

ARTICLES 104 AND 105

Table of Contents

	<u>Paragraphs</u>
Text of Article 104	
Text of Article 105	
Introductory Note	1 - 5
I. General Survey	6 - 19
** A. Operation of Charter provisions	
B. Implementation of Articles 104 and 105	6 - 19
1. By General Convention	6
2. By special agreements on privileges and immunities	7 - 12
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	13 - 17
4. By other decisions and actions of United Nations organs	18 - 19
II. Analytical Summary of Practice	20 - 96
A. Article 104	20 - 26
1. Legal capacity of the Organization in the territory of Member or non-member States	20
a. Capacity to contract	20
** b. Capacity to acquire and dispose of movable and immovable property	
** c. Capacity to institute legal proceedings	
2. The question of international personality of the Organization	21 - 26
The right of the United Nations to sail vessels under its own flag	21 - 26
B. Article 105 (1)	27 - 53
** 1. Scope of the term "the Organization"	
2. Privileges and immunities of the Organization	27 - 53
a. Property, funds and assets	27 - 48
i. Privileges and immunities under the General Convention	27 - 31
ii. Additional privileges and immunities under special agreements	32 - 48
(a) Exemption from taxation and customs duties	32 - 36
(b) Favourable rates of exchange	37
(c) Exemption from inspection of property	38 - 39
(d) Control and authority of the United Nations over its premises	40 - 42

Table of Contents
(continued)

	<u>Paragraphs</u>
(e) Police protection of United Nations premises	43 - 44
(f) Right of transit and freedom of access to the United Nations Headquarters district or conference area	45 - 48
b. Facilities in respect of communications	49 - 53
C. Article 105 (2)	54 - 96
1. Privileges and immunities of representatives of Members . . .	54
2. Privileges and immunities of officials of the Organization .	55 - 72
a. Categories of officials	55
b. Privileges and immunities	56 - 71
i. General provisions	56
ii. Qualification or extension of specific privileges and immunities	57 - 64
(a) Exemption from national income taxation . . .	57 - 62
(b) Immunity from national service obligations . .	63
(c) Exemption from customs duties	64
iii. Cases in which full diplomatic privileges and immunities are extended to certain categories of officials of the Organization	65 - 68
iv. The question of privileges and immunities of locally recruited personnel	69 - 70
v. Waiver of, and other obligation in connexion with, the privileges and immunities	71
c. United Nations laissez-passer	72
3. Privileges and immunities of experts on mission for the United Nations	73 - 74
** 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	
5. Privileges and immunities of the members of the United Nations Emergency Force	75 - 95
a. Provisions relating to civil jurisdiction	76 - 80
i. Under the Status Agreement with Egypt	76 - 78
ii. Under the Leave Centre Agreement with Lebanon . . .	79 - 80
b. Provisions relating to criminal jurisdiction	81 - 83
i. Under the Status Agreement with Egypt	81
ii. Under the Leave Centre Agreement with Lebanon . . .	82
iii. Under agreements with the participating States . .	83
c. Military police: Arrest, transfer of custody and mutual assistance	84 - 90
i. Under the Status Agreement with Egypt	84 - 87
ii. Under the Leave Centre Agreement with Lebanon . . .	88 - 90
d. Taxation, customs and fiscal regulations	91 - 92
e. Entry and exit: identification	93 - 94
f. Right to bear arms	95
6. Privileges and immunities of operational and executive personnel	96

Table of Contents
(continued)

** D. Article 105 (3)

Annex. Member States which acceded to the Convention on the Privileges and Immunities of the United Nations between 1 September 1956 and 31 August 1959

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 general structure of the present study follows that of Articles 10⁴ and 105 in the previous Repertory studies, except for the omission of a few subheadings and the addition of two new subheadings. The former subheadings under section II C 2 a have been deleted because of the lack of new material. The new subheadings added under section II C are 5. "Privileges and immunities of the members of the United Nations Emergency Force" and 6. "Privileges and immunities of operational and executive personnel".

2. Though the United Nations Emergency Force (UNEF) was created as a subsidiary organ of the General Assembly and, as such, its status, privileges and immunities are treated under the appropriate original headings, the members of UNEF recruited from among the military forces of Member States were not "officials of the United Nations" within the meaning of the Convention on the Privileges and Immunities of the United Nations, 1/ referred to hereinafter as the "General Convention". These members of UNEF formed a special category of international personnel and enjoyed such privileges and

1/ United Nations, Treaty Series, vol. 1, I, No. 4, p. 15.

immunities as were granted to them under the special agreements between the United Nations and the host countries, in accordance with the Regulations ^{2/} issued by the Secretary-General, which took into account their international status as well as their national character.

3. The personnel provided by the United Nations to requesting Governments under the programme for the provision of operational, executive and administrative personnel (OPEX), as a form of technical assistance in public administration under General Assembly resolution 1256 (XIII), were assigned duties by the Governments concerned and were responsible only to them. They were neither "officials of the United Nations" nor "experts on missions for the United Nations". They had a special international status, however; they entered into special contracts with the United Nations which defined their relationship to the Organization, and their privileges and immunities were provided for in agreements concluded between the United Nations and the Governments concerned.

4. For the reasons mentioned in the two preceding paragraphs, the privileges and immunities of the military personnel of UNEF and those of OPEX are treated in separate sections in the present study, in relation to Article 105, paragraph 2, under items II C 5 and II C 6.

5. The question of the right of the United Nations or any other international organization to sail vessels under its own flag (see section II A 2 of the present study), as discussed at the seventh and eighth sessions of the International Law Commission in connexion with the articles on the régime of the high seas, was reported in detail in the Repertory, Supplement No. 1. ^{3/} The United Nations Conference on the Law of the Sea, which was convened in February 1958, took the articles prepared by the Commission as a basis for its discussion. Although the Conference was not an organ of the United Nations, its decision relating to the question of the United Nations flag, in the form of an additional article incorporated in the Convention on the High Seas, ^{4/} is treated in the present study in order to show the subsequent development of a question which had previously been examined by a subsidiary organ of the United Nations.

I. GENERAL SURVEY

**A. Operation of Charter provisions

B. Implementation of Articles 104 and 105

1. *By General Convention*

6. Twelve Member States acceded to the Convention on the Privileges and Immunities of the United Nations (General Convention) during the period from 1 September 1956 to 1 September 1959. The accessions of two Members contained reservations regarding certain provisions of the General Convention (see the annex to the present study). The total number of accessions had reached sixty-one on 1 September 1959.

^{2/} Regulations for the United Nations Emergency Force (ST/SGB/UNEF/1, 20 February 1957).

^{3/} Vol. II, under Articles 104 and 105, paras. 13-23.

^{4/} United Nations Conference on the Law of the Sea, Plen., A/CONF.13/38 (United Nations Publication, Sales No.: 58.V.4), vol. II, p. 135, A/CONF.13/L.53.

