations might be included in the list to be drawn up by agreement between the Secretary-General, the Government of the United States of America and the Government of the Member State concerned."

C. PRIVILEGES AND IMMUNITIES

85. The General Convention contains the following provisions regarding the privileges and immunities of representatives of Members: ^{88/}

^{86/} G A (II), Plen., vol. II, p. 1519, annex 9 b (A/427).

^{87/} A/C.6/175. See also draft resolution submitted by Argentina which was later withdrawn by its sponsor (G A (II), 6th Com., p. 376, annex 14 (A/378)).

^{88/} Section 15 of the General Convention states that the provisions of sections 11, 12 and 13 are not applicable as between a representative and authorities of the State of which he is a national or of which he is or has been a representative.

"Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

"(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

"(b) inviolability for all papers and documents;

"(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

"(d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

"(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, and also;

"(g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

"Section 12. In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

"Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of residence."

Section 14 provides for the waiver by a Member of the immunity of its representative in any case where, in the opinion of the Member, the immunity would impede the course of justice; the provision stressed that privileges and immunities were accorded to representatives of Members in order to safeguard the independent exercise of their functions in connexion with the United Nations.

86. The same provisions on the privileges and immunities of the representatives of Members are contained in the Interim Arrangement between the United Nations and Switzerland.

87. Article V, section 15, 89/ of the Headquarters Agreement provides that the resident representatives to the United Nations (see para. 82 above)

"shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to and from foreign countries."

88. By the Agreement between the United Nations and Chile which was supplementary to the General Convention, the Government of Chile granted diplomatic privileges and immunities to the representatives of Member States to the Economic and Social Council (during the twelfth session of the Council held in Santiago) "regardless of whether or not the Government maintains diplomatic relations with the Governments of any such Member States". 90/

89. The French Government, by its agreement (supplementary to the General Convention) with the United Nations concerning the holding of the sixth session of the General Assembly in Paris, granted, for the duration of their mission, including the time of travel in French territory, the privileges, immunities and facilities accorded to diplomatic envoys accredited to the French Government, to (a) representatives of delegations of Member States of the United Nations accredited to the sixth session of the General Assembly and (b) permanent representatives and permanent members of their staff who enjoyed diplomatic privileges and immunities at the Headquarters of the Organization. 91/

90. The Government of Uruguay, which had not acceded to the General Convention, granted, by agreement with the United Nations, diplomatic privileges and immunities to the representatives of States Members in the Sub-Commission on Freedom of Information and of the Press and in the Economic Commission for Latin America when both Commissions were holding sessions 92/ in Montevideo.

91. The Government of the Republic of Korea granted to the representatives of Member States serving on United Nations Commissions operating in Korea and the members of their delegations such "privileges and immunities, exemptions and facilities as are granted to diplomatic envoys of similar rank in accordance with international law". 93/

92. Indonesia granted to the three representatives on the United Nations Commission for Indonesia and the personnel of their delegations "all privileges and immunities granted to the members of the Diplomatic Corps of similar rank accredited in Indonesia". 94/

89/ For the cases in which the application of this section was invoked, see ST/LEG/2, p. 66.

90/ Ibid., p. 154.

91/ Ibid., pp. 88 and 89.

92/ Ibid., p. 145.

93/ Ibid., p. 94.

94/ Ibid., p. 126.

93. Lebanon, before its accession to the General Convention, undertook to apply article IV of the Convention to representatives of States Members of the United Nations during the period of their mission to the Commission on the Status of Women meeting in Lebanon, including the time of travel in Lebanese territory. 95/

94. Japan also undertook, by special agreement with the United Nations, to apply article IV of the General Convention to representatives of Member States exercising their official functions in Japan or passing through Japan to and from Korea, including representatives of Member States serving on any United Nations mission in Korea and members of their delegations. 96/

95. The foregoing survey shows that while Article 105 (2) provided for privileges and immunities of representatives of Members which "are necessary for the independent exercise of their functions in connection with the Organization" and article IV of the General Convention enumerated such privileges and immunities on the same functional basis, most States (whether Members or non-members) have, by special agreements with the United Nations extended full diplomatic privileges and immunities 97/ to representatives of Members when organs of the United Nations were established or holding meetings in their territory.

d. THE QUESTION OF THE PRIVILEGES AND IMMUNITIES OF THE MEMBERS OF
THE ADVISORY COUNCIL FOR SOMALILAND

96. The draft Trusteeship Agreement for the Territory of Somaliland under Italian administration, as first presented by the Philippines, 98/ contained an article stating that

"Members of the Advisory Council and their staffs shall enjoy in the Trust Territory diplomatic privileges and immunities".

As a result of consideration by the Committee for Italian Somaliland, the above text, which became article 10 of the draft 99/ Trusteeship Agreement, was changed to read:

"Article 10. Members of the Advisory Council and their staff shall enjoy in the Territory the same privileges and immunities as they would enjoy if the Convention on the Privileges and Immunities of the United Nations were applicable to the Territory."

97. During the discussion 100/ of the foregoing text in the Trusteeship Council, and in connexion with a suggestion that the staff of the Advisory Council be granted diplomatic privileges and immunities by Italy, it was pointed out that since members of the Advisory Council were States Members of the United Nations which would appoint their representatives to the Advisory Council as sovereign States, those representatives would enjoy the privileges and immunities traditionally accorded to members of the diplomatic corps. In support of this view, it was maintained that the members of the Advisory Council would retain distinctly national characteristics, and that each, in addition to being responsible to the United Nations as a member of a body set up by the

95/ Ibid., p. 150.

96/ Ibid., p. 98.

97/ The term "diplomatic privileges and immunities" denotes the whole complex of privileges and immunities which are in fact accorded to diplomatic envoys.

98/ T C (VI), Annex, vol. I, p. 103, T/440.

99/ T/449, p. 13.

100/ T C (VI), 4th mtg., paras. 21-91.

General Assembly, would, therefore, be responsible to his own Government. The discussion resulted in the unanimous adoption by the Trusteeship Council of an amendment to insert the words "shall enjoy full diplomatic privileges and immunities" between the words "members of the Advisory Council" and the words "and their staff" in article 10. 101/

2. Privileges and immunities of officials of the Organization

a. CATEGORIES OF OFFICIALS

1. General

98. Article V, section 17, of the General Convention provides:

"The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII 102/ 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."

In accordance with this provision, the Secretary-General submitted to the General Assembly at the second part of its first session a report 103/ which included a draft resolution recommending that articles V and VII of the General Convention be applied to all members of the staff "with the exception of those who are recruited locally and who are assigned to hourly rates". The word "who" was deleted from this clause by the Joint Sub-Committee of the Fifth and Sixth Committees which explained in its report 104/ that the purpose of this change was to make clear the intention that both factors, local recruitment and hourly rates, must be present in each case before the exception would be applicable.

