

# ARTICLES 104 AND 105

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## 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. The organization and presentation of material in the present study follow closely those in the corresponding study in volume V of the Repertory. While the general outline established in the Repertory has been maintained, the sub-headings under sections I,B,2., I,B,3., I,B,4., II,C,1., II,C,3., II,C,4., and II,D., have been omitted owing to the lack of new material or to facilitate the treatment of the supplementary material. In one case, it has been found necessary to insert a new sub-heading to cover a question that had arisen in the period under review, i.e., the right of the United Nations to sail vessels under its own flag. This question bears on Article 104 and is examined in section II,A,2.

2. The present study, like the previous study, is confined to the practice of United Nations Organs. It does not deal with enabling legislation of individual States and decisions of national courts relating to the privileges and immunities of the United Nations.

## I. GENERAL SURVEY

## A. Operation of Charter provisions

3. There is no new material bearing on the exclusive operation of Articles 104 and 105.

## B. Implementation of Articles 104 and 105

1. *By General Convention*

4. Between 1 September 1954 and 1 September 1956, six Member States have acceded to the Convention on the Privileges and Immunities of the United Nations, including four Members whose accessions were accompanied by reservations regarding certain provisions of the Convention (see Annex). The total number of accessions has therefore reached forty-nine.

2. *By special agreements on privileges and immunities*

5. By an exchange of letters between the United Nations High Commissioner for Refugees and the Permanent Delegation of Colombia, the Government of Colombia declared that although it had not yet ratified the Convention on Privileges and Immunities of the United Nations, it had approved and ratified the Charter of the United Nations, under Article 105 (2) of which Member States were obliged to grant United Nations officials "such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization." It was in pursuance of this provision that the General Assembly, on 13 February 1946, adopted a resolution approving the said Convention. As a Member State, Colombia was therefore prepared to be bound by that resolution in respect of the status of the Representative of the United Nations High Commissioner for Refugees and to grant the said Representative the privileges and immunities referred to in Article V of the said Convention.

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*

6. An over-all agreement <sup>1/</sup> between the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the Government of Lebanon was concluded on 26 November 1954, in the form of an exchange of notes signed by the Minister for Foreign Affairs of the Lebanese Republic and the Director of UNRWA, together with an aide-memoire setting out a specific arrangement for its implementation. In this agreement, the Government of Lebanon declared its readiness to interpret the Convention on the Privileges and Immunities of the United Nations in accordance with international practice (see also paragraph 25 below).

7. The competent organs of the United Nations continued to conclude agreements with Member and non-member States concerning the activities of the United Nations Children's Fund and concerning technical assistance. These agreements contained clauses relating to the privileges and immunities similar to those reported in the Repertory. <sup>2/</sup>

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<sup>1/</sup> See Annual Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, G A (X), Suppl. No. 15, (A/2978), p. 35.

<sup>2/</sup> See in the Repertory, vol. V, under Articles 104 and 105, paras. 103 and 110.

4. *By other decisions and actions of United Nations organs* 3/

8. On 15 December 1955, the General Assembly adopted resolution 973 (X) on the "Use of income derived from the Staff Assessment Plan" which bears on the question of immunity from national taxation on salaries and emoluments paid by the United Nations to its staff members (see paragraphs 30-34 below).

9. The International Law Commission, at its seventh and eighth sessions, discussed a question bearing on Article 104, namely, the right of the United Nations and other international organizations to sail ships exclusively under their own flags. The Commission took note of certain proposals without making any decision (see paragraphs 13-23 below).

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Article 104

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

##### a. CAPACITY TO CONTRACT

10. The United Nations and its organs, in the performance of their functions, have continued to enter into a variety of contracts of a private law character. For example, the Director of UNRWA, in his annual report to the General Assembly, stated: 4/

"... Large amounts of money are spent annually, either in the purchase of supplies or in the hiring of services, involving the conclusion of contracts. These contracts sometimes give rise to disputes and claims which, unless settled by direct negotiations, are generally referred to arbitration. The Agency is currently engaged in several arbitration cases. In Lebanon, for example, a case has arisen out of a loan agreement; in Syria, out of a contract for the drilling of certain wells; in Jordan, out of a transport contract, etc. ...."