2. *By special agreements on privileges and immunities*

7. By an exchange of letters on 8 February 1957 5/ between the Secretary-General, acting in consultation with the Advisory Committee established under General Assembly resolution 1001 (ES-I) and the Minister for Foreign Affairs of Egypt, an agreement was reached concerning the status of the United Nations Emergency Force (UNEF) in Egypt, hereafter referred to as the "status Agreement with Egypt". This agreement provided, among other things, that the status, privileges and immunities of the United Nations were to be extended to UNEF in accordance with the General Convention.
8. In an exchange of letters between the Commander of UNEF and the Minister for Foreign Affairs of Lebanon, a provisional agreement concerning a UNEF leave centre in Lebanon, 6/ hereafter referred to as the "Leave Centre Agreement with Lebanon", was concluded on 29 April 1957. This agreement was similar in its provisions to the Status Agreement with Egypt, and it applied the privileges and immunities of the General Convention to UNEF in Lebanon.
9. The Secretary-General and the Government of Thailand concluded an agreement concerning the privileges and immunities of the Economic Commission for Asia and the Far East (ECAFE) in Thailand; 7/ this was complementary to the General Convention. This agreement was ratified by Thailand on 6 February 1957.
10. The status, privileges and immunities of the United Nations Observation Group in Lebanon (UNOGIL) were agreed upon in an exchange of letters between the Secretary-General and the Foreign Minister of Lebanon, dated 13 June 1958, and an amendment dated 26 and 30 June 1958. 8/ This agreement was to take effect upon the arrival in Lebanon of UNOGIL.
11. An exchange of letters between the Secretary-General and the Government of Jordan 9/ in November 1958 provided for privileges, immunities and facilities for the subsidiary organ of the United Nations under the charge of the Special Representative of the Secretary-General stationed in Jordan in furtherance of General Assembly resolution 1237 (ES-III), as well as for the Special Representative and the officials of the United Nations assigned to his staff.
12. In connexion with the convening of the twenty-seventh session of the Economic and Social Council in Mexico City, an exchange of letters between the Secretary-General and the Government of Mexico 10/ in April 1959 provided for the application, for the purpose of the session, of the General Convention to the United Nations, its staff,

5/ "Exchange of letters constituting an agreement between the United Nations and the Government of Egypt concerning the status of the United Nations Emergency Force in Egypt, with a summary of the arrangements" (G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526). A report submitted by the Secretary-General concerning this agreement was noted with approval by the General Assembly in its resolution 1126 (XI).

6/ "Exchange of letters constituting a provisional arrangement concerning the United Nations Emergency Force Leave Centre in Lebanon. Beirut, 20 and 29 April and 1 May 1957" (United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125).

7/ United Nations, Treaty Series, vol. 260, I, No. 3703, p. 35.

8/ Ibid., vol. 303, I, No. 4386, p. 271; also reproduced, without the amendment of 26 and 30 June 1958, in S C, 13th yr., Suppl. for Apr.-June, p. 70, A/4029, annex II.

9/ Ibid., vol. 315, I, No. 4564, p. 125.

10/ Ibid., vol. 381, I, No. 5468, p. 123.

representatives of Members and experts on mission, on the understanding that this would not constitute a precedent with respect to the position which the Government of Mexico might in the future decide to take with respect to the General Convention, to which Mexico had not acceded.

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

13. In November 1956, during the first days of resumed operation in the Gaza Strip by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), a provisional agreement setting forth the framework within which UNRWA would continue its operations was reached between UNRWA and Israel authorities. This agreement took the form of an exchange of letters between the Director of UNRWA and the Israel Chief of Staff; 11/ it provided that the General Convention would govern the relations between UNRWA and the Government of Israel.

14. In accordance with the authority granted 12/ by the General Assembly on 2 November 1956, the Secretary-General, through an exchange of letters on 8 January 1957 with the Foreign Minister of Egypt, negotiated an agreement for the clearance of the Suez Canal. 13/ This agreement included a provision to apply the terms of the General Convention to the property and personnel of the United Nations and to contractors (including subcontractors) working under United Nations direction.

15. An exchange of letters dated 21 December 1957 and 20 January 1958 between the Commander of UNEF and the Foreign Minister of Lebanon brought about an agreement concerning a UNEF transit unit at the Beirut international airfield and an agreement concerning postal arrangements for UNEF. 14/ The former agreement made the Leave Centre Agreement with Lebanon applicable mutatis mutandis to the operation of the transit unit.

16. In pursuance of General Assembly resolution 1256 (XIII), "United Nations technical assistance in public administration", agreements for the provision of operational and executive personnel were concluded between the United Nations and the Governments requesting such assistance. Each of the agreements included a provision on the privileges and immunities which the contracting Government was to grant to such personnel. 15/

17. Each of the agreements concluded between the United Nations Special Fund and the Governments requesting assistance from the Special Fund 16/ contained a clause on "facilities, privileges and immunities" to be granted by the Government concerned to the United Nations and to its organs and its officials; to each specialized agency and the International Atomic Energy Agency, acting as an executing agency, and its officials; and, subject to agreement between the parties, to a firm or organization and its personnel retained to execute or assist in the execution of a development project.

11/ G A (XI), Suppl. No. 14 A (A/3212/Add.1), para. 18.

12/ G A resolution 997 (ES-I).

13/ G A (XI), Annexes, vol. II, a.i. 66, p. 38, A/3492, annex II.

14/ United Nations, Treaty Series, vol. 286, I, No. 4166, p. 190 and No. 4167, p. 199, respectively.

15/ See, for example, United Nations, Treaty Series, vol. 319, I, No. 4629, p. 3 (agreement between the United Nations and Burma).

16/ For example, United Nations, Treaty Series, vol. 338, I, No. 4836, p. 203 (agreement between the United Nations and Ghana).

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

18. The General Assembly adopted a resolution 17/ on 27 February 1957 entitled "Establishment of a Tax Equalization Fund: local and state income taxes". This resolution concerned the question of immunity from taxation by State and local governments of salaries and emoluments paid by the United Nations to its staff members (see paragraphs 57 to 62 below).

19. Acting under the authority conferred on him by General Assembly resolution 1001 (ES-I), the Secretary-General issued Regulations for the United Nations Emergency Force 18/ affirming the international character of UNEF as a subsidiary organ of the General Assembly and defining its rights and duties.

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

20. The capacity of United Nations organs to enter into contracts was recognized in the General Convention 19/ and in various agreements between the United Nations and individual States. During the period under review, this legal capacity was given express recognition in the Regulations for the United Nations Emergency Force (UNEF) 20/ and in the agreement with Thailand concerning the headquarters of the Economic Commission for Asia and the Far East (ECAFE). 21/

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

**c. CAPACITY TO INSTITUTE LEGAL PROCEEDINGS 22/

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

The right of the United Nations to sail vessels under its own flag

21. The question of the right of the United Nations to sail vessels under its own flag was considered by the International Law Commission in connexion with the

17/ G A resolution 1099 (XI), amending resolution 937 (X), para. 4.

18/ ST/SGB/UNEF/1.

19/ United Nations, Treaty Series, vol. 1, I, No. 4.

20/ Paragraph 27 of the Regulations provided that "The Commander shall enter into contracts and make commitments for the purpose of carrying out his functions under these Regulations" (ST/SGB/UNEF/1, para. 27).

21/ United Nations, Treaty Series, vol. 260, I, No. 3703, p. 35, article II, section 2.

22/ For the institution by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) of legal proceedings before local courts, see G A (XI), Suppl. No. 14 (A/3212), annex G; G A (XII), Suppl. No. 14 (A/3686), annex H.

Commission's draft articles on the régime of the high seas. The conclusion reached by the Commission on this question and the relevant discussions were examined in an earlier Repertory study of these Articles. 23/

22. In accordance with General Assembly resolution 1105 (XI), the United Nations Conference on the Law of the Sea was convened by the United Nations in Geneva on 24 February 1958. As a basis for its discussion, the Conference utilized the articles concerning the law of the sea prepared by the International Law Commission, 24/ and allocated the articles relating to the régime of the high seas to the Second Committee of the Conference.