99. When the report of the Joint Sub-Committee was considered by the Sixth Committee, the Rapporteur further explained 105/ that the Sub-Committee, during its discussions, had studied three possible criteria by which to determine the categories of officials considered under section 17 of the General Convention: (a) the functions performed by the officials in question; (b) the fact of employment by the United Nations, except on an hourly basis; and (c) the duration of the contract. He stated that since the Joint Sub-Committee pronounced itself in favour of the second criterion, it was no longer necessary to arrive at a definition of the word "officials".

100. The report of the Joint Sub-Committee was approved by the Fifth Committee at its 32nd meeting and by the Sixth Committee at its 36th meeting. The draft resolution recommended in the report of the Fifth Committee 106/ was adopted by the General Assembly as resolution 76 (I) in which:

101/ United Nations Publications, Sales No.: 1951. VI.A.1, p. 6.

102/ Article VII deals with United Nations laissez-passer.

103/ G A (I/2), 6th Com., p. 209, annex 11 (A/116 and A/116/Add.1).

104/ Ibid., p. 224, annex 11 d (A/C.5/99-A/C.6/97).

105/ G A (I/2), 6th Com., 31st mtg., p. 163.

106/ G A (I/2), Plen., p. 1498, annex 44 (A/212).

"The General Assembly,

" ...

"Approves the granting of the privileges and immunities referred to in Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates."

101. The following persons have been deemed to be included in the categories of officials so specified:

ii. Specialized personnel serving as consultants in the Secretariat

102. In the report of the Joint Sub-Committee referred to above, it was stated that:

"The Sub-Committee was concerned as to whether or not the categories of officials covered by the draft resolution included all specialized personnel employed by or performing special functions for or on behalf of the United Nations, either at its headquarters or elsewhere, who are serving on a temporary basis or for a period of limited duration and who may be compensated on a "when actually employed" basis, on short-term contracts or merely on the basis of subsistence and travel allowances. It was concluded that such personnel, when serving as consultants in the Secretariat, would be covered by the proposed resolution ...".

iii. Technical assistance experts

103. Technical assistance experts who fall within the definition of General Assembly resolution 76 (I) are considered as "officials" of the Organization. Circular letters to that effect were sent on 9 May 1951 by the Secretary-General to all Governments concerned. Express provision on this point is contained in the Basic Agreement between the United Nations and the Government of Thailand for the provision of technical assistance, article IV of which reads: 107/

"2. Staff of the Organization, including experts engaged by it as members of its staff, assigned to carry out the purposes of this Agreement, shall be deemed to be 'officials' within the meaning of the above general convention."

b. PRIVILEGES AND IMMUNITIES

i. General provisions

104. Article V of the General Convention provides for the privileges and immunities of the officials of the Organization as follows:

"Section 18. Officials of the United Nations shall:

"(a) be immune from legal process in respect of words spoken or written and in all acts performed by them in their official capacity;

107/ United Nations Treaty Series, vol. 90, 1951, I, No. 1225, p. 52.

"(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 [108] 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."

105. Similar provisions are contained in the Interim Arrangement between the United Nations and Switzerland (see also para. 111 below).

106. Japan agreed to apply article V of the General Convention to the following persons: 109/ (a) the Secretary-General and Assistant Secretaries-General of the United Nations, (b) representatives of organs of the United Nations, (c) the Agent General, the Deputy Agent General and other officials of the United Nations Korean Reconstruction Agency, (d) personal representatives of the Secretary-General, Principal Secretaries, and other United Nations Secretariat officials of organs of the United Nations, (e) any further United Nations Secretariat officials, and (f) any officials of the United Nations specialized agencies serving on any United Nations missions in Korea.

ii. Qualification or extension of specific privileges and immunities

107. The specific privileges and immunities which have been qualified or extended in scope by special agreements, or in respect of which an organ of the United Nations has made recommendations, are summarized below:

(a) Exemption from national income taxation

108. Certain Members stipulated by national legislation or by making reservations to the General Convention (see annex) that exemption from taxation on salaries and emoluments paid by the United Nations to its staff would not be extended to their own nationals. In view of the fact that failure to accord the tax exemption creates inequality among members of the staff of the Organization, the General Assembly had, at its first three sessions, urged Members to take action to remedy the situation. In its

108/ See para. 57 above.
109/ ST/LEG/2, p. 98.

resolution 239 C (III), for example, the General Assembly requested Members which had not yet acceded to the General Convention, or which had acceded to it with reservations to section 18 (b), to take the necessary action, legislative or other, to exempt their nationals employed by the United Nations from national income taxation with respect to the salaries and emoluments paid them by the United Nations, or in any other manner to grant relief from double taxation to such nationals. 110/

109. By the agreement between UNRWA and the Government of the Hashemite Kingdom of the Jordan, 111/ the latter agreed to grant to all internationally recruited members of the UNRWA's staff the privileges and immunities, "including freedom from income and other taxes" provided for under the General Convention.

110. The agreements between UNICEF and Member or non-member States contain the following provisions: 112/

"No tax, fee, toll or duty shall be levied by the Government or any political sub-division thereof or any other public authority on or in respect of salaries or remunerations for personal services paid by the Fund to its officers, employees, or other Fund personnel who are not subjects of ... or permanent residents thereof."

(b) Immunity from national service obligations

111. Under the Interim Arrangement with Switzerland, immunity of United Nations officials from national service obligations is subject to special provisions contained in an annex to the Arrangement 113/ which reads:

"The Secretary-General of the United Nations will communicate to the Swiss Federal Council a list of officials of Swiss nationality liable for service of a military nature.

"The Secretary-General of the United Nations and the Swiss Federal Council will draw up by agreement a limited list of officials of Swiss nationality who will be granted dispensation in view of the office which they hold.

"If other officials of Swiss nationality are called up, the Secretariat of the United Nations, through the Federal Political Department, may ask for postponement or some other appropriate measure."

112. Turkey, in its instrument of accession to the General Convention, made a reservation to the effect that deferment of the second period of military service of Turkish nationals during their service with the United Nations would be arranged in accordance with the procedures specified in the Military Law of Turkey, their reserve status being taken into account provided that they complete their previous period of military service (see annex).

110/ See also G A resolutions 78 (I) and 160 (II). The discussion by the General Assembly of the question of tax equalization resulted in the adoption of a Staff Assessment Plan.

111/ ST/LEG/2, p. 114.