3/ In some cases, an organ of the United Nations, when drafting an international instrument the subject matter of which fell within its competence, had considered the privileges and immunities of a body to be set up under that instrument. The Commission on Human Rights, for example, when examining the draft international covenant on civil and political rights, had discussed and rejected two texts concerning the privileges and immunities of the Committee on Human Rights to be established under the covenant. During the discussion, the view was expressed that it might be better to provide for a reference to the Convention on the Privileges and Immunities of the United Nations with particular emphasis on its Articles V and VI which dealt with the privileges and immunities of the "officials" and of the "experts" of the United Nations. It was doubted, however, whether the provisions of any international instrument could be automatically applied to members of the Committee. It was questioned whether it was correct and even advisable in view of the high qualifications of the members of the Committee to refer to them as "experts" within the meaning of the Convention. For a summary of the discussion, see Annotations on the text of the draft International Covenant on Human Rights, G A (X), annexes, a.i. 28 (Part II), A/2929, paras. 143-146, pp. 96 and 97.

4/ G A (IX), Suppl. No. 17 (A/2717), p. 31 (annex G, para. 6).

UNRWA has adopted a policy of inserting an arbitration clause in most of its commercial contracts. The present clause provides that, if the parties to a dispute are unable to choose an arbitrator who is mutually acceptable to them, one will be appointed by the President of the Court of Arbitration of the International Chamber of Commerce. <sup>5/</sup>

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

11. No new problem has arisen regarding the exercise by the United Nations of its capacity to acquire and dispose of movable and immovable property in the period under review.

c. CAPACITY TO INSTITUTE LEGAL PROCEEDINGS

12. In some cases, United Nations organs had to institute proceedings in local courts. UNRWA, for example, instituted court proceedings against suppliers who had failed to carry out their obligations. There were also several cases pending in the various host countries for recovery of overdue instalments on loans. <sup>6/</sup>

2. *The question of international personality of the Organization*

a. THE RIGHT OF THE UNITED NATIONS TO SAIL VESSELS UNDER ITS OWN FLAG

13. The attention of the International Law Commission was drawn to a question closely related to the international personality of the United Nations, namely, whether the United Nations had the right to register its own ships and sail them under its own flag. The proceedings before the Commission and its conclusions are summarized below.

14. The International Law Commission at its seventh session considered the provisional articles concerning the régime of the high seas. At its 320th meeting held on 27 June 1955, the Commission adopted draft article 4 on the "right to a flag" under which each State might fix the conditions for the registration of ships in its territory and the right to fly its flag. The Commission then discussed a letter <sup>7/</sup> from the Legal Counsel of the United Nations, relating to the flag and registry of ten fishing vessels owned by the United Nations. The vessels had been built in Hong Kong for the United Nations Korean Reconstruction Agency (UNKRA), taken to Pusan, Korea, and turned over to Korean nationals. They had been navigated from Hong Kong to Pusan under the United Nations flag and registry, since British or Korean registry was unavailable by reason of the vessels' ownership while it was deemed inappropriate to register the vessels in, for instance, Liberia, where registry could easily have been obtained, but with which country the vessels had no link whatsoever. In view of the possible occurrence in the future of cases of this kind, the Legal Counsel of the United Nations thought it desirable that the Commission's provisional articles concerning the régime of the high seas should at least not exclude the possibility of registration by an international organization of its own ships. At the same time, he called the Commission's attention to the questions of jurisdiction and law applicable on board vessels under international registration.

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<sup>5/</sup> G A (X), Suppl. No. 15 (A/2978), p. 34 (annex G, para. 7).

<sup>6/</sup> *Ibid.*, p. 34 (annex G, para. 8).

<sup>7/</sup> For text of the letter, see A/CN.4/SR.320, para. 68.