23. A memorandum 25/ on the "use of the United Nations flag on vessels" was prepared by the United Nations Secretariat for the information of the Second Committee of the United Nations Conference on the Law of the Sea in connexion with its consideration of the question of the nationality of ships. The memorandum stated that the United Nations flag had been flown on (a) the fishing vessels of the United Nations Korean Reconstruction Agency (UNKRA), 26/ (b) the vessels of the United Nations Emergency Force (UNEF) and (c) the vessels of the United Nations Suez Canal Clearance Operation (UNSCO). The United Nations flag had been used on both registered and unregistered ships on the high seas and on the territorial sea. In the case of registered vessels, the United Nations flag had been flown either with or without the national flags of the vessels. It was pointed out that in all instances the use of the United Nations flag had been based on urgent and practical considerations; it had served the purpose of identifying the vessels as part of a United Nations undertaking and of indicating that they would be entitled to the protection of the United Nations.

24. In the discussion of the International Law Commission, the argument against the right of the United Nations to register its ships and fly its flag was based mainly on the question of jurisdiction over crimes committed on such ships on high seas. 27/ The Secretariat memorandum referred to above 28/ reported a case in which UNEF took title to a landing craft mechanized (LCM) without placing it on any national registry. It was explained that this case was not expected to present any major problem as regards criminal jurisdiction since the crew would be composed entirely of members of UNEF, who were subject to the criminal jurisdiction of their own national States (see paragraphs 81-83 below). Nor would any question arise relating to jurisdiction over goods carried on board the craft, since in all cases the goods would be the property of either UNEF or, on occasion, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

25. During the meetings of the Second Committee of the United Nations Conference on the Law of the Sea, a proposal 29/ was submitted to add, after the articles on the nationality and status of ships, a new article reading as follows:

23/ Supplement No. 1, vol. II, under Articles 104 and 105, paras. 13-23.

24/ G A (XI), Suppl. No. 9 (A/3159), pp. 4-45.

25/ United Nations Conference on the Law of the Sea, A/CONF.13/40 (United Nations Publication, Sales No.: 58.V.4, vol. IV), p. 138, A/CONF.13/C.2/L.87.

26/ This instance is reported in the Repertory, Supplement No. 1, vol. II, under Articles 104 and 105, para. 14.

27/ Yearbook of the International Law Commission, 1955 (A/CN.4/SER.A/1955; United Nations Publication, Sales No.: 60.V.3, vol. I), 320th mtg., paras. 69 and 78.

28/ United Nations Conference on the Law of the Sea, A/CONF.13/40 (United Nations Publication, Sales No.: 58.V.4, vol. IV), p. 138, A/CONF.13/C.2/L.87, paras. 8-10.

29/ United Nations Conference on the Law of the Sea, A/CONF.13/40 (United Nations Publication, Sales No.: 58.V.4, vol. IV), p. 129, A/CONF.13/C.2/L.51.

"The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization".

Upon the recommendation of the Second Committee, the proposed article was adopted by the Conference and was incorporated in the Convention on the High Seas as article 7. 30/

26. Provisions concerning the use of the United Nations flag were also contained in the following agreements concluded by the United Nations:

(a) Paragraph 20 of the Status Agreement with Egypt 31/ provided:

"The Egyptian Government recognizes the right of the Force to display within Egyptian territory the United Nations flag on its headquarters, camps, posts or other premises, vehicles, vessels and otherwise as decided by the Commander. Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Commander. Sympathetic consideration will be given to observations or requests of the Egyptian authorities concerning this last-mentioned matter."

(b) The agreement with Egypt regarding the clearance of the Suez Canal 32/ stated:

"The undertaking would be regarded as a United Nations enterprise and its personnel would be under obligation to discharge their functions and regulate their conduct solely in the interest of the United Nations. In keeping with the United Nations responsibilities, the vessels would fly the flag of the United Nations in place of their national flags ...".

(c) Article 13.1 of the contract with the consortium of Smit-Svitzer, relating to the clearance of the Suez Canal 33/ read:

"Smit-Svitzer shall ensure that each of its vessels utilized in the performance of the work shall fly the UN flag in place of its national flag while in the Suez Canal area, in accordance with the provisions of the United Nations Flag Code and any regulations made pursuant thereto by the Secretary-General or his duly authorized representative. The use of the UN flag on the vessels concerned shall not be deemed to effect any alteration in their national registration".

30/ Ibid., A/CONF.13/38 (United Nations Publication, Sales No.: 58.V.4, vol. II), p. 135, A/CONF.13/L.53.

31/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526. See also Regulations for UNEF (ST/SGB/UNEF/1), para. 7.

32/ Ibid., p. 38, A/3492, annex II.

33/ United Nations Conference on the Law of the Sea, A/CONF.13/40 (United Nations Publication, Sales No.: 58.V.4, vol. IV), p. 138, A/CONF.13/C.2/L.87, para. 12.

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

27. The annual reports 34/ submitted by the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to the General Assembly stated that in several of the countries in which UNRWA operated, incidents had occurred which were prejudicial to the security of the staff and property of UNRWA. The reports referred to the General Convention, which provided immunity from legal process of "the property and assets of the United Nations, wherever located and by whomsoever held", and noted that the provision had not been observed by local courts in some cases arising from the activities of UNRWA. Legal proceedings brought before local tribunals which indicated misunderstanding of the status of UNRWA included a failure to recognize UNRWA as a subsidiary organ of the United Nations, 35/ a finding that UNRWA was a public body of Syria 36/ and a holding that the jurisdictional immunity of UNRWA applied only to criminal and not to civil cases. 37/ Another instance in which the provision of the General Convention had not been regarded was the serving of attachment and garnishee orders on the funds of UNRWA in respect of salaries payable to staff members. 38/ In all these situations UNRWA had brought to the attention of the authorities of the host countries its position as an organ of the United Nations and its right to immunity from every form of legal process.

28. The entire problem concerning the privileges and immunities of UNRWA in relation with its host Governments was brought before the Special Political Committee during the eleventh session of the General Assembly. At the twenty-third meeting of the Committee, the Director of UNRWA drew attention, 39/ among other things, to incidents in Syria and Gaza in disregard of the international status of UNRWA and its staff. A draft resolution 40/ was submitted which provided that the General Assembly would request host Governments to co-operate fully with UNRWA and its personnel in the light of its international status and privileges and immunities. This provision, as revised and ultimately adopted by the General Assembly in resolution 1018 (XI), noted the willingness of the host countries to co-operate with UNRWA and their desire "to extend to it every appropriate assistance in carrying out its functions, in accordance with the provisions of Articles 104 and 105 of the Charter of the United Nations, the terms of the Convention on the Privileges and Immunities of the United Nations, the contents

34/ G A (XI), Suppl. No. 14 (A/3212), annex G; G A (XII), Suppl. No. 14 (A/3686), annex H; G A (XIII), Suppl. No. 14 (A/3931), annex H.
35/ G A (XII), Suppl. No. 14 (A/3686), annex H, para. 14.
36/ *Ibid.*, para. 23.
37/ G A (XI), Suppl. No. 14 (A/3212), annex G, para. 24.
38/ *Ibid.*, para. 10.
39/ G A (XI), Annexes, vol. I, a.i. 23, p. 8, A/SPC/9, paras. 27 and 28.
40/ *Ibid.*, p. 14, A/SPC/L.13/Rev.1.

of paragraph 17 of resolution 302 (IV) and the terms of the agreements with the host Governments". 41/

29. The agreement between the Government of Israel and the Director of UNRWA (see paragraph 13 above), relating to the operations of UNRWA in the Gaza Strip, provided, in addition to the terms of the General Convention, that the Government of Israel would ensure the protection of the personnel, installations and property of UNRWA to the best of its ability.