112/ United Nations Treaty Series, vol. 65, 1950, I, p. 14.

113/ G A (I/2), 6th Com., annex 17 (A/175), appendix I, pp. 265 and 266.

(c) Exemption from customs duties

113. By the agreement between the United Nations and France in connexion with the holding of the sixth session of the General Assembly, 114/ France granted to the members of the United Nations Secretariat exemption from customs duties on their personal effects and on any goods which were part of their personal baggage. The United Nations was authorized to import, free of duty, victuals, spirits, tobacco and clothing for sale to members of the Secretariat for personal consumption by themselves and their family. As regards miscellaneous taxation and imposts, Secretariat members were accorded the same exemptions and facilities as members of the Diplomatic Corps regularly accredited for service in France.

114. Egypt agreed 115/ to exempt the Director, Deputy Director and all internationally employed members of UNRWA, as well as members of the Advisory Commission (which was established by the General Assembly to assist UNRWA in the execution of its relief programme), from quarantine, customs and other fees of similar nature when travelling upon official business of UNRWA. The same exemptions were extended by the Hashemite Government of the Jordan. 116/

115. Italy accorded 117/ to the Secretariat staff assigned by the Secretary-General to the Advisory Council for Somaliland the same exemption from customs duties, import prohibitions and restrictions in respect of their personal baggage and articles imported for their personal use as was accorded to officials of comparable rank forming part of diplomatic missions to the Italian Government. These articles were also exempted from all duties and taxes.

116. The agreement between the United Nations and Chile provided, 118/ in connexion with the holding of the twelfth session of the Economic and Social Council in Santiago, that all personal baggage belonging to the officials of the United Nations might be imported and exported from Chile free of all customs and excise or other taxes whatsoever.

117. Both the General Convention and the Interim Arrangement provide that in addition to the privileges and immunities specified for the officials of the United Nations, the Secretary-General and the 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.

iii. Cases in which full diplomatic privileges and immunities are extended to certain categories of officials of the Organization

118. Under the Interim Arrangement, Switzerland was to accord, 119/ if the Secretary-General should so desire, to the chief administrative officer of the United Nations in Switzerland, in respect of himself, his spouse and minor children, diplomatic privileges and immunities.

114/ ST/LEG/2, p. 89.

115/ Ibid., p. 110.

116/ Ibid., p. 115.

117/ Ibid., p. 134.

118/ Ibid., p. 154.

119/ G A (I/2), 6th Com., annex 17 (A/175), appendix I, p. 262.

119. France extended full diplomatic privileges and immunities to the "Directors of the United Nations Secretariat assigned for duty at the sixth session [of the General Assembly] and bearers of United Nations laissez-passer." 120/

120. The agreement between the United Nations and the Republic of Korea provides 121/ that (1) representatives of organs of the United Nations who may exercise official functions in Korea, (2) the Agent General of the United Nations Korean Reconstruction Agency, his Deputies and other officials of the staff of the Agency, (3) the personal representative of the Secretary-General, the Principal Secretary and other United Nations Secretariat staff of organs of the United Nations operating in Korea (4) officials of the United Nations specialized agencies and any further United Nations Secretariat staff who may exercise official functions in Korea "shall enjoy the privileges and immunities, exemptions and facilities as are granted to diplomatic envoys of similar rank in accordance with international law".

121. In connexion with the relief programme of UNRWA, Egypt 122/ and Jordan 123/ agreed to grant to the Director of the Agency, his Deputy and the members of the Advisory Commission, the privileges and immunities normally enjoyed by international custom by diplomatic envoys of equivalent rank.

122. In his letter to the Permanent Representatives of the United Kingdom and France concerning the privileges and immunities of the United Nations Commissioner in Libya, the Secretary-General stated: 124/

"It is noted that the Convention on the Privileges and Immunities of the United Nations does not appear to contain any express provision specifically applicable to an office such as that of the Commissioner in Libya. Nevertheless it is my considered opinion that, in view of the high office which the Commissioner in Libya holds as an agent of this Organization and of the important functions entrusted to him, it would be necessary for the independent exercise of these functions that the Commissioner in Libya enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys and which are accorded to the Secretary-General and the Assistant Secretaries-General of the United Nations under Section 19 of the Convention on the Privileges and Immunities of the United Nations."

The United Kingdom and France agreed to grant diplomatic privileges to the Commissioner in Libya.

123. In exchanging letters with the Secretary-General, the Minister for Foreign Affairs of the Republic of the United States of Indonesia informed 125/ the latter that "in view of clarifying the status of the representatives on the United Nations Commission for Indonesia and the personnel attached to the Commission, the Government of the Republic of the United States of Indonesia confirms that the Principal Secretary and the members of the Secretariat enjoy all privileges and immunities granted to the members of the Diplomatic Corps of similar rank accredited in Indonesia."

120/ ST/LEG/2, p. 89.

121/ Ibid., p. 92.

122/ Ibid., p. 112.

123/ Ibid., p. 114.

124/ Ibid., pp. 123 and 124.

125/ Ibid., p. 126.

124. In connexion with the sessions of the Sub-Commission on the Freedom of Information and of the Press, and of the Economic Commission for Latin America, the Government of Uruguay granted 126/ diplomatic privileges and immunities not only to the Secretary-General and the Assistant Secretaries-General, but also to "high officials of the United Nations" for the duration of their duties including their travel time in the territory of Uruguay.

125. In connexion with the twelfth session of the Economic and Social Council, the Government of Chile undertook 127/ to grant to all officials of the United Nations and to all officials of specialized agencies attending the Conference other than locally recruited personnel, the same privileges and immunities, exemptions and facilities as were accorded to diplomatic envoys of similar rank accredited to the Government of Chile.

iv. The question of privileges and immunities of locally recruited personnel

126. Locally recruited personnel of the United Nations or its organs have been the subject of special provisions in the following agreements.

127. The agreement between the United Nations and the Republic of Korea contains the following provision: 128/

"Locally recruited personnel attached to any United Nations organs operating in Korea shall enjoy immunity from jurisdiction in respect of all acts and functions performed by them in their official capacity. Locally recruited personnel who are considered essential to the work of the United Nations because of their special qualifications, shall enjoy immunity from military or other compulsory service. A list of locally recruited personnel considered essential will be furnished periodically to the Government of the Republic of Korea."