15. There was a brief debate in the Commission. <sup>8/</sup> Some members of the Commission considered that the United Nations and other internationally recognized legal entities were juridical persons fully entitled to own ships and to protect them in fulfilling the purposes of the organizations concerned. One of these members proposed <sup>9/</sup> that a paragraph be added either to article <sup>4</sup> or to its comment stating that the provisions of that article did not exclude the right which the United Nations and other international organizations endowed with the same legal capacity might have to register and fly their flags on ships owned or used by them in an international service. He invoked Article 104 in support of his proposal. Article 104, he said, clearly stated that the Organization enjoyed in the territory of each of its Member States such legal capacity as might be necessary for the exercise of its functions and the fulfilment of its purposes. The legal capacity which it enjoyed in the actual territory of the Member States belonged to it a fortiori on the high seas. Article 104 gave a blank check to the United Nations in respect of such matters as registering ships and allowing them to fly its flag. If the Commission were merely to take note of the letter from the Legal Counsel without at the same time stating that it did not exclude the right that an international organization might have in the matter, it would be casting a doubt on a subject which was covered by a very explicit Article of the Charter.

16. Certain members of the Commission pointed out that the United Nations was not a State and did not possess any legislation of its own. Moreover, a ship's flag implied not only a nationality but also the submission to a particular legal system which would govern all the legal problems connected with the ship on the high seas. The United Nations flag could not possibly have such implications. It was therefore urged that the matter required more careful study.

17. The Chairman of the Commission proposed that the Commission should at the present stage confine itself to stating that it intended to examine the question at a later date. The proposal was adopted <sup>10/</sup> by 10 votes to 1, with 1 abstention. Accordingly, the following paragraph was included in the comment to article <sup>4</sup> of the provisional articles concerning the regime of the high seas: <sup>11/</sup>

"The question was raised whether the United Nations and possibly other international organizations also should be granted the right to sail vessels exclusively under their own flags. The Commission recognized the great importance of this question. Member States will obviously respect the protection exercised by the United Nations over a ship where the competent body has authorized the vessel to fly the United Nations flag. It must, however, not be forgotten that the legal system of the flag State applies to the vessel authorized to fly the flag. In this respect the flag of the United Nations or that of another international organization cannot be assimilated to the flag of a State. The Commission was of the opinion that the question calls for further study, and it proposes to undertake such study in due course."

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<sup>8/</sup> A/CN.4/SR.320, paras. 69-104.

<sup>9/</sup> Ibid., para. 71. The proposal was rejected by the Commission by 4 votes to 3, with 4 abstentions. See ibid., para. 103.

<sup>10/</sup> Ibid., para. 104.

<sup>11/</sup> Report of the International Law Commission covering the work of its seventh session, G A (X), Suppl. No. 9, (A/2934), p. 4.

18. Before the opening of its eighth session, the International Law Commission received written comments from various Governments on the provisional articles concerning the regime of the high seas. <sup>12/</sup> One of the Governments suggested <sup>13/</sup> that the study to be undertaken by the Commission on the right of the United Nations to sail vessels under its flag should also cover the partly related question of the right of the United Nations and possibly other international organizations to fly aircraft under their own colours. Another Government considered that the matter might be simplified by making a distinction between the legal consequences implicit in the conception of the nationality of a ship and the use for international purposes of recognized signs and insignia in order to secure a certain measure of protection.

19. At the eighth session of the International Law Commission, the Special Rapporteur submitted a supplementary report on "The right of international organizations to sail vessels under their flag". <sup>14/</sup> This report stated that the questions to be answered seemed to fall into three categories: (1) those connected with the possibility of the United Nations or other international organizations owning vessels; (2) those relating to the flag, registration, nationality and protection of vessels owned by the United Nations or other international organizations, and (3) those concerning the law applicable to such vessels and the persons and chattels aboard. When replying to the questions thus summarized, it might be helpful to keep in mind the Advisory Opinion of the International Court of Justice of 11 April 1949 on reparation for injuries suffered in the service of the United Nations in which the Court stated that Member States, by entrusting certain functions to the United Nations, with the attendant duties and responsibilities, had clothed it with the competence required to enable those functions to be effectively discharged. The Court concluded that the Organization was an international person which meant that it was a subject of international law and capable of possessing international rights and duties. <sup>15/</sup> It was pointed out in the Supplementary Report that the Organization certainly had the right to own ships since otherwise it might not be in a position to discharge its functions effectively. It was further pointed out that no difficulty could arise over the question whether the United Nations might register the ships it owned with a particular State and have them fly the flag of that State. Therefore, the only question was: "If no convenient registration, or no registration at all, is available, has the Organization then, or should it have, the right to register them with itself and fly the United Nations flag on them?"