30. Both the Regulations for the United Nations Emergency Force (UNEF) 42/ and the Status Agreement with Egypt 43/ provided that UNEF, as a subsidiary organ of the United Nations, should enjoy the status, privileges and immunities of the United Nations in accordance with the General Convention. The two instruments further specified that the provisions of article II of the General Convention should also apply to the property, funds and assets of participating States used in a host State in connexion with the national contingents serving in UNEF. 44/

31. Under the agreements between the United Nations Special Fund and the Governments requesting assistance from the Special Fund, the Governments undertook to apply the provisions of the General Convention to the United Nations and its property, funds and assets. The model text of this provision on facilities, privileges and immunities read as follows: 45/

"1. The Government shall apply to the United Nations and its organs, including the Special Fund, its property, funds and assets, and to its officials, the provisions of the Convention on the Privileges and Immunities of the United Nations.

"2. The Government shall apply to each Specialized Agency acting as an Executing Agency, its property, funds and assets and to its officials, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies including any Annex to the Convention applicable to such Specialized Agency. In case the International Atomic Energy Agency acts as an Executing Agency, the Government shall apply to its property, funds and assets and to its officials, the Agreement on the Privileges and Immunities of the International Atomic Energy Agency or, in the absence of such Agreement, the Convention on the Privileges and Immunities of the United Nations. (Provisional text, subject to revision after consultation with International Atomic Energy Agency.)

"3. In appropriate cases where required by the nature of the project, the Government and the Special Fund may agree that immunities similar to those

41/ In G A resolution 302 (IV), para. 17, the General Assembly "calls upon the Governments concerned to accord to the United Nations Relief and Works Agency for Palestine Refugees in the Near East 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".

42/ ST/SGB/UNEF/1, para. 10.

43/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 23.

44/ Ibid.; the participating States might not, however, acquire immovable property in Egypt without agreement with the Government of Egypt.

45/ United Nations Treaty Series, vol. 338, I, No. 4836, p. 203, article VIII.

specified in the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies shall be granted by the Government to a firm or organization, and to the personnel of any firm or organization, which may be retained by either the Special Fund or an Executing Agency to execute or to assist in the execution of a project. Such immunities shall be specified in the Plan of Operation relating to the project concerned."

ii. Additional privileges and immunities under special agreements

(a) Exemption from taxation and customs duties

32. Under the Status Agreement with Egypt, 46/ UNEF might import duty-free equipment for UNEF, and provisions, supplies and other goods for the exclusive use of members of UNEF and members of the United Nations Secretariat detailed by the Secretary-General to serve with UNEF, except for locally recruited personnel. The agreement also provided that service institutes might be established at headquarters, camps and posts for the sale of consumable goods and other articles of nominal value.

33. In addition, UNEF had the right "... to the use of roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges either by way of registration or otherwise in the area of operations and the normal points of access, except for charges that are related directly to services rendered". 47/

34. Though UNEF had the right, under the Leave Centre Agreement with Lebanon, 48/ to import duty-free articles required for the operation of the Centre, the Commander of UNEF undertook to import only such articles as were not readily available in Lebanon, or were in the nature of service institute amenities or had particular national significance to a national contingent of UNEF.

35. The agreement between the Commander of UNEF and the Foreign Minister of Lebanon establishing postal facilities for UNEF 49/ in Lebanon provided that all outbound and inbound mail, including all types of parcels, would be treated as mail in transit and as such be exempt from Lebanese regulations concerning customs, censorship and currency control. The agreement concerning the UNEF transit unit 50/ provided that, in respect of the supplies and mail trans-shipped from one United Nations plane to another at the Beirut international airfield, all customs and other formalities might be dispensed with in order to avoid delay.

36. The agreement with Thailand 51/ concerning the headquarters of the Economic Commission for Asia and the Far East (ECAFE) in Bangkok provided that the United Nations was to be exempt from excise duties, sales and luxury taxes and all other indirect taxes when it made important purchases for official use by ECAFE of property on which such duties or taxes were normally chargeable.

46/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 23.

47/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 33.

48/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125.

49/ Ibid., vol. 286, I, No. 4167, p. 199; see foot-note 1, p. 202.

50/ Ibid., No. 4166, p. 189.

51/ United Nations, Treaty Series, vol. 260, I, No. 3703, article IV, section 9. The other provisions relating to the property, funds and assets of ECAFE were similar to those contained in the General Convention.

(b) Favourable rates of exchange

37. Under paragraph 35 of the Status Agreement with Egypt, 52/ the Government of Egypt, if requested by the Commander of UNEF, would make available to UNEF, against reimbursement in United States dollars, Swiss francs or other currency mutually acceptable, Egyptian currency required for the use of UNEF, including the pay of members of national contingents, at the rate of exchange most favourable to UNEF and officially recognized by the Government of Egypt.

(c) Exemption from inspection of property

38. As provided in the Status Agreement with Egypt, 53/ UNEF was not subject to Egyptian laws relating to the licensing of operators and the registration of vehicles, vessels and aircraft. A similar provision regarding exemption from licensing and registration laws was contained in the Leave Centre Agreement with Lebanon.

39. Under the agreement with Lebanon 54/ concerning the status of the United Nations Observation Group in Lebanon (UNOGIL), the latter had the right to use United Nations vehicle registration plates. 55/

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

40. The headquarters, camps and premises provided by the Egyptian Government for the use of UNEF, though Egyptian territory, were to be inviolable and subject to the exclusive control and authority of the Commander of UNEF, who alone might consent to the entry of officials to perform duties on such premises. 56/

41. The premises necessary for the accommodation and fulfilment of the functions of UNOGIL, including office space and areas for observation posts and field centres, were to be inviolable and subject to the exclusive control and authority of UNOGIL. 57/

42. The agreement with Thailand 58/ contained provisions relating to United Nations control of the working site of ECAFE that were similar to the corresponding provisions of the Headquarters Agreement between the United Nations and the United States. 59/

(e) Police protection of United Nations premises

43. Section 5 of the agreement with Thailand regarding ECAFE, like the Headquarters Agreement, 60/ required the appropriate authorities of the host country to provide police protection for the purposes of ensuring tranquillity, preserving law and order, and removing undesirable persons from United Nations premises.

44. A different procedure was prescribed in the Status Agreement with Egypt for the policing of UNEF premises and the removal of persons therefrom. 61/ The latter

52/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 35.

53/ Ibid., para. 21.

54/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 12.

55/ Ibid., vol. 303, I, No. 4396, p. 271.

56/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 19.

57/ United Nations, Treaty Series, vol. 303, I, No. 4386, p. 271.

58/ Ibid., vol. 260, I, No. 3707, p. 35, article III.

59/ Ibid., vol. 11, I, No. 147, p. 11.

60/ See Repertory, vol. V, under Articles 104 and 105, para. 67.

61/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, paras. 14 and 15.

provided that military police designated by the Commander of UNEF should police UNEF premises and areas where UNEF was deployed in the performance of its functions. The military police of UNEF might take into custody any person on the premises who was subject to Egyptian criminal jurisdiction, without subjecting him to the ordinary routine of arrest, in order to deliver him immediately to the nearest appropriate Egyptian authorities: (a) when so requested by the Egyptian authorities; or (b) for the purpose of dealing with any offence or disturbance on the premises.