128. After the conclusion of the agreement between the United Nations and Japan on the privileges and immunities of the United Nations in Japan, the Secretary-General acknowledged a letter 129/ from the Foreign Minister of Japan which defined the privileges and immunities of the locally recruited personnel of the United Nations as follows:

"... the Japanese Government, willing to protect the interests of the United Nations in Japan, will extend to locally recruited personnel of the United Nations' organs and missions operating in Japan the same treatment as that accorded to employees of diplomatic missions residing in this country;

"Employees of foreign diplomatic missions whose names have duly been notified to this Ministry

"(1) Receive identification cards issued by this Ministry certifying that they are in the service of such diplomatic missions and stating that necessary steps to facilitate the performance of their official functions will be taken by the authorities concerned;

126/ Ibid., p. 145

127/ Ibid., p. 154.

128/ Ibid., p. 94

129/ Ibid., pp. 102 and 103.

"(2) Are not arrested without prior approval of the head of the mission involved or its member acting on his behalf. However, this will not prevent arrest of the offender in case of flagrant delict in which threat to public safety necessitates immediate action. Such arrests will be made only in connexion with serious crimes such as murder, arson, assault, burglary, etc., while no such actions will be taken in regard to lesser offenses including traffic violations and infringements of laws and regulations concerning economic or financial controls.

"Clauses defining the treatment of the United Nations locally recruited personnel set forth in the preceding paragraphs are included in new instructions, dealing with the treatment of diplomatic agents, members of the Security Forces and foreigners in general which are now being issued by the Metropolitan Police Board. These instructions are expected to give precedents and bases to similar regulations to be adopted by the National Rural Police and other Municipal authorities. You will have been informed that privileges and immunities of foreign diplomatic envoys and their suites have always been regulated in this country by this type of regulation, which is to be construed as the sole authoritative enactment concerning this matter."

129. In the exchange of letters between the Secretary-General and the Italian Observer to the United Nations on the privileges and immunities of the staff of the Advisory Council for Somaliland, it was stated ^{130/} that Italy was prepared to grant the privileges and immunities set forth in the General Convention to "non-indigenous personnel locally recruited but not assigned to hourly rates;". This statement was made the subject of further exchange of letters in which the Secretary-General pointed out that basic privileges and immunities normally accorded under prevailing diplomatic practice and necessary for the exercise of their functions in connexion with the Organization should not be denied to personnel serving the Advisory Council merely because they were autochthonous. It was explained that these basic rights would not be expected to go beyond immunity from jurisdiction or arrest in respect of words spoken or written and acts performed by them in their official capacity. In reply, the Italian Government agreed "to grant local indigenous personnel employed by the Advisory Council the privileges and immunities accorded under international practice to personnel of local nationality engaged by diplomatic and consular missions and acting in their official capacity".

130. The Government of Indonesia, while granting diplomatic privileges and immunities to the personnel attached to the United Nations Commission for Indonesia (see para. 123 above), specified that those privileges and immunities would not apply to locally recruited personnel.

131. The Government of Uruguay, while granting diplomatic privileges and immunities to the high officials of the United Nations (see para. 124 above), stated that "All other officials of the United Nations, including those engaged locally but excluding those paid by the hour, shall enjoy the privileges and immunities enumerated in Section 18" of the General Convention.

132. The Government of Chile also undertook to apply section 18 of the General Convention to locally recruited personnel not paid at hourly rates while it granted diplomatic privileges and immunities to all other officials of the United Nations (see para. 125 above).

^{130/} Ibid., p. 134.

v. Waiver of, and other obligations in connexion with, the privileges and immunities

133. Article V of the General Convention provides:

"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 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."

134. In addition, the General Assembly, on the same day that it approved the General Convention, adopted 131/ the following resolution:

"It has been found that a frequent source of difficulty is road accidents in which motor cars, owned or driven by persons possessing immunity from legal process, are involved.

"It is the intention of the United Nations to prevent the occurrence of any abuse in connection with privileges, immunities and facilities granted to it under Articles 104 and 105 of the Charter and the general convention on privileges and immunities, which determines the details of the application of these articles.

"Therefore the General Assembly instructs the Secretary-General to ensure that the drivers of all official motor-cars of the United Nations and all members of the staff, who own or drive motor-cars, shall be properly insured against third party risks."

c. UNITED NATIONS LAISSEZ-PASSER

135. Article VII of the General Convention provides for the issuance of the United Nations laissez-passer and the facilities to be accorded to the holders of the laissez-passer as follows:

"Section 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents, by the authorities of Members, taking into account the provisions of section 25.

131/ G A resolution 22 E (I).

"Section 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

".....

"Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

"Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide."

136. The same provisions are contained in the Interim Arrangement between the United Nations and Switzerland. Italy undertook to apply Article VII of the General Convention to the Advisory Council for Somaliland. Japan and Korea recognized and accepted the United Nations laissez-passer as a valid travel document in accordance with the provisions of Article VII of the General Convention.

137. The Governments of the United Kingdom and Pakistan have waived visa requirements for holders of the United Nations laissez-passer. The Government of Chile also dispensed with visa requirement for holders of the United Nations laissez-passer in connexion with the holding of the twelfth session of the Economic and Social Council in Santiago.

138. The following Governments have granted visas free of charge to persons connected with an organ of the United Nations established or meeting in their territory: Chile, France, Jordan, Lebanon and Uruguay.

139. The facilities for speedy travel to be accorded to United Nations officials on official business include the granting of priorities and clearance and the prompt completion of any governmental procedures relating to the travel.

3. Privileges and immunities of experts on missions for the United Nations

a. PRIVILEGES AND IMMUNITIES

140. Article VI of the General Convention provides:

"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 connection 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."

The Interim Arrangement with Switzerland and the agreements concluded by the Secretary-General with Japan and Korea made provision to the same effect.

b. APPLICATION OF THE TERM "EXPERTS ON MISSIONS FOR THE UNITED NATIONS" TO MEMBERS OF THE PERMANENT CENTRAL OPIUM BOARD

141. The Economic and Social Council, by resolution 123 E (VI) of 2 March 1948, recommended that Governments should extend to the members of the Permanent Central Opium Board 132/ privileges and immunities along the lines laid down in the General Convention and invited the Governments to report as soon as possible what measures they had taken to carry out this recommendation.

142. Pursuant to this resolution, the Permanent Representative of the United Kingdom in a letter 133/ to the Secretary-General, noted that members of the Permanent Central Opium Board were considered to fall within the category of experts performing missions for the United Nations under Article VI of the General Convention. Other communications to that effect were received by the Secretary-General from the following States: Greece, Switzerland, Denmark, Yugoslavia and Turkey.

c. TRAVEL FACILITIES

143. Section 26 of the General Convention provides that facilities in respect of the applications for visas and facilities for speedy travel shall be accorded to experts and other persons who, though not holders of the United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations. The same provision is contained in the Interim Arrangement between the United Nations and Switzerland.