20. The supplementary report stated that the establishment of a "United Nations registration" would not be a solution. The legal status of a United Nations ship not registered with a State, whether on the high seas, in territorial waters or in a port, would be highly problematical, and the same applied to the crew and possible passengers. The United Nations, being unable to offer the same guarantee as States for the orderly use of the seas, under general international law was not entitled to register its own ships.

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<sup>12/</sup> See A/CN.4/99/Add.1, pp. 3 and 4, 24 and 25 and 86; A/CN.4/97/Add.1, p. 5.

<sup>13/</sup> A/CN.4/99/Add.1, pp. 24 and 25.

<sup>14/</sup> A/CN.4/103.

<sup>15/</sup> See in the Repertory, vol. V, under Articles 104 and 105, paras. 44 and 45.

21. As a possible solution of the problems involved, the Special Rapporteur proposed that consideration be given to the following measures: (a) Member States would recognize a special United Nations registration which would entitle the ship to fly the United Nations flag and to special protection by the United Nations; (b) the Secretary-General would be authorized to conclude, as the need arose, a special agreement with one or more Members by which those Members would allow ships to fly their flag in combination with the United Nations flag; (c) Members would undertake in a general agreement to extend their legislation to ships concerning which a special agreement between them and the Secretary-General had been concluded, and to assimilate such ships to their own ships, in so far as that would be compatible with the United Nations interests; (d) Members would declare in the same general agreement that they recognized the special agreements between the Secretary-General and other Members and extend to the United Nations all international agreements relating to navigation to which they were parties.

22. There was a brief discussion of the Special Rapporteur's Supplementary Report at the 347th meeting of the International Law Commission. <sup>16/</sup> It was said in support that the United Nations and other recognized international organizations should have the right to own, possess and/or operate ships for the effective discharge of their functions and to sail such ships on the high seas under their respective flags, and that such ships were entitled to be registered in any of the Member States of the United Nations or of the international organization as the case may be. Another view was that the idea of a special United Nations registration entailing the right to fly the United Nations flag was an innovation, and that since vessels were already entitled by State legislation to fly the flag of their State, there could be no question of that right being extended under a special agreement between the Secretary-General and a Member of the United Nations. The essential basis was the legislation of the State and not any special registration of the United Nations. It would be sufficient simply to say that the Charter of the United Nations authorized registration by the United Nations of a vessel in the territory of a Member State as required by the exercise of its functions and for the fulfilment of its purposes.

23. As a result of discussion, it was agreed <sup>17/</sup> that there should not be an article dealing with the right of international organizations to sail vessels under their flags and that the Special Rapporteur's proposals should form part of the commentary to article 4. The proposals submitted by the Special Rapporteur were reproduced, with drafting changes, in the report of the International Law Commission to the eleventh session of the General Assembly as follows: <sup>18/</sup>

"(a) The Members of the United Nations would recognize a special United Nations registration entitling the ship to fly the United Nations flag and to special protection by the United Nations;

"(b) The Secretary-General of the United Nations would be authorized to conclude, as occasion may require, a special agreement with one or more Member States by which such Member States would allow the ship concerned to fly their flag in combination with the United Nations flag;

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<sup>16/</sup> I L C Yearbook, 1956, vol. I, Summary Records of the Eighth Session, 347th mtg., paras. 1-31.

<sup>17/</sup> Ibid., para. 32.

<sup>18/</sup> G A (XI), Suppl. No. 9 (A/3159), p. 25.

"(c) The Members of the United Nations would undertake, in a general agreement, to extend their legislation to ships concerning which a special agreement between them and the Secretary-General, as referred to in subparagraph (b), has been concluded, and to assimilate such ships to their own ships, in so far as that would be compatible with the United Nations interests;

"(d) The Members of the United Nations would declare in the same general agreement that they recognize the special agreements between the Secretary-General and other Members of the United Nations, referred to in subparagraph (b), and that they extend to the United Nations all international agreements relating to navigation to which they are a party."