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

45. At the tenth session of the General Assembly, a question arose which had some bearing on the right of access to United Nations Headquarters. As a result of the lack of travel documents, some petitioners (Union des populations du Cameroun, Union démocratique des femmes camerounaises, Jeunesse démocratique du Cameroun) who had been granted oral hearings by the Fourth Committee were unable to reach United Nations Headquarters in New York. With a view towards finding a solution to this problem, the Fourth Committee adopted 62/ a resolution proposing that the Secretary-General should examine measures that could be taken to enable such petitioners to appear before the Fourth Committee of the General Assembly.

46. Pursuant to this resolution, the Secretary-General submitted a report 63/ which contained the following observations:

(a) Under arrangements currently in effect, United States authorities, upon notification by the Secretary-General that a hearing had been granted to a person by the Fourth Committee of the General Assembly, would deliver an entry visa to that person, upon application, pursuant to sections 11 and 13 (a) of the Headquarters Agreement.

(b) Neither the General Convention nor Trusteeship agreements contained any specific provisions obliging the Administering Authorities to grant travel documents to persons to whom hearings had been granted by United Nations organs or to authorize their departure from Territories under their administration; and current international practice allowed governmental authorities to exercise wide discretionary powers in regard to the issuance of passports, and exit and entry visas.

(c) The views of Governments having responsibility for the administration of Trust Territories indicated that though petitioners would remain subject to the regulations applicable to foreign travel, persons granted a hearing would not be obstructed from leaving the Territory for the purpose of travel to United Nations Headquarters. In all cases, except one, petitioners had reached Headquarters and had presented their views.

47. Because of the wide variety of special factors involved, including the nationality and residence status of petitioners, the applicability of legislative and administrative requirements, and the route and means of travel to be used, the Secretary-General expressed the opinion that it would be preferable, for the time being, to continue to deal with individual cases which might arise on an ad hoc basis, through direct negotiations with the national Government concerned.

62/ G A (X), Annexes, vol. I, a.i. 13, A/C.4/L.414/Rev.1; p. 2, A/3092, para. 26.
63/ G A (XI), Annexes, vol. I, a.i. 13, p. 20, A/C.4/333.

48. On 26 February 1957, the General Assembly adopted resolution 1062 (XI); in this resolution, the General Assembly, considering that the exercise of the right of oral hearing should be facilitated, invited the Administering Members concerned to grant petitioners the necessary travel documents to enable them to appear before the proper United Nations organs for oral hearings and to return home.

b. FACILITIES IN RESPECT OF COMMUNICATIONS

49. Under the Status Agreement with Egypt, UNEF enjoyed the facilities in respect of communications that were provided in article III of the General Convention. The Status Agreement with Egypt further prescribed the following facilities for UNEF: 64/

(a) The Commander had authority to install and operate radio sending and receiving stations, and to connect at appropriate points and exchange traffic with the United Nations radio network, subject to the provisions of article 45 of the International Telecommunication Convention relating to harmful interference.

(b) UNEF had the right to unrestricted communication by radio, telephone, telegraph or any other means, and to the establishment of necessary facilities for maintaining such communications within and between the premises of UNEF, including laying cables and land lines and establishing fixed and mobile radio sending and receiving stations. In addition, UNEF might have its own postal service, free from Egyptian censorship, for private mail addressed to or emanating from members of UNEF. 65/

50. The privileges and immunities extended to the United Nations Observation Group in Lebanon (UNOGIL) by the agreement on the status of UNOGIL 66/ included "the right of unrestricted communication by radio, both within the area of operations and to connect with the United Nations radio network, as well as by telephone, telegraph or other means".

51. Article V of the agreement with Thailand 67/ provided facilities for the Economic Commission for Asia and the Far East (ECAFE) similar to those contained in article III of the General Convention. It specified the following facilities:

(a) For its official communications, ECAFE was to enjoy treatment not less favourable than that accorded by the Government of Thailand to any other Government or organization, including foreign diplomatic missions in Thailand.

(b) For its official purposes, ECAFE was entitled to use the transport facilities of the Government of Thailand under the conditions granted to resident diplomatic missions.

(c) No censorship was to be applied to official correspondence or other communications of ECAFE. Such immunity was to extend, without limitation by reason of the enumeration, to publications, still and moving pictures, films and sound recordings.

64/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, paras. 29-31.

65/ Agreement with Lebanon concerning UNEF postal arrangements (United Nations, Treaty Series, vol. 286, I, No. 4167), p. 199. See also International Telecommunication Union, Plenipotentiary Conference, Buenos Aires, 1952, Convention and Final Protocol (ITU: Geneva, 1953).

66/ United Nations, Treaty Series, vol. 303, I, No. 4386, p. 271.

67/ Ibid., vol. 260, I, No. 3703, p. 35.

(d) ECAFE was to have the right to use codes and to dispatch and receive official correspondence and, without limitation by reason of the enumeration, publications, documents, still and moving pictures, films and sound recordings, either by courier or in sealed bags which were to have the same immunities and privileges as diplomatic couriers and bags.

(e) The United Nations was authorized to operate between the working site and other United Nations radio stations one point-to-point telecommunications circuit in a generally easterly direction and one in a generally westerly direction.

(f) Subject to General Assembly approval, the United Nations might operate within the working site its own short-wave sending and receiving radio broadcasting facilities, which might be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable Thai regulations) for radio-telegraph, radio-telephone and similar services. Also subject to General Assembly approval, such other radio facilities might be established and operated at the working site as might be specified by supplemental agreement between the United Nations and the appropriate Thai authorities.

(g) The United Nations was to make arrangements for the operation of the services referred to in sub-paragraphs (e) and (f) above, with the International Telecommunication Union, the appropriate agencies of the Thai Government and the appropriate agencies of other affected Governments, with regard to all frequencies and similar matters. The facilities provided for in sub-paragraphs (e) and (f) might, to the extent necessary for efficient operation, be established and operated outside the working site with the consent of the Thai Government.

52. Under the agreement with Israel referred to in paragraph 13 above, the Government of Israel would, subject to military security, permit free movement of vehicles of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and its international staff into and within the Gaza area, and would permit the local staff of UNRWA to move within the Gaza Strip, subject to military government regulations. 68/

53. Under the agreement between the United Nations and the Government of Jordan 69/ concerning the arrangements for stationing a subsidiary organ of the United Nations in Jordan, the privileges and immunities necessary for the full exercise of the functions of the organ included the "right of unrestricted communication by radio, through the operation of fixed or mobile sending and receiving stations within Jordan, and for connexion with the United Nations radio network, as well as by telephone, telegraph or other means".

C. Article 105 (2)

1. *Privileges and immunities of representatives of Members*

54. The site agreement with Thailand 70/ relating to the Economic Commission for Asia and the Far East (ECAFE) provided that representatives of Governments participating in the work of ECAFE, or in any conference which might be convened by the United Nations

68/ G A (XI), Suppl. No. 14 A (A/3212/Add.1), para. 18 (d).

69/ United Nations, Treaty Series, vol. 315, I, No. 4564, p. 125.

70/ United Nations, Treaty Series, vol. 260, I, No. 3703, p. 135, article VI, section 15 and article I, section 1 (k).

at the working site, were entitled, while exercising their functions and during their journey to and from the working site, to the same privileges and immunities in the territory of Thailand as the Government of Thailand accorded to members of diplomatic missions of comparable rank. The expression "representatives of governments" was deemed to apply to delegates, deputy delegates, advisers, technical experts and secretaries of delegations and to include the families of resident representatives.