132/ The Permanent Central Opium Board was established under the 1925 Convention relating to dangerous drugs. Article 19 of the Convention, as amended by the Protocol of 11 December 1946, provided that the members of the Board should be appointed by the Economic and Social Council of the United Nations. See E S C (VI), Suppl. No. 2, pp. 21-23.

133/ ST/LEG/2, p. 120.

d. WAIVER OF IMMUNITY

144. Article VI, section 20, of the General Convention provides that the Secretary-General should waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the United Nations. In the case of the members of the Permanent Central Opium Board referred to above, the communication from the Swiss Federal Political Department contained the following statement: 134/

"With respect to the waiving of the privileges and immunities of a member of the Central Board, it shall be possible to apply either to the Central Board itself or to the Economic and Social Council."

4. *Privileges and immunities of members of the International Court of Justice, the Registrar, officials of the Registry, assessors, agents and counsel of the parties and of witnesses and experts*

145. The Preparatory Commission of the United Nations, having examined Article 105 of the Charter and the relevant provisions of the Statute of the International Court of Justice, considered 135/ that the details of diplomatic privileges and immunities to be accorded to members of the Court when engaged upon the business of the Court, and the privileges and immunities of agents, counsel, and advocates of parties before the Court, necessary to the independent exercise of their duties, at the seat of the Court or elsewhere, should be determined after the Court had been consulted, and that until further action had been taken the rules applicable to the members of the Permanent Court of International Justice should be followed.

146. On 13 February 1946, the General Assembly, upon the recommendation of the Sixth Committee, 136/ which was entrusted with the examination of the report of the Preparatory Commission, adopted resolution 22 C (I) reading as follows:

"1. The General Assembly, with a view to ensuring that the International Court of Justice shall enjoy the privileges, immunities and facilities necessary for the exercise of its functions and the fulfilment of its purposes, in the country of its seat and elsewhere, invites the members of the Court at their first session to consider this question and to inform the Secretary-General of their recommendations.

"2. The General Assembly decides that the question of the privileges and immunities of the Court shall be considered as soon as possible after the receipt of the recommendations of the Court.

"3. The General Assembly recommends that, until further action has been taken, the rules which have been applied to the Permanent Court of International Justice should be observed by Members in relation to the International Court of Justice."

147. Pursuant to this resolution of the General Assembly, the Court entered into negotiations with the Government of the Netherlands for a site agreement. At the same

134/ ST/LEG/2, p. 119.

135/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VII, appendix A, para. 9.

136/ G A (I/1), Plen., pp. 642-644, annex 22 (A/43/Rev.1). See also G A (I/1), 6th Com., p. 48, annex 3 c (A/C.6/33).

time, the Court examined the question of privileges and immunities in its various aspects.

148. The President of the Court, in his letter to the Minister for Foreign Affairs of the Netherlands proposing the site agreement, referred to the recommendation of the Sixth Committee. He further explained 137/ that the reason of the Assembly for dealing separately with the case of the International Court of Justice and for asking it to formulate proposals was that the Statute of the Court, which was annexed to, and formed an integral part of, the Charter, provided for diplomatic privileges for members of the Court and laid down the principle on which privileges and immunities were to be enjoyed by the agents, counsel and advocates of the parties before the Court. Another reason was that the Court was an organism whose members, with their small staff, performed duties of a special character and whose requirements were consequently different from those of the other organs of the United Nations.

149. In its report 138/ to the General Assembly, the Court suggested a number of provisions regarding the privileges and immunities of its members and officials and indicated that the General Assembly might adopt a resolution embodying those provisions to be applied by Members of the United Nations in their respective countries. The Court also asked the General Assembly to declare the site agreement with the Netherlands to be satisfactory. In addition, the report stated that

"As the principal judicial organ of the United Nations, the Court as such, and its chambers, are already furnished with the guarantees of independence necessary for the collective exercise of their functions, by the provisions of the Charter and of the Statute of the Court."

150. The report of the Court was examined by the Sixth Committee at the second part of the first session of the General Assembly. The draft resolution recommended by the Sixth Committee 139/ was adopted by the General Assembly as resolution 90 (I). 140/

151. Provisions regarding privileges and immunities are contained in Article 19, Article 32 (8) and Article 42 (3) of the Statute of the Court. These Articles, together with the Agreement 141/ concluded between the Court and the Netherlands (referred to below as "the Agreement") and approved by General Assembly resolution 90 (I), and the recommendations contained in the same resolution, constitute the totality of privileges and immunities enjoyed, at the seat of the Court and elsewhere, by members of the Court, the Registrar, officials of the Registry, assessors, the agents and counsel of the parties, and the witnesses and experts.

137/ G A resolution 90 (I), annex.

138/ G A (I/2), 6th Com., annex 16 (A/105), p. 246.

139/ G A (I/2), Plen., p. 1510, annex 52 (A/202).

140/ The Swiss Minister in The Hague informed the Registry of the Court that the Swiss Federal Council had decided, on April 30th, 1948, that the recommendation in regard to the privileges and immunities of the Court made by the General Assembly in its resolution 90 (I) would henceforward be applicable in Switzerland. (I C J Yearbook, 1947-1948, p. 28).

141/ For the text of the Agreement, see United Nations Treaty Series, vol. 8, 1947, I, No. 114, pp. 62-69.

a. PRIVILEGES AND IMMUNITIES OF THE MEMBERS OR JUDGES OF THE COURT

152. Under the Statute of the Court: The members of the Court, when engaged on the business of the Court, were to enjoy diplomatic privileges and immunities (Article 19). The salaries, allowances and compensation referred to in Article 32 (1)-(4) were to be free of all taxation (Article 32 (8)).

153. Under the Agreement: (a) The members of the Court of other than Netherlands nationality were, in a general way, to be accorded the same treatment as heads of diplomatic missions accredited to Her Majesty, the Queen of Netherlands. (b) Members of the Court who were of Netherlands nationality were not to be answerable to the local jurisdiction for acts performed by them in their official capacity and within the limits of their duties. (c) Netherlands nationals of whatever rank were to be exempt from direct taxation on the salaries allotted to them from the budget of the Court. (d) The wives and unmarried children of members of the Court, when of non-Netherlands nationality, were to receive the same treatment as the head of the family, if they lived with him and were without profession. The household of the family (governesses, private secretaries, servants et cetera) were to occupy the same position as was accorded in each case to the domestic staff of diplomatic persons of comparable rank.