It was further stated in the report that

"The Commission, after discussion, merely took note of these proposals. Having regard to the diversity of the problems raised by this question, the Commission was unable to take a decision. It has, however, inserted these proposals in its report, since it regards them as useful material for any subsequent study of the problem."

## B. Article 105 (1)

### \*\* 1. *Scope of the term "the Organization"*

#### 2. *Privileges and immunities of the Organization*

##### a. PROPERTY, FUNDS AND ASSETS

##### i. Privileges and immunities under the General Convention

24. It was stated 19/ in the corresponding study in the Repertory that the General Convention provided for the inviolability of the premises of the United Nations. In a few cases where attempts were made to serve summonses on the premise of an organ of the United Nations, that organ had requested that the summonses be forwarded through the Ministries for Foreign Affairs "in order that the inviolability of its offices and premises be respected". 20/

##### ii. Additional privileges and immunities under special agreements

##### (a) Exemption from taxation and customs duties

25. Under the agreement between UNRWA and Lebanon referred to in paragraph 6 above, the Government of Lebanon confirmed 21/ the exemption of the Agency from taxes on certain supplies and from landing charges in respect of its airplane. The Government further agreed to reimburse port charges previously paid by the Agency, as well as the difference between rail and road transport costs.

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19/ See in the Repertory, vol. V, under Articles 104 and 105, para. 53.

20/ G A (X), Suppl. No. 15, p. 34 (annex G, para. 12).

21/ Ibid., p. 35 (annex G, para. 21).

- \*\* (b) Favourable rates of exchange
- \*\* (c) Exemption from inspection of property
- \*\* (d) Control and authority of the United Nations over its premises
- \*\* (e) Police protection of United Nations premises
- (f) Right of transit and freedom of access to the United Nations headquarters district or conference area

26. The question of access by the representatives of non-governmental organizations to the United Nations Headquarters again arose at the twenty-first session of the Economic and Social Council. A representative designated by the World Federation of Trade Unions to attend that session of the Council was refused a visa by the United States Government. The question was first brought to the attention of the Council Committee on Non-Governmental Organizations. There it was alleged <sup>22/</sup> that such action on the part of the United States was contrary to the provisions of the Headquarters Agreement between the United Nations and the United States. It was further stated that the report of the Secretary-General to the Council on this subject laid down the principle that in the case of aliens in transit to the Headquarters District on exclusively official business of or before the United Nations, the rights of the United States were limited to those explicitly indicated in the Headquarters Agreement. <sup>23/</sup> Resolution 509 (XVI) of the Economic and Social Council by which the Council had noted the oral and written statements of the Secretary-General and had expressed the hope that any remaining questions would be satisfactorily and expeditiously resolved within the provisions of the Headquarters Agreement was also cited in support of the argument that the United States had no right to refuse a visa to the representative of WFTU. In reply the representative of the United States maintained that his Government was well aware of the terms of the Headquarters Agreement and had applied them. The Agreement, in the form approved by the United States Senate, was however open to different interpretations. Difficulties had arisen from time to time but the fact that there had been difficulties did not mean that the United States Government was in the wrong. He explained that the United States Government had refused the visa to the representative of WFTU on the ground of the national security of the United States and the interests of the United Nations.

27. At the 923rd meeting of the Economic and Social Council, the representative of the Secretary-General reported <sup>24/</sup> that the Secretary-General had successfully concluded his consultations with the United States Delegation concerning the United States Government's failure to issue a visa to the representative of the WFTU who had wished to attend the Council's twenty-first session. The United States Government had authorized its consular authorities at Paris to issue the visa. He further stated that both the United States Government and the Secretary-General were determined that a procedure should be agreed upon before the next session of the Council to deal effectively and expeditiously with similar cases.

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<sup>22/</sup> E/C.2/SR.160, 19 April 1956.

<sup>23/</sup> E/2492. See also in the Repertory, vol. V, under Articles 104 and 105, para. 71.

<sup>24/</sup> E S C (XXIII), 923rd mtg., paras. 1 and 2.