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

a. CATEGORIES OF OFFICIALS

55. The expression "officials of the ECAFE" used in the ECAFE site agreement with Thailand 71/ applied to "all staff members of the United Nations Secretariat, other than manual workers locally recruited, who are at any time working with the ECAFE, and whose names are communicated from time to time to the appropriate Thai authorities".

b. PRIVILEGES AND IMMUNITIES

i. General provisions

56. The Status Agreement with Egypt 72/ provided that members of the United Nations Secretariat detailed by the Secretary-General to serve with UNEF remained officials of the United Nations and were therefore entitled to the privileges and immunities of articles V and VII of the General Convention. The same provision was contained in the Leave Centre Agreement with Lebanon. 73/

ii. Qualification or extension of specific privileges and immunities

(a) Exemption from national income taxation

57. The Government of Thailand exempted all ECAFE officials, including its own nationals, from taxation on salaries and emoluments paid to them by the United Nations. Officials of other than Thai nationality were exempt from any form of direct taxation on income derived from sources outside Thailand. 74/

58. Laos acceded to the General Convention with the following reservation: "Laotian nationals domiciled or habitually resident in Laos shall not enjoy exemption from taxation payable in Laos on salaries and income". 75/

59. By resolution 973 A (X), the General Assembly had established a Tax Equalization Fund which was to be utilized to provide relief from double taxation to those members

71/ Ibid., article I, section 1 (h).

72/ G.A. (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 24.

73/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 7.

74/ Ibid., vol. 260, I, No. 3703, p. 35, article VIII, section 17 (b). Section 17 (h) provided that officials of other than Thai nationality also enjoyed "freedom to maintain within Thailand, or elsewhere, foreign securities, and other movable and immovable property, and whilst employed by the United Nations in Thailand, and at the time of termination of such employment, the right to take out of Thailand funds in United States dollars or other convertible currencies without any restrictions or limitations, provided that the said officials can show good cause for their lawful possession of such funds".

75/ See the annex to the present study.

of the staff whose salaries were subject both to staff assessment and to national income taxation. ^{76/} Paragraph 4 of the resolution provided that all amounts paid by way of double-taxation relief in respect of national income taxes, "excluding any local or state income taxes" levied on staff members by a Member State should be charged against the credit of that State to the Tax Equalization Fund. The qualifying phrase "excluding any local or state income taxes" was adopted on the understanding that the Secretary-General would have time to study the matter further, as suggested by the Advisory Committee on Administrative and Budgetary Questions. ^{77/}

60. In his report ^{78/} to the eleventh session of the General Assembly, the Secretary-General stressed the principle of maintaining equality of treatment among staff members and equity among Member States. He pointed out that under section 18 (b) of the General Convention, the exemption from taxes on income received from the United Nations was unqualified, and covered all taxes on such income. In fact there had never been any doubt that section 18 (b) applied to all taxes on income, whether they were assessed by a central Government or by a political subdivision, or whether in a metropolitan or in an overseas territory. He drew attention to the fact that at the same session at which it had adopted the General Convention, the General Assembly had approved an almost identical arrangement with Switzerland. Section 15 (b) of that arrangement, in the same language as section 18 (b) of the General Convention, exempted the salaries of United Nations officials from taxation, though in Switzerland the normal taxing level was cantonal or communal, not federal.

61. The Advisory Committee on Administrative and Budgetary Questions, in its report ^{79/} on the problem of state and local income taxes, recalling General Assembly resolution 13 (I), part V, which had provided for reimbursement of national income taxes to staff members, expressed the opinion that the material consideration was the fact that the General Assembly, with the object of achieving equality among staff members, had specifically interpreted state and local taxes to be national income taxation within the meaning of resolution 13 (I) and had provided annually in the budget for the reimbursement of state or local taxes paid by staff members in respect of each of the financial years 1946 to 1955.

62. On 27 February 1957, the General Assembly adopted resolution 1099 (XI) to amend paragraph 4 of its resolution 973 (X) by deleting the phrase "excluding any local or state income tax". Thus all income taxes paid by staff members of the United Nations to the Government of a Member State, whether national, state or local, were credited against their staff assessments, and an equal amount was charged against the sub-account in the Tax Equalization Fund of the taxing Member State.

(b) Immunity from national service obligations

63. In the reservation accompanying its accession to the General Convention, Laos declared that "Laotian nationals who are officials of the United Nations shall not be immune from National Service obligations". ^{80/}

^{76/} See Repertory, Supplement No. 1, vol. II, under Articles 104 and 105, paras. 30-34.

^{77/} G A (X), 5th Com., 521st mtg., paras. 38 and 39; G A (X), Annexes, a.i. 48, p. 3, A/3035, para. 8.

^{78/} G A (XI), Annexes, vol. I, a.i. 43, p. 30, A/C.5/657.

^{79/} Ibid., p. 2, A/3331.

^{80/} See the annex to the present study.

(c) Exemption from customs duties

64. The ECAFE site agreement with Thailand 81/ provided that officials of ECAFE should enjoy within and with respect to the territory of Thailand,

"The right to import, free of duty and other levies, prohibitions and restrictions on imports, their furniture and effects within six months after first taking up their post in Thailand; the same regulations shall apply in the case of importation, transfer and replacement of automobiles as are in force for the resident members of diplomatic missions of comparable rank".

The Executive Secretary and the Deputy Executive Secretary of ECAFE were to be incorporated by the Ministry of Foreign Affairs of Thailand into the appropriate diplomatic categories and were to enjoy the customs exemptions granted to such diplomatic categories in Thailand.

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

65. The Government of Egypt extended to the Commander of UNEF the provisions of sections 19 and 27 of the General Convention, thus conferring on him the privileges and immunities of diplomatic envoys in accordance with international law. 82/ The privileges and immunities of sections 19 and 27 of the General Convention were also accorded to the UNEF Commander in the Leave Centre Agreement with Lebanon. 83/

66. Under the agreement between the Secretary-General and the Foreign Minister of Lebanon, 84/ members of the United Nations Observation Group in Lebanon (UNOGIL), consisting of three senior members, United Nations military observers and United Nations Secretariat members were extended - over and above the status which they enjoyed under the General Convention - the privileges and immunities, exemptions and facilities which were enjoyed by diplomatic envoys in accordance with international law. This extension of diplomatic privileges and immunities to UNOGIL was granted in view of the special importance and difficult nature of the functions which it was to perform.

67. In an amendment 85/ to the above arrangement, experts sent to Lebanon to perform missions in connexion with the work of UNOGIL were also accorded the privileges and immunities enjoyed by diplomatic envoys.

68. By its agreement 86/ with the United Nations, the Government of Jordan, in view of the special functions and importance of the United Nations subsidiary organ stationed in Jordan, undertook to extend to the Special Representative of the Secretary-General and to officials of the United Nations assigned to his staff - over and above the status which they and the organ enjoyed under the General Convention, to which Jordan acceded on 3 January 1958 - "the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law".

81/ United Nations, Treaty Series, vol. 260, I, No. 3703, p. 35, article VIII, sections 17 (1) and 19 (b).

82/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 25.

83/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 7.

84/ Ibid., vol. 303, I, No. 4386, p. 271.

85/ Ibid.

86/ United Nations, Treaty Series, vol. 315, I, No. 4564, p. 125.

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

69. The Regulations for UNEF 87/ provided that locally recruited personnel of UNEF were not subject to or entitled to the benefits of the Staff Regulations of the United Nations but were entitled to immunity in respect of official acts as provided in section 18 (a) of the General Convention. The latter provision was also contained in the Status Agreement with Egypt 88/ and the Leave Centre Agreement with Lebanon. 89/

70. Under the agreement between the United Nations and the Government of Jordan, 90/ the latter was to render assistance to the Special Representative of the Secretary-General in the recruitment of local staff members, who would enjoy immunity concerning official acts, as provided in section 18 (a) of the General Convention, and freedom of movement within Jordan in the exercise of their official functions.