154. Under General Assembly resolution 90 (I): (a) If a judge, for the purpose of holding himself permanently at the disposal of the Court, resided in some country other than his own, he should be accorded diplomatic privileges and immunities during the period of his residence there. (b) Judges should be accorded every facility for leaving the country where they might happen to be, for entering the country where the Court was sitting, and again for leaving it. On journeys in connexion with the exercise of their functions, they should, in all countries through which they might have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys.

b. PRIVILEGES AND IMMUNITIES OF THE REGISTRAR AND DEPUTY REGISTRAR

155. Under the Agreement: (a) The Registrar of the Court and the Deputy Registrar, when acting for the Registrar, were to enjoy the same privileges, immunities and facilities as those provided for the members of the Court and enumerated in paragraph 153 above. (b) The Deputy Registrar of the Court was, in a general way, to be accorded the same treatment as counsellors attached to diplomatic missions at The Hague.

156. Under General Assembly resolution 90 (I): (a) The facilities accorded to the judges of the Court in connexion with their journeys in all countries (see paragraph 154 (b) above) also applied to the Registrar and to any officer of the Court acting as Registrar. (b) The Registrar, and any officer of the Court acting as Registrar, should, while on the business of the Court, be accorded diplomatic privileges and immunities.

c. PRIVILEGES AND IMMUNITIES OF THE OFFICIALS OF THE COURT

157. Under the Agreement: (a) The higher officials of the Court -- first secretaries and secretaries -- were, in a general way, to be accorded the same treatment as secretaries attached to diplomatic missions at The Hague; the other officials of the Court were to be treated as officials of comparable rank attached to diplomatic missions at The Hague. (b) The provisions regarding immunity from local jurisdiction, exemption from direct taxation on salaries and treatment of wives and unmarried children as accorded to members of the Court (see paragraph 153 (b), (c), (d) above), were also to apply to higher officials of the Court.

158. Under General Assembly resolution 90 (I): Officials of the Court should enjoy, in any country where they might be on the business of the Court, or in any country through which they might pass on such business, such privileges, immunities and facilities for residence and travel as might be necessary for the independent exercise of their functions.

d. PRIVILEGES AND IMMUNITIES OF THE ASSESSORS OF THE COURT AND THE AGENTS, COUNSEL AND ADVOCATES OF THE PARTIES

159. Under the Statute of the Court: "The agents, counsel and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties" (Article 42 (3)).

160. Under the Agreement: "The assessors of the Court and the agents, counsel and advocates of the Parties, shall be accorded such privileges, immunities and facilities for residence and travel as may be required for the independent exercise of their functions."

161. Under General Assembly resolution 90 (I): (a) The agents, counsel and advocates before the Court should be accorded, during the period of their missions, including the time spent on journeys in connexion with their missions, the privileges and immunities provided for in Article IV, sections 11, 12 and 13 of the General Convention (see paragraph 85 above) under the conditions of Article IV, section 15 of that Convention (see footnote 88 above). (b) Assessors of the Court should be accorded, during the period of their missions, including the time spent on journeys in connexion with their missions, the privileges and immunities provided for in Article VI, section 22, of the General Convention (see paragraph 140 above).

e. PRIVILEGES AND IMMUNITIES OF WITNESSES AND EXPERTS

162. Under the Agreement: Witnesses and experts should be accorded the immunities and facilities necessary for the fulfilment of their mission.

163. Under General Assembly resolution 90 (I): Witnesses, experts and persons performing missions by order of the Court should be accorded, during the period of their missions, including the time spent on journeys in connexion with their missions, the privileges and immunities provided for in Article VI, section 22, of the General Convention.

f. UNITED NATIONS LAISSEZ-PASSER

164. In its resolution 90 (I), the General Assembly

"Recommends that:

"(a) The authorities of Members should recognize and accept United Nations laissez-passer, issued by the International Court of Justice to the members of the Court, the Registrar and the officials of the Court, as valid travel documents, taking into account the provisions of sub-paragraph (b).

"(b) Applications for visas (where required) from the judges of the Court and the Registrar should be dealt with as speedily as possible. All other holders of laissez-passer should receive the same facilities when the applications for visas are accompanied by a certificate that they are travelling on the business of the Court. In addition, all holders of laissez-passer should be granted facilities for speedy travel.

"(c) Similar facilities to those specified in sub-paragraph (b) should be accorded to experts and other persons who, though not the holders of United Nations laissez-passer delivered by the International Court of Justice, have a certificate that they are travelling on the business of the Court."

165. Such laissez-passer have been prepared and issued by the Court since the summer of 1950. They are similar in form to the laissez-passer issued by the Secretary-General of the United Nations to his staff. The States concerned have received due notification of this fact. Those listed below have informed the Registry that they have taken the necessary steps to ensure that such laissez-passer would be considered as valid travel documents within their territory: 142/ Australia, Belgium, Bolivia, Haiti, Mexico, New Zealand, Nicaragua, Norway, Pakistan, Peru, and the Philippines.

g. WAIVER OF IMMUNITY

166. Both in the Agreement and in the General Assembly resolution, it was stated that privileges and immunities were granted in the interests of the good administration of international justice and not for the personal benefit of the individuals themselves. On this basis, the duty to waive the immunity of any official of the Registry was to be exercised by the Registrar, with the approval of the President of the Court. In the case of the Registrar, this duty was to rest with the Court. In the case of the agents, counsel and advocates before the Court, assessors of the Court, as well as witnesses, experts and persons performing missions by order of the Court, this duty was to rest with the appropriate authority.

D. Article 105 (3)

1. Convention proposed by the General Assembly

167. The Preparatory Commission of the United Nations, while recommending that the General Assembly, at its first session, should make recommendations with a view to determining the details of the application of Article 105 (1) and (2) of the Charter, or propose conventions to the Members of the United Nations for this purpose, transmitted a draft convention on privileges and immunities for the consideration of the General Assembly. 143/

168. At the first part of the first session of the General Assembly, the Sixth Committee appointed a Sub-Committee on Privileges and Immunities to consider the recommendations of the Preparatory Commission and to present a preliminary report on the most appropriate methods of implementing the provisions of Article 105. The Sub-Committee examined the respective advantages of (a) the Assembly making recommendations, and (b) the Assembly proposing conventions to the Members of the United Nations, and reached the conclusion that the latter method was preferable. In support of its conclusions the Sub-Committee gave three main reasons: 144/

"... In the first place, it was thought that the immunities necessary for the fulfilment of the purposes of the Organization and the independent exercise of their functions by its officials and by the representatives of Members should be laid down in a manner which was as precise as possible.

142/ I C J Yearbook 1950-1951, p. 28.

143/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VII, paras. 3 and 4 and appendix B.