## \*\* b. FACILITIES IN RESPECT OF COMMUNICATIONS

## C. Article 105 (2)

\*\* 1. *Privileges and immunities of representatives of Members*2. *Privileges and immunities of officials of the Organization*

## a. CATEGORIES OF OFFICIALS

\*\* i. General\*\* ii. Specialized personnel serving as consultants in the Secretariatiii. Technical assistance experts

28. It was stated 25/ in the Repertory that technical assistance experts who came under the definition of General Assembly resolution 76 (I) were considered "officials" of the Organization. The question was raised whether certain technical assistance personnel reported as being officials were not more appropriately to be considered "experts on mission" than members of the staff.

29. In reply, the Secretary-General explained 26/ the United Nations policy as follows:

"An overwhelming proportion of the individuals engaged by United Nations as technical assistance experts are engaged on substantially similar terms and serve under the same conditions as other members of the staff. They subscribe to the same oath as other staff members, are subject to the authority of the Secretary-General and are responsible to him in the exercise of their functions. They receive no instructions from any authority external to the Organization. It is entirely necessary that they be members of the staff in every sense if the Secretary-General is to exercise the responsibilities which have been vested in him in implementing the Expanded Programme of Technical Assistance. Moreover, in view of the staff character of their functions, it is important that there be equity of treatment as between such individuals and other members of the staff. Such individuals are designated by the Secretary-General as being in the categories of officials to whom privileges and immunities are accorded under the Convention.

"Past experience has shown that a very few individuals are engaged each year upon whom, by reason of circumstances which vary in each individual case, it is unnecessary or inadvisable to confer the status of membership in the staff of the United Nations, and for whom it is not necessary for the Secretary-General to accept all of the responsibilities bestowed upon him in respect of staff members. An example might be the case of an individual whose sole responsibility is the production of a text-book for a fixed fee: another example might involve engagement of the services of an individual through contract with a third party such as a university or research institution, the contractual relationship being between the Secretary-General and the institution on the one hand, and between the institution and the individual on the other. Such individuals are engaged under special contractual arrangements

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25/ See in the Repertory, vol. V, under Articles 104 and 105, para. 103.  
26/ TAB/R.282, 24 March 1955.

which neither confer on them the privileges of staff membership nor require of them the obligations of members of the staff. They do not subscribe to the oath of office, their remuneration is normally paid on the basis of a fixed fee which is not related to the international salary scale, and the extent of the authority of the Secretary-General over such individuals and of their responsibility to him is narrow in scope and limited to the terms set forth in the contractual agreement under which they are engaged. The Secretary-General does not consider such persons to be members of the staff, and therefore they are excluded from the categories of officials to whom privileges and immunities are accorded under the Convention.

"As already stated, the circumstances which lead to employment of individuals under the special contractual arrangements described above vary widely from case to case; clearly, the decision as to whether the arrangements are such as to warrant exclusion of any given individuals concerned from membership on the staff can best be made by the Secretary-General, and to establish rigid criteria for such determinations would greatly hamper the usefulness of such contracts to the Programme. It would appear proper that Governments recognize the authority of the Secretary-General to make such determinations. Indeed, the general Convention not only makes no incursion upon the authority of the Secretary-General to decide upon the type of contract most suitable for the services to be rendered, but of course leaves to him the determination as to which officials to include in the categories to which the provisions of the Convention are or are not to apply.

"It follows from the above that the mere fact of the length of the contract term offered him would not be sufficient to justify treating a technical assistance expert as not being a member of the staff. Not only would it be difficult to determine at what point the mere duration of his office should be taken to alter its character but such a policy would ignore the essential elements of staff relationship and responsibility already noted."

b. PRIVILEGES AND IMMUNITIES

\*\* i. General provisions

ii. Qualification or extension of specific privileges and immunities

(a) Exemption from national income taxation

30. At the ninth session of the General Assembly, the Secretary-General submitted to the Fifth Committee a report 27/ on the "use of income derived from the Staff Assessment Plan" in which a plan was suggested to meet the problem of national income taxation levied on the salaries and emoluments paid by the United Nations to its officials.

31. There was general concern in the Fifth Committee that 28/ the unsatisfactory situation resulting from the fact that certain Member States had not exempted their nationals in the Secretariat from taxation on the salaries paid to them by the United Nations continued to exist in spite of several resolutions of the Assembly requesting such exemption or alternative relief from double taxation. 29/

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27/ G A (IX), annexes, a.i. 38, p. 20, A/C.5/584 and Corr. 2.