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

71. The ECAFE site agreement with Thailand 91/ provided that the Executive Secretary of ECAFE should take every precaution to ensure that no abuse of a privilege or immunity conferred by the agreement should occur, and for this purpose he should establish such rules and regulations as he might deem necessary and expedient for officials of ECAFE and persons performing missions for ECAFE, or serving on its missions.

C. UNITED NATIONS LAISSEZ-PASSER

72. The Government of Thailand recognized and accepted the United Nations laissez-passer issued to officials of ECAFE as a valid travel document "equivalent to a passport". 92/

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

73. Persons who were not officials of ECAFE, but performed missions for the United Nations in relation to ECAFE in Thailand, were granted the privileges and immunities accorded to the officials of ECAFE as specified in section 17 of article VIII of the site agreement. 93/

74. Officers serving on the United Nations Command (the Commander's headquarters staff), as distinguished from Secretariat members, were entitled, under the Status Agreement with Egypt 94/ and the Leave Centre Agreement with Lebanon, 95/ to the privileges and immunities granted to experts on mission by article VI of the General Convention.

87/ ST/SGB/UNEF/1, para. 19 (c).

88/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 24.

89/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 7.

90/ Ibid., vol. 315, I, No. 4564, p. 125.

91/ United Nations, Treaty Series, vol. 260, I, No. 3703, p. 35, article VIII, section 20 (b).

92/ Ibid., article X, section 22.

93/ Ibid., article IX, section 21.

94/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 25.

95/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 7.

****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**

5. Privileges and immunities of the members of the United Nations Emergency Force

75. The privileges and immunities accorded to the members of UNEF under the relevant agreements are summarized below.

a. PROVISIONS RELATING TO CIVIL JURISDICTION

i. Under the Status Agreement with Egypt

76. Members of UNEF were not to be subject to the civil jurisdiction of Egyptian courts or to other legal process in any matter relating to their official duties. In a case arising from a matter relating to the official duties of a member of UNEF which involved a member of UNEF and an Egyptian citizen, and in other disputes as agreed, the procedure provided in paragraph 38 (b) 96/ was to apply to the settlement. 97/

77. In cases in which civil jurisdiction was exercised by Egyptian courts with respect to members of UNEF, the Egyptian courts and authorities were to grant members of UNEF sufficient opportunity to safeguard their rights. If the Commander certified that a member of UNEF was unable, because of official duties or authorized absence, to protect his interests in a civil proceeding in which he was a participant, the Egyptian court or authority would suspend the proceeding at his request until the elimination of the disability, but for not more than ninety days. Property of a member of UNEF which was certified by the Commander to be needed by him for the fulfilment of his official duties was to be free from seizure for the satisfaction of a judgement, decision or order, together with other property not subject thereto under Egyptian law. The personal liberty of a member of UNEF was not to be restricted by an Egyptian court or authority in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath of disclosure or for any other reason. 98/

96/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526; para. 38 (b) provided that:
"(b) Any claim made by

- (i) an Egyptian citizen in respect of any damages alleged to result from an act or omission of a member of the Force relating to his official duties;
- (ii) the Government of Egypt against a member of the Force; or
- (iii) the Force or the Government of Egypt against one another, that is not covered by paragraphs 39 or 40 of these arrangements,

shall be settled by a Claims Commission established for that purpose. One member of the Commission shall be appointed by the Secretary-General, one member by the Government of Egypt and a chairman jointly by the Secretary-General and the Government of Egypt. If the Secretary-General and the Government of Egypt fail to agree on the appointment of a chairman, the President of the International Court of Justice shall be asked by either to make the appointment. An award made by the Claims Commission against the Force or a member thereof or against the Government of Egypt shall be notified to the Commander or the Egyptian authorities, as the case may be, to make satisfaction thereof".

97/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 12 (a).

98/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 12 (b).

78. In the cases provided for in the preceding paragraph, the claimant might elect to have his claim dealt with in accordance with the procedure set out in paragraph 38 (b) of the arrangements. In case a claim adjudicated or an award made in favour of the claimant by an Egyptian court or the Claims Commission under paragraph 38 (b) of the arrangements was not satisfied, the Egyptian authorities might, without prejudice to the claimant's rights, seek the good offices of the Secretary-General to obtain satisfaction. 99/

ii. Under the Leave Centre Agreement with Lebanon

79. Members of UNEF who were in Lebanon on official duty were not to be subject to legal process or the civil jurisdiction of Lebanon in respect of any matter arising out of their official duties. Civil claims or disputes involving a member of UNEF acting in the course of his official duty and a third party were to be settled in accordance with the provisions of article VIII of the General Convention. 100/

80. In respect of a member of UNEF present in Lebanon on official leave or otherwise acting outside the scope of his official duty, the civil courts of Lebanon might exercise jurisdiction. The Commander was to extend full co-operation to the civil authorities in any civil suit against a member of UNEF, including facilitating the service of civil process upon any such member of UNEF and the enforcement of any judgement, decision or order against him by a Lebanese civil court of competent jurisdiction. 101/

b. PROVISIONS RELATING TO CRIMINAL JURISDICTION

i. Under the Status Agreement with Egypt

81. Members of UNEF were to be subject to the exclusive jurisdiction 102/ of their own national States in respect of any criminal offences which might be committed by them in Egypt. 103/

ii. Under the Leave Centre Agreement with Lebanon

82. A member of UNEF was to be subject to the exclusive criminal jurisdiction of the competent authorities of the participating State to which he belonged. The Commander was to notify the Lebanese authorities of the disposition of every criminal offence committed by a member of UNEF in Lebanon. 104/

99/ Ibid., para. 12 (c).

100/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 14.

101/ Ibid., para. 15.

102/ For certain questions raised by a representative concerning the meaning of the phrase "exclusive jurisdiction", see G A (XI), Plen., vol. II, 659th mtg., paras. 14-18.

103/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 11.

104/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 13.

iii. Under agreements with the participating States

83. Through an exchange of letters, agreements were concluded between the Secretary-General and each participating State 105/ concerning the application of the Status Agreement with Egypt and of the Regulations for UNEF issued by the Secretary-General. In these agreements it was emphasized that immunity from the jurisdiction of Egypt was based on the understanding that the authorities of the participating States would exercise such jurisdiction as might be necessary with respect to crimes or offences committed in Egypt by any members of UNEF provided from their own military services.

C. MILITARY POLICE: ARREST, TRANSFER OF CUSTODY AND
MUTUAL ASSISTANCE

i. Under the Status Agreement with Egypt 106/

84. The Commander was to take all appropriate measures to ensure the maintenance of discipline and good order among UNEF members. To this end military police designated by the Commander were to police the premises of UNEF and areas where UNEF was deployed in the performance of its functions. Elsewhere, such military police were to be employed only subject to arrangements with the Egyptian authorities and in liaison with them and in so far as such employment was necessary to maintain discipline and order among UNEF members. For the purpose of maintaining discipline and order, the military police of UNEF were to have the power of arrest over UNEF members.