144/ G A (I/1), 6th Com., p. 44, annex 3 (A/C.6/17).

Secondly, that the method should be adopted which would be likely to lead to the greatest uniformity in application; and, thirdly, that the procedure should be such as best to facilitate the passing by Members of the necessary domestic legislation. All these three reasons pointed to the adoption of a Convention as the best course."

169. The Sixth Committee adopted unanimously the recommendation of the Sub-Committee that the General Assembly should propose a convention to all Members and asked the Sub-Committee to draft such a convention. 145/ The Convention on the Privileges and Immunities of the United Nations (referred to earlier in this study as "the General Convention") thus drafted 146/ was approved by the General Assembly in resolution 22 A (I) and submitted to every Member for accession. Accession is effected by deposit of an instrument with the Secretary-General (for accessions thus far, see annex).

170. At the second part of its first session, the General Assembly, having considered a report by the Secretary-General on the state of accessions to the General Convention, adopted resolution 93 (I) 147/ which invited Members of the United Nations to accede at as early a date as possible to the General Convention and recommended

"... that Members, pending their accession to the Convention, should follow, so far as possible, the provisions of the Convention in their relations with the United Nations, its officials, the representatives of its Members and experts on missions for the Organization."

171. In addition to the accessions by Members to the General Convention, application of the provisions of the Convention has been extended by means of special agreements concluded by United Nations organs with non-member States (see paragraph 13 above) and with Members which had not deposited their instruments of accession (see paragraph 18 above).

172. In the following two cases where the activities of the United Nations are carried out in all parts of the world, a clause relating to the application of the General Convention has been inserted in the agreements concerning such activities concluded by the competent organs of the United Nations with Member or non-member States.

(1) The agreements concluded by UNICEF (a) with Members which had acceded to the General Convention, (b) with Members which had not acceded to the General Convention, 148/ (c) with the United Kingdom on behalf of its overseas territories, 149/

145/ G A (I/1), 6th Com., p. 16, 7th mtg.

146/ Ibid., p. 45, annex 3 a (A/C.6/31). The draft submitted by the Sub-Committee was approved by the Sixth Committee with minor modifications (ibid., pp. 26-28, 11th mtg.).

147/ See also General Assembly resolution 259 (III) of 8 December 1948 which again invited Members which had not yet acceded to the Convention to do so at the earliest possible moment.

148/ United Nations Treaty Series, vol. 68, 1950, I, No. 888, p. 96 (Burma); II, No. 239, p. 256 (Ceylon); vol. 65, 1950, I, No. 838, p. 105 (Colombia); No. 816, p. 27 (Czechoslovakia); No. 826, p. 60 (Ecuador); vol. 68, 1950, II, No. 238, p. 254 (Indonesia); vol. 65, 1950, I, No. 834, p. 80 (Peru); vol. 68, 1950, I, No. 886, p. 94 (Siam).

149/ Ibid., vol. 65, 1950, No. 820, p. 50 (Brunei); No. 821, p. 54 (Hong Kong); No. 822, p. 54 (Federation of Malaya); No. 823, p. 56 (North Borneo); No. 824, p. 56 (Sarawak); No. 825, p. 58 (Singapore); No. 828, p. 64 (British Honduras); No. 837, p. 86 (Malta).

and (d) with non-member States, 150/ contained an article on "Privileges and Immunities", the model text of which reads as follows: 151/

"The Government will grant to the Fund and its personnel the privileges and immunities contained in the general convention on privileges and immunities adopted by the General Assembly of the United Nations on 13 February 1946."

(2) The basic agreements concluded by the Technical Assistance Administration (TAA) or by the Technical Assistance Board (TAB) with the Governments of Members for the provision of technical assistance also contains a clause which reads: 152/

"The Government shall, in conformity with the Convention on the Privileges and Immunities of the United Nations [and the Convention on Privileges and Immunities of the Specialized Agencies] to which it has acceded, accord to the Organization[s] and its [their] experts all the privileges and immunities for which provision is made in that [those] Convention[s]."

173. In cases where the contracting Governments have not acceded to the Convention(s), the clause would read: 153/

"The Government undertakes, in so far as it is not already legally bound to do so, to apply to the Organization[s], its [their] property, funds and assets and to its [their] experts and other staff, all the applicable provisions of the Convention on the Privileges and Immunities of the United Nations [and the Convention on the Privileges and Immunities of the Specialized Agencies]."

174. The foregoing provision is also contained in the basic agreement between TAB and the Government of Italy for the provision of technical assistance to the Trust Territory of Somaliland. 154/

175. The basic agreement between TAB and the United Kingdom for the provision of technical assistance to the Trust, Non-Self-Governing and other Territories for whose international relations the Government of the United Kingdom is responsible, contains the following clause: 155/

"The Government of each Territory which receives technical assistance under the Basic Agreement or any Supplementary Agreement shall, in its Territory, apply to the Organizations their funds, property and assets, and to their staff the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies."

150/ United Nations Treaty Series, vol. 68, 1950, II, No. 237, p. 252 (Austria); No. 232, p. 223 (Bulgaria); No. 233, p. 224 (Finland); No. 234, p. 226 (Hungary); No. 235, p. 228 (Romania).

151/ Ibid., vol. 65, 1950, I, pp. 13 and 14.

152/ See, for example, United Nations Treaty Series, vol. 78, 1951, I, No. 1015, p. 165 (TAA and Yugoslavia); vol. 81, 1951, I, No. 1075, p. 261 (TAB and El Salvador).

153/ Ibid., vol. 90, 1951, I, No. 1225, p. 45 (TAA and Thailand); vol. 81, 1951, I, No. 1075, p. 261 (TAB and Burma).

154/ Ibid., vol. 97, 1951, II, No. 273, p. 291.

155/ Ibid., vol. 92, 1951, I, No. 1258, p. 27.

2. Recommendations of the General Assembly

176. The Sub-Committee on Privileges and Immunities established by the Sixth Committee at the first part of the first session of the General Assembly, while recommending a convention as the best method to implement Article 105, stated at the same time that the adoption of a convention would not exclude the possibility of the adoption, in addition, of recommendations by the General Assembly upon particular points which were not fully dealt with in the Convention.

177. The General Assembly has, in practice, made recommendations of the nature referred to above. Its recommendation to use certain provisions of the General Convention as a guide in considering which members of the staff of delegations were to enjoy privileges and immunities under the Headquarters Agreement is an example. The General Assembly has also adopted recommendations which determine in detail the privileges and immunities of the members and officials of the International Court of Justice in countries other than the country of the seat of the Court. All these recommendations have been summarized in the Analytical Summary under A, B and C above.