28/ Ibid., p. 56, A/2886, para. 43.

29/ See also in the Repertory, under Articles 104 and 105, para. 108.

32. Upon the recommendation of the Fifth Committee, the General Assembly adopted resolution 893 (IX) in which the Assembly,

"1. Requests the Secretary-General to continue his negotiations with those Member States which have not yet become Parties to the Convention on the Privileges and Immunities of the United Nations or adopted alternative measures under which appropriate relief would be granted to all United Nations officials in so far as national income taxation is concerned, and to submit a report thereon as soon as possible before the opening of the tenth session of the General Assembly, together with the comments of the Advisory Committee on Administrative and Budgetary Questions on that report;

"2. Decides to postpone to the tenth session of the General Assembly further consideration of measures to be taken by the Assembly towards a solution of the problem."

33. In view of this resolution, the Secretary-General had sent 30/ letters to the Governments of those States which had not yet acceded to the Convention on the Privileges and Immunities of the United Nations. In those letters, he recalled, in particular, the prevailing view in the General Assembly that the only fully effective means of ensuring the application of the principle of equity amongst all the Member States and equality amongst the members of the staff of the Organization would be early accession to the Convention in accordance with the repeated appeals to Members previously made by the Assembly. He referred likewise to the strong consensus which had led the Assembly to base the postponement of its consideration of measures to be taken in this connexion upon the understanding that it would reach a definitive solution at its tenth session. To this end, he stated further, the Assembly would wish to know the position of each of the Member States which had not yet acceded to the Convention, so that it could then consider means whereby Members which had not acceded, or had not otherwise enacted some express tax exemption measures affecting their nationals on the staff of the Secretariat, should cease on 1 January 1956 to receive by way of deduction from the annual contribution the benefit of the revenue derived from the application of the Staff Assessment Plan.

34. On 15 December 1955, the General Assembly adopted resolution 973 (X) on the "Use of income derived from the Staff Assessment Plan". According to this resolution, a Member State's account in the Tax Equalization Fund to be established (comprising the Member's share in the income from staff assessment and its share of the amount transferred from the Working Capital Fund) would be debited with the amount of the income tax levied by that Member State on the salaries and emoluments paid by the United Nations.

\*\* (b) Immunity from national service obligations

\*\* (c) Exemption from customs duties

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

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

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

\*\* c. UNITED NATIONS LAISSEZ-PASSER

30/ G A (X), Suppl. No. 1 (A/2911), p. 105.

**\*\* 3. Privileges and immunities of experts on mission for the United Nations**

**\*\* 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**

**\*\* D. Article 105 (3)**

**ANNEX**

**Member States which acceded to the Convention on the Privileges and Immunities of the United Nations between 1 September 1954 and 1 September 1956**

<u>State</u>	<u>Date of deposit of the instrument</u>
Burma	25 January 1955
Czechoslovakia, With the following reservation: *	7 September 1955
<p>"The Czechoslovak Republic does not consider itself bound by Section 30 of the Convention which envisages the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention; in regard to the competence of the International Court in such differences, the Czechoslovak Republic adheres 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 further provisions contained in the same section, whereby the advisory opinion of the International Court shall be accepted as decisive."</p>	
Ecuador	22 March 1956
Hungary, With the following reservation:	30 July 1956
<p>"The Presidential Council of the Hungarian People's Republic expressly reserves its position with regard to section 30 of the Convention, since, in its opinion, the jurisdiction of the International Court of Justice can be founded only on the voluntary prior acceptance of such jurisdiction by all the parties concerned."</p>	
Romania, With the following reservation:	5 July 1956
<p>"The Romanian People's Republic does not consider itself bound by the terms of section 30 of the Convention which provide for the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention;</p>	

StateDate of deposit  
of the instrument

with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court is to be accepted as decisive."

Thailand,

30 March 1956

With the reservation that officials of the United Nations of Thai nationality shall not be immune from national service obligations.

**Chapter XVII**

**TRANSITIONAL SECURITY ARRANGEMENTS**