85. The Egyptian authorities might take a member of UNEF into custody without subjecting him to the ordinary routine of arrest in order to deliver him immediately, together with any weapons or items seized, to the nearest appropriate authorities of UNEF (a) when so requested by the Commander, or (b) if the military police of UNEF were unable to act with necessary promptness when a member of UNEF was apprehended in the commission or attempted commission of a criminal offence that resulted or might result in serious injury to persons or property, or serious impairment of other legally protected rights. In the latter case, the Egyptian authorities might make a preliminary interrogation but might not delay the transfer of custody. Following the transfer of custody, the person concerned was to be made available for further interrogation upon request.

86. The Commander and the Egyptian authorities were to assist each other in carrying out all necessary investigations into offences in respect of which either or both had an interest, in producing witnesses and in collecting and producing evidence, including seizing and, in proper cases, handing over items connected with an offence. Handing over any such items might be made subject to their return within the time specified by the authority delivering them. Each was to notify the other of the disposition of any case in the outcome of which the other might have an interest or in which there had been a transfer of custody.

87. The Government of Egypt was to ensure the prosecution of persons subject to its criminal jurisdiction who were accused of acts in relation to UNEF or its members which, if committed in relation to the Egyptian forces or their members, would have rendered

105/ United Nations, Treaty Series: Finland, vol. 271, I, No. 3913, p. 135; Sweden, vol. 271, I, No. 3914, p. 187; Norway, vol. 271, I, No. 3917, p. 223; Canada, vol. 274, I, No. 3957, p. 47; Denmark, vol. 274, I, No. 3959, p. 81; Brazil, vol. 274, I, No. 3966, p. 199; India, vol. 274, I, No. 3968, p. 233; Yugoslavia, vol. 277, I, No. 4006, p. 191.

106/ G A (XI). Annexes, vol. II, a.i. 66, p. 52, A/3526, paras. 14 and 16-18.

them liable to prosecution. The authorities of UNEF were to take the measures within their power with respect to crimes or offences committed against Egyptian citizens by UNEF members.

ii. Under the Leave Centre Agreement with Lebanon

88. Arrangements were made 107/ for the presence of a limited number of UNEF military police, with a view to maintaining discipline among members of UNEF in Lebanon, to assist the appropriate Lebanese authorities in the maintenance of public order, in so far as members of UNEF were concerned. The Lebanese authorities might take a member of UNEF into custody, without subjecting him to the ordinary routine of arrest, in order to deliver him immediately, together with any items seized, to the authorities of UNEF. The Lebanese authorities might make a preliminary interrogation but might not delay the transfer of custody.

89. The authorities of UNEF and the Lebanese authorities were to assist each other in the collection and production of evidence, and in the production of witnesses, in respect of offences in which either or both had an interest.

90. The Lebanese authorities undertook to assist UNEF in the apprehension of members of UNEF reported by an authority of UNEF to be absent without leave; any absentee apprehended by the Lebanese authorities was to be handed over with the least possible delay to UNEF authorities.

d. TAXATION, CUSTOMS AND FISCAL REGULATIONS

91. Members of UNEF in Egypt were exempt from taxation on all income, whether received from their national Governments or from the United Nations. They were also exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges. They had the right to import their personal effects free of duty in connexion with first taking up their posts in Egypt. They were subject to Egyptian laws and regulations governing customs and foreign exchange with respect to personal property not required by them by reason of their presence with UNEF in Egypt. Special facilities for entry or exit were to be granted by the Egyptian immigration, customs and fiscal authorities to regularly constituted units of UNEF, provided that the authorities concerned had been duly notified sufficiently in advance. Notwithstanding foreign exchange regulations, members of UNEF, on their departure from Egypt, might take with them such funds as the appropriate pay officer of UNEF certified were received in pay and emoluments from their national Governments or from the United Nations, and were a reasonable residue thereof. 108/

92. At the time of his entry into Lebanon on official duty or on leave, a member of UNEF might enter a reasonable quantity of personal effects as accompanied baggage, free of duty. 109/

e. ENTRY AND EXIT: IDENTIFICATION

93. Members of UNEF were exempt from passport and visa regulations and immigration inspection and restrictions on entering or departing from Egyptian territory. They were also exempt from any regulations governing the residence of aliens in Egypt, including registration, but were not to be considered as acquiring any right to

107/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, paras. 16-18.

108/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, paras. 26 and 27.

109/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, para. 5.

permanent residence or domicile in Egypt. For the purpose of such entry and departure, members of UNEF were required to have (a) an individual or collective movement order issued by the Commander or an appropriate authority of the participating State; and (b) a personal identity card issued by the Commander under the authority of the Secretary-General. They might be required to present, but not to surrender, their identity cards upon demand of an appropriate Egyptian authority. 110/

94. Similarly, a movement order and identity card were to be presented, but not surrendered, on demand of appropriate Lebanese authorities, by a member of UNEF entering Lebanon on duty or on leave, by sea or by air. The officer in charge of the administration of the UNEF leave centre in Lebanon was to notify the appropriate Lebanese immigration, customs or other authorities of the impending arrival or departure of regularly constituted groups of members of UNEF in sufficient time to enable such authorities to carry out the necessary clearance formalities with the least possible delay. 111/

f. RIGHT TO BEAR ARMS

95. Members of UNEF in Egypt might possess and carry arms while on duty, in accordance with their orders. 112/

6. *Privileges and immunities of operational and executive personnel*

96. Each of the agreements concluded between the United Nations and individual Governments under the programme for the provision of operational, executive and administrative personnel (OPEX) as a form of United Nations technical assistance to the Governments contained a clause 113/ by which the Government concerned recognized that such personnel should:

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

"(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 upon 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 forming part of diplomatic missions to the Government;

"(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."

110/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, paras. 7 and 8.

111/ United Nations, Treaty Series, vol. 266, I, No. 3827, p. 125, paras. 2 and 3.

112/ G A (XI), Annexes, vol. II, a.i. 66, p. 52, A/3526, para. 22.

113/ See, for example, the agreement between the United Nations and Burma, 15 December 1958 (United Nations, Treaty Series, vol. 319, I, No. 4629), p. 3, article IV (5).

**D. Article 105 (3)

ANNEX

Member States which acceded to the Convention on the Privileges
and Immunities of the United Nations between
1 September 1956 and 31 August 1959 114/

<u>State</u>	<u>Date of deposit of the instrument</u>
Albania	2 July 1957
<p>With the following reservation:</p> <p>"The People's Republic of Albania does not consider itself bound by the provisions of section 30, which provide that any difference arising out of the interpretation or application of the present Convention shall be brought before the International Court of Justice, whose opinion shall be accepted as decisive by the parties; with respect to the competence of the Court in disputes relating to the interpretation or application of the Convention, the People's Republic of Albania will continue to maintain, as it has heretofore, that in every individual case the agreement of all the parties to the dispute is required in order that the dispute may be laid before the International Court of Justice for a ruling."</p>	
Argentina	12 October 1956
Austria	10 May 1957
Federation of Malaya	31 August 1957
Finland	31 July 1958
Ghana	5 August 1958
Italy	3 February 1958
Jordan	3 January 1958
Laos	24 November 1956

With the following reservations:

"1. Laotian nationals domiciled or habitually resident in Laos shall not enjoy exemption from the taxation payable in Laos in salaries and income."

"2. Laotian nationals who are officials of the United Nations shall not be immune from National Service obligations."

114/ United Nations, Status of Multilateral Conventions (ST/LEG.3/Rev.1, pp. III-3 to III-8).

<u>State</u>	<u>Date of deposit of the instrument</u>
Libya	28 November 1958
Morocco	18 March 1957
Tunisia	7 May 1957

Chapter XVII

TRANSITIONAL SECURITY ARRANGEMENTS