3. Other actions of the General Assembly

178. The General Assembly has approved (1) the Headquarters Agreement between the United Nations and the United States of America, and (2) the Agreement between the International Court of Justice and the Netherlands. Both these Agreements set forth in detail the privileges and immunities of the Organization and of the Court in the respective host countries.

179. In its resolution 259 (III), the General Assembly stated that the agreements 156/ regarding the Headquarters of the United Nations were complementary to the General Convention, "since these instruments taken together are intended to define the status of the United Nations in the country where these headquarters are located". Members

156/ The agreements referred to are the Headquarters Agreement and the Interim Headquarters Agreement.

The drafting of the Headquarters Agreement took place in several stages. The first draft was prepared by the Preparatory Commission (Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, appendix C to chap. VII) and was used as a basis of discussion by the Sixth Committee at the first part of the first session of the General Assembly. The General Assembly, by its resolution 22 B (I), transmitted the draft agreement of the Sixth Committee to the Secretary-General for use as a basis for discussion in the negotiation of the Headquarters Agreement. A joint report was submitted by the Secretary-General and the Negotiating Committee on the negotiations resulting from preliminary discussion which included a revised draft agreement and the opinion of the United States Attorney General regarding the effect under United States law of the proposed agreement (G A (I/2), 6th Com., p. 408, annex 25 (A/67 and A/67/Add.1)). By its resolution 99 (I) of 14 December 1946, the General Assembly, having decided that the permanent Headquarters of the United Nations should be located in the city of New York, authorized the Secretary-General to negotiate and conclude with the appropriate authorities of the United States an agreement concerning arrangements required as a result of this decision and using the draft agreement contained in the above-mentioned joint report as a guide in such negotiations. The final text of the Agreement was approved by the General Assembly in its resolution 169 (II) of 31 October 1947.

which had not yet acceded to the General Convention were, therefore, invited by the General Assembly to deposit their instruments of accession to the said Convention with the Secretary-General at the earliest possible moment.

180. By clear implication, therefore, the approval of the Headquarters Agreement, or of the Agreement between the International Court of Justice and the Netherlands was an action taken by the General Assembly under Article 105 (3).

ANNEX

Member States which have acceded to the Convention on the
Privileges and Immunities of the United Nations

<u>State</u>	<u>Date of deposit of the instrument</u>
Afghanistan	5 September 1947
Australia	2 March 1949
Belgium	25 September 1948
Bolivia	23 December 1949
Brazil	15 December 1949
Byelorussian Soviet Socialist Republic, With the following reservation:	
<p>"The Byelorussian Soviet Socialist Republic does not consider itself bound by the provision of Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court and, in regard to the competence of the International Court in differences arising out of the interpretation and application of the Convention, the Byelorussian Soviet Socialist Republic will, as hitherto, adhere to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provision contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive."</p>	
Canada	22 January 1948
<p>With the reservation that exemption from taxation imposed by any law in Canada on salaries and emoluments shall not extend to a Canadian citizen residing or ordinarily resident in Canada.</p>	
Chile	15 October 1948
Costa Rica	26 October 1949
Denmark	10 June 1948
Dominican Republic	7 March 1947
Egypt	17 September 1948
El Salvador	9 July 1947
Ethiopia	22 July 1947

<u>State</u>	<u>Date of deposit of the instrument</u>
France	18 August 1947
Greece	29 December 1947
Guatemala	7 July 1947
Haiti	6 August 1947
Honduras	16 May 1947
Iceland	10 March 1948
India	13 May 1948
Iran	8 May 1947
Iraq	15 September 1949
Israel	21 September 1949
Lebanon	10 March 1949
Liberia	14 March 1947
Luxembourg	14 February 1949
Netherlands	19 April 1948
New Zealand	10 December 1947
<p>With the reservation that exemption from rates imposed by any law in New Zealand or taxation imposed on salaries and emoluments, by any law in New Zealand shall not extend to a person who is a British subject and who is domiciled and employed in New Zealand.</p>	
Nicaragua	29 November 1947
Norway	18 August 1947
Pakistan	22 September 1948
Panama	27 May 1947
Paraguay	2 October 1953
Philippines	28 October 1947
Poland	8 January 1948
Sweden	28 August 1947
Syria	29 September 1953

StateDate of deposit of
the instrument

Turkey

22 August 1950

With the following reservations: a/

"(a) The deferment, during service with the United Nations, of the second period of military service of Turkish nationals who occupy posts with the said Organization, will be arranged in accordance with the procedures provided in Military Law No. 1111, account being taken of their position as reserve officers or private soldiers, provided that they complete their previous military service as required under Article 6 of the above-mentioned Law, as reserve officers or private soldiers.

"(b) Income obtained from businesses and undertakings outside the political activity of the United Nations and of a commercial nature shall be subject to the provisions of our laws on direct taxation.

"(c) When goods belonging to the United Nations imported into Turkey under customs exemptions are sold in Turkey, they shall be subject to import duties and charges in accordance with Article 4 of the Customs Law.

"(d) Purchases of land and immovables in Turkey by the United Nations are subject to the conditions of purchase applied to foreigners.

"All goods bought by the United Nations which are not exported but utilized and consumed in Turkey are also subject to the provisions of the laws governing taxation on consumption and transactions and other laws concerning goods of the same kind.

"(e) Turkish nationals entrusted by the United Nations with a mission in Turkey as officials of the Organization are subject to the taxes payable by their fellow citizens. They must make an annual declaration of their salaries in accordance with the provisions set forth in Chapter 4, Section 2, of Law No. 5421 concerning income tax."

Ukrainian Soviet Socialist Republic

20 November 1953

With the following reservation:

"The Ukrainian Soviet Socialist Republic does not consider itself bound by the provision of Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court and, in regard to the competence of the

a/ The original text was in Turkish; its translation has been provided by the Secretariat.

StateDate of deposit of
the instrument

International Court in differences arising out of the interpretation and application of the Convention, the Ukrainian Soviet Socialist Republic will, as hitherto, adhere to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provision contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive".

Union of Soviet Socialist Republics

22 September 1953

With the following reservation:

"The Soviet Union does not consider itself bound by the provision of Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court and, in regard to the competence of the International Court in differences arising out of the interpretation and application of the Convention, the Soviet Union will, as hitherto, adhere to the position that, for the submission of a particular dispute for settlement by the International Court, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provision contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive".

United Kingdom of Great Britain and Northern Ireland

17 September 1946

Yugoslavia

30 June 1950

Chapter XVII

TRANSITIONAL SECURITY ARRANGEMENTS

